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# The Clock Is Ticking For Fla. Construction Defect Claims

By **Sean Ravenel** (June 14, 2024, 6:11 PM EDT)

Last year, as part of S.B. 360, Florida's Legislature enacted significant changes to several Florida laws related to construction defect litigation.

Among the legislative acts was a change in the statute of repose for construction defect claims, shortening from 10 years to seven the deadline by which property owners, including their subrogating insurers, must file suit for latent defects based on the design, planning or construction of an improvement to real property.

Latent defects are defects that are hidden and cannot be discovered even by reasonable and customary inspections.

A statute of repose is different from a statute of limitations. A statute of limitations is the period during which the owner must bring a claim after discovery of the defect. Thus, with a statute of limitations, the clock begins to run when the defect is discovered.

With a statute of repose, on the other hand, the clock begins to run on a defined triggering event, for example the issuance of a certificate of occupancy. Also, with a statute of repose, if the defect is discovered even just one day after the statute of repose period has ended, the owner is forever barred from bringing a construction defect claim against the party responsible for the defect.

It is also important to understand that the statute of limitations does not extend the statute of repose, so the absolute outer limit to bring a construction defect claim is the expiration of the statute of repose.

The new seven-year statute of repose law under Florida Statute 95.11(3)(b) took effect on April 13, 2023. On that date, all construction defect claims that previously had deadlines between April 13, 2023, and April 13, 2026, based on the previous 10-year statute of repose under Florida Statute 95.11(3)(c) became forever barred.

However, the Florida Legislature inserted a short grace period into the new law, allowing claimants until July 1 this year to file claims that could have been brought under the old statute but were barred by the new one. The statute effective date and the grace period language states:

The amendments to s. 95.11(3)(c), Florida Statutes, made by this act apply to any action commenced on or after the effective date of this act, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, before the amendments made by this act must be commenced on or before July 1, 2024. If the action is not commenced by July 1, 2024, and is barred by the



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amendments to s. 95.11 (3)(c), Florida Statutes, made by this act, then the action is barred.

Although the focus of this article is the impending July 1 deadline to bring claims based on the old statute, it is worth mentioning here a few related issues.

First, under the old 10-year statute of repose, the clock began to run at the latest date of any one of the commencement dates, also known as triggering events, listed in the statute.

Under the new statute, however, the triggering event is defined as "the date the authority having jurisdiction issues a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion, or the date of abandonment of construction if not completed, whichever date is earliest."

Second, the issuance of a temporary certificate of occupancy or issuance of a certificate of completion are two new triggering events added by the Florida Legislature. A temporary certificate of occupancy or a certificate of occupancy is issued for new construction or change of use, while a certificate of completion is issued for remodels, renovations and shell buildings.

In many cases a temporary certificate of occupancy is issued many months before the certificate of occupancy, thus potentially even further shortening the amount of time a property owner must bring a claim based on a latent defect due to the triggering event now being the earlier of the listed events.

And third, S.B. 360 also effected changes to Florida Statute 553.84, which will affect many construction defect claims by adding a materiality requirement to an allegation that damage was caused by a violation of the Florida Building Code.

The new law adds the definition of material code violation, defining it as "a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems."

This stated purpose of this heightened standard is to focus building defect claims on issues related to safety and building performance, as opposed to less important matters, such as aesthetic issues.

And there are other impacts of the Florida Legislature's recent changes to the laws involving the filing of construction defect claims. Fortunately, the grace period language in the new statute appears to also pause the application of the new rules — including the new and earlier triggering events — until the expiration of the grace period.

A few of the stated goals of the recent Florida law changes include a reduction in frivolous litigation, a reduction in insurance premiums and an effort to bring more clarity to the process of construction defect litigation in the state. But another consequence — and a very real one — of the recent changes will be a reduction in the ability to bring claims based on defective construction, including the ability to pursue viable subrogation recovery opportunities.

The purpose of this article is to point out that the absolute bar to bring a construction defect claim under the old statute is right around the corner. The message to property owners and their representatives, including subrogation professionals considering filing suit on losses based on the design, planning or construction of an improvement to real property in Florida is this: If you have not double-checked your current statute of repose deadlines, consider this your final warning.

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