

Florida's New Construction Defect Legislation: Alternative Dispute Resolution Process for Claims Relating to Defective Residential Construction

A new Florida law which became effective on May 27, 2003 as Chapter 558 of the Florida Statutes creates and mandates an alternative dispute resolution process applicable to claims alleging defective construction of dwellings. The Statute is intended to reduce the number of lawsuits and arbitrations filed for defective residential construction by granting construction professionals an opportunity to investigate and settle potential claims and/or correct defective construction before would-be claimants can file lawsuits or demand arbitration.

The Statute provides Florida's construction professionals the right to receive notice, the right to inspect and the right to offer to resolve construction defect claims before being sued. The Statute sets forth specific notice and procedural requirements which must be met prior to the initiation of an action (including arbitration) for the defective construction of a "dwelling." The Statute has broad application and defines "dwelling" as a single-family house, manufactured or modular home, duplex or unit in a multi-family residential building designed for residential use, including condominium units and common elements." The statute applies to claims asserted by homeowners, homeowners associations, tenants, condominium unit owners, condominium associations and subsequent purchasers.

The Statute requires that any contract for the sale, design, construction, or remodeling of a dwelling must provide notice to the owner of the

Statute's application. This Statutory Notice must contain the following specific language and be printed in bold face type and all capital letters:

FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW.

Clearly, developers' sales contracts with purchasers of dwellings must

include the Statutory Notice. However, the Statute is not clear as to whether construction contracts between a contractors and developers must contain the Statutory Notice. In an abundance of caution, and to better assure the protections afforded by the Statute, we recommend that the Statutory Notice be included in contractors' construction contracts with developers and that construction contracts also require the developers to include the Statutory Notice in their purchase contracts and the documents creating condominium and homeowners associations. We also recommend including the Statutory Notice in existing contracts by change order or modification to attempt to shelter current projects under the Statute.

Please do not hesitate to contact the Miami office if you have any questions or concerns regarding the Statute or if they can be of assistance in implementing your compliance. ❖

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