

2018 Florida Legislature Amends Construction Statute of Limitations and Repose

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The Florida Legislature has amended the construction statute of limitations and repose a second time in two years. Effective July 1, the amendments include (1) a provision addressing completion of the contract and final performance, and (2) a provision extending the statute of repose in certain circumstances.

Pursuant to Fla. Stat. §95.11(3)(c), Florida's four-year statute of limitations and 10-year statute of repose, the time for commencing an action founded on the design, planning, or construction of an improvement to real property runs from the latest of the date of:

1. actual possession by the owner;
2. issuance of a certificate of occupancy;
3. abandonment of construction if not completed; or
4. completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

Completion of the Contract and Final Performance

To address final performance with regard to "completion of the contract," which last year was defined to mean "the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment was made," the 2018 Legislature added the following provision:

With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced.

This provision clarifies that repair or correction of completed work, including warranty work, performed after issuance of a certificate of occupancy or certificate of completion, does not delay the start of the running of the statute of limitations or repose.

Extension of the Statute of Repose

The 2018 Legislature also added the following provision to the statute of repose:

However, counterclaims, crossclaims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

This provision extends the time for defendants in construction defect actions, upon being served, to commence a counterclaim, crossclaim, or third-party claim against other responsible persons or entities. It essentially provides a cushion where, for example, an owner sues a general contractor on the eve of the expiration of the SOR, thereby leaving the general contractor limited or no time to investigate and commence an action against responsible subcontractors.

*** The full article will be published in the Summer 2018 edition of ActionLine, a publication of the Florida Bar Real Property, Probate, and Trust Law Section.*

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