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FLORIDA'S CONSTRUCTION DEFECT STATUTE: RENOVATION BEGINS AGAIN

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Renovation is underway again on Florida's construction defect law, Chapter 558 of the Florida Statutes. Florida's construction defect law requires the owner of real property in Florida to provide contractors, developers and other construction parties with a formal written notice of potential construction defects and the reasonable opportunity to fix the defects before a construction defect lawsuit is filed.

In 2015, Florida's construction defect law was significantly overhauled, including a more detailed written notice requirement for claimants. On February 23, 2017, Senator Passidomo filed a bill in the Florida Senate, SB 1164, to again amend the construction defect law.

SB 1164 contains several noteworthy changes to Chapter 558 of the Florida Statutes , including the following:

- A notice of construction defect claim must be signed by the claimant, not by the claimant's attorney or agent.
- A notice of claim which is not sufficiently detailed is deemed invalid and is insufficient for the claimant to commence the notice and cure procedure in the statute.
- The claimant or his or her agent and any retained experts must be present for the inspection to identify the location of the alleged construction defects.
- A notice of acceptance or rejection of a settlement offer must be signed by the claimant, not by the claimant's attorney or agent.
- Before rejecting a settlement offer, a claimant must serve a written demand for mediation explaining why the claimant considers the offer inadequate. Unless mediation is waived by the person making the offer, the parties must mutually select a mediator and begin mediation within 20 days after service of the demand for mediation.
- The statute of limitations for actions founded on the design, planning, or construction or an improvement to real property (*e.g.*, construction defect lawsuits), is further tolled for 30 days after the mediation is concluded or terminated or an impasse is declared.
- A claimant's service of a notice of claim does not toll any applicable statute of repose.

The most controversial proposed change is likely to be the mandatory mediation requirement. Owners and community associations are expected to oppose the change because it will delay them from suing in court where they believe they will have the most success recovering their losses. Contractors, which have embraced the notice and cure procedure under the statute, will likely favor the addition of a mediation requirement viewing it as an additional opportunity to resolve the claim without the expense of litigation.

SB 1164 also seeks to amend Section 95.11, Florida Statutes (the four-year statute of limitations for construction defect actions), by adding a provision that a right of action founded on the design, planning, or construction or an improvement to real property does not pass to subsequent purchasers of the real property which is purchased as-is.

We will follow this legislation closely.

For more information, please contact the author Jeff Wertman on our Dispute Resolution Team.

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