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## Proposed Amendments to Chapter 558, Florida Statutes

The Associated General Contractors of America (“AGC”) will be seeking passage of a bill in 2015 which amends Chapter 558, Florida Statutes, Florida’s “Notice and Opportunity to Cure” statute.

House of Representatives Bill 87 (“HB 87”) was filed in the Florida House of Representatives on December 9, 2014. The House sponsor for HB 87 is Representative Kathleen Passidomo, an attorney whose practice includes real estate, corporate, and business law. The proposed legislation was developed with the assistance of several Florida construction attorneys, primarily Gary Stein, co-managing partner of Peckar & Abramson’s Miami office and General Counsel for the South Florida chapter of the AGC.

The proposed amendments to Chapter 558, as set forth in HB 87, are intended to address a number of problems with the current notice and opportunity to cure process, in order to ensure that contractors can proactively and effectively address alleged construction defects and avoid costly litigation.

Key proposed amendments to Chapter 558 include:

- Revising the legislative intent to address the involvement of insurers;
- Revising the legislative intent to indicate that Chapter 558 is intended to provide an opportunity to resolve construction defect claims through confidential settlement negotiations;
- Revising the definition of the term “Completion of a building or improvement” to include issuance of a temporary certificate of occupancy;
- Providing additional requirements for a notice of claim, including the identification of specific location(s) of each alleged construction defect, as well as the specific provisions of the building code, project plans, project drawings, project specifications, or other documentation, information, or authority that serve as the basis of the claim for each alleged construction defect;
- Revising the requirements for a response to a notice of claim to address monetary settlement offers;
- Providing that, if a claimant proceeds with an action that includes any claim previously resolved in accordance with Chapter 558, the associated portion of that action shall be deemed frivolous;
- Providing for sanctions for such frivolous claims, including attorneys’ fees;
- Revising the provisions relating to production of records requested under Chapter 558, to include a claimant’s maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defects identified in the notice of claim and any resulting damages; and
- Providing for sanctions for construction defect claims that were solely the fault of a claimant or its agents, including costs of investigation, testing, and attorneys’ fees.

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HB 87 also contains proposed amendments to §§ 718.203(3) and 719.203(3), Florida Statutes, conforming those statutory sections to the revised definition of the term “Completion of a building or improvement.”

The proposed legislation should be filed in the Senate shortly, and will continue to work its way through the legislative process when the Florida Legislature holds its committee meetings in January and February 2015.

We will continue to monitor the progress of this important proposed legislation, and encourage members of the South Florida chapter of the AGC, Construction Association of South Florida, Associated Builders and Contractors, and others in the construction industry to contact local legislators to voice their support for the proposed amendments to Chapter 558, Florida Statutes.

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