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NEW LAWS IMPACTING CONSTRUCTION INDUSTRY

Florida's recent legislative session resulted in new laws impacting residential construction. One new law creates a mandatory alternative dispute resolution process for homeowners with claims of defective construction against construction professionals. Another act amended the existing lien law and mandates changes to your forms and contracts. And, the requirement for proper licensing of all contractors as a condition to contract enforcement was modified.

Defects: The Residential Construction Defects Act became effective on May 27, 2003. Homeowners, subsequent purchasers of houses, tenants, residential associations, and construction professionals now are required to investigate and to attempt to settle claims related to construction defects before a lawsuit may be filed. Strict timeframes are established during which the homeowner and the construction professional must act.

Before filing a lawsuit against a construction professional relating to an alleged defect, the claimant must provide written notice of the claim in reasonable detail. The construction professional has five days after service of the initial notice to inspect the property and assess each defect. Within ten days of the initial notice, the construction professional must forward notice of the claim to each subcontractor, supplier, or design professional that it believes may be responsible for any defect identified in the notice.

All construction professionals receiving notice of a claim must, within 25 days of receiving notice, serve a written response to the claimant. If any construction professional offers to settle or correct the defects, the claimant must respond within fifteen days (45 for an association, such as a condominium association) – or the offer is deemed accepted. If a claimant wishes to reject the offer of repair, the response must use the word "REJECTED" – or, again, the offer will be deemed accepted.

Notice of this process has to be included in all contracts with an owner. The particular language required by the law is set forth in Section 558.005, Florida Statutes.

Liens: The lien laws of Florida were also amended. Direct contracts between a contractor and owner for projects of up to four residential units must contain a specific notice provision in boldface type. Also, some forms have been amended: (1) the warning language in the Notice to Owner has been expanded; (2) a specific, expanded form is mandated for the "Contractor's Final Payment Affidavit;" (3) warning language

on the Claim of Lien has been expanded; and (4) lenders making any loan disbursement must provide a specific notice to borrowers.

Licenses: Section 489.128 was clarified. The law retains the requirement that all contractors must be licensed. An unlicensed contractor has no lien or bond claim, “for any labor, services, or materials provided under the contract,” which means an unlicensed contractor cannot enforce a payment requirement. But the new law clarifies what it means to be “unlicensed” and provides that it is not a defense to a bond claim that the principal or indemnitor is unlicensed.