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Construction Claims: WHICH FLORIDA STATUTE OF LIMITATIONS APPLY

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When a contractor, subcontractor, developer, supplier or design professional is sued for defective work, work pursuant to a contract, or misrepresentations / fraud in connection with a project the first question Defense counsel addresses is whether the claim is barred by a statute of limitations. Statute of limitations generally places a time limit on filing suit. Different time limits apply depending on the kind of claim asserted (breach of contract, negligence, fraud). If the suit is not timely filed it is forever barred.

Florida's statute of repose claims for negligent design or construction only, establishes a ten year cap or ceiling after which a suit is forever barred.

Caveat Plaintiff --- LET THE PLAINTIFF BEWARE



Specific Statutes of Limitations

Actions Based on Design, Planning or Construction of an Improvement to Real Property

- In Florida, there is a 4 year statute of limitations for actions founded on the design, planning or construction of an improvement to real property. The statute of limitations begins to run from the last date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed or the date of completion or termination of the contract between the professional engineer, registered architect or licensed contractor and his or her client.
- For latent defects (hidden defects), the 4 year statute of limitations does not start to run until the defect is discovered or should have been discovered with the exercise of due diligence.

Breach of Written Contract / Breach of Express Warranty

- For actions alleging breach of written contract / express warranty the Statute of Limitations is 5 years [except payment bonds which are typically one (1) year from the date of last furnishing].

Breach of Oral Agreement

- For actions alleging the breach of an oral agreement the statute of limitations is 4 years.

LEGAL INFORMATION FOR THE CONSTRUCTION INDUSTRY

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Implied Contract Claims

*“Let
the
Plaintiff
beware”*

- Where a plaintiff is not certain about the viability of a breach of contract claim, the theories of quantum meruit and unjust enrichment are sometimes plead in the alternative.

The statute of limitations for quantum meruit and unjust enrichment claims is 4 years.

Negligence / Professional Malpractice

- The statute of limitations for negligence or professional malpractice (engineer, architect, surveyor) is 4 years.

Fraud and Misrepresentation

- Claims for fraud and misrepresentation must be brought within 4 years from when fraud or mistake is discovered or should have been discovered.

Breach of Implied Warranties

- The statute of limitations for claims for the breach of the implied warranty of habitability for new homes and the breach of the implied warranty of workmanlike performance for repair work is 4 years.

Indemnity Claims

- Construction participants may seek indemnification from one another based upon a contract or a special relationship between one another.

If the indemnity claim is based upon a contract, the statute of limitations is 5 years. If the claim is one common law indemnity, the statute of limitations is 4 years.

The statute of limitations does not begin to run on a claim for indemnity until the right to bring that claim is established - either when a judgment has been entered or when a defendant has paid the claim.

Statute of Repose

- Florida has a 10 year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. The action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect or licensed contractor and his or her employer, whichever date is latest.

Practice Note - Condominium and Cooperative Associations

The statute of limitations for any actions which a condominium association or cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration [commonly referred to as "turnover"]. F.S. 718.124

Conclusion

Owners should determine when the defect was discovered or should have been discovered and the date of substantial completion for the defective work and the project, provide prompt written notice to the parties who may have responsibility for the defect, and consider whether to enter into tolling agreements with the parties who may have responsibility for the defective work to toll the applicable statute of limitations and statute of repose.

Contractors, developers, suppliers and design professionals should determine when the defect was discovered or should have been discovered and the date of substantial completion for the defective work and the project. In addition, these construction parties should consider providing written notice to the owner reserving their rights and stating that nothing they say or do should be construed as an admission of liability.