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New Law Impacting Florida's Statute of Repose

On June 14, 2017, Governor Scott signed House Bill 377 into law, clarifying that Florida's ten-year Statute of Repose commences either when the work is completed or when final payment becomes due, whichever is latest. The new law resolves a problem for contractors created by a recent Florida court ruling that held the Statute of Repose to commence as late as when the owner made final payment. The applicable amendments to Florida Statute Section 95.11 take effect on July 1, 2017 and apply to all causes of action that accrue on or after that date.

Perhaps the most critical component of a construction professional's risk management program is the length of time that it is liable for the work performed on a project. While contractual warranty periods typically run one or two years from substantial completion, the true length of a contractor's post-completion obligation is measured by the "Statute of Repose," which establishes the period of time following the completion of construction that a lawsuit can be filed for construction defects.

Florida Statutes, Section 95.11 states that any lawsuit based upon the design, planning, or construction of an improvement to real property must be brought within four years from "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 . . . whichever date is latest." This four-year period is the "Statute of Limitations."

There is one very important exception to this rule. If the action is based upon a "latent defect," the deadline to file suit is four years from the discovery of the defect or the date that it reasonably should have been discovered. However, such actions must be brought within ten years from "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 . . . whichever date is latest." This ten-year period is the "Statute of Repose" and represents the absolute latest date that a contractor can be liable for its work.

Knowing exactly when the Statute of Repose expires is critical because it dictates the period during which risk management tools such as completed operations coverage (for contractors and subcontractors alike) must remain in place. Ambiguity regarding the expiration of the Statute of Repose could result in contractors and subcontractors being unprotected and subject to unexpected liability for their work.

In a recent Florida court case, there was an issue as to the definition of the phrase "completion of the contract," as the statute left it undefined. The court ruled that it was the date that the owner made final payment. While this ruling extended the period of liability for the contractor beyond its expectation, it also had the effect of creating uncertainty as to when the Statute of Repose would, in fact, expire. This made it difficult for contractors to plan ahead and be sure that their risk

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mitigation mechanisms would be in place throughout the entire period of potential liability. This also gave owners an opportunity to intentionally delay payment for the purpose of extending the liability period.

House Bill 377 is good news for contractors as it clarified that “completion of the contract” occurs either when the work is completed or when final payment becomes due, whichever is latest. The date final payment is actually made no longer plays a role, which removes the ambiguity created by the court ruling and prevents owners from intentionally delaying payment to extend the repose period.

More information about the Bill, as well as the revised language for Florida Statutes, Section 95.11, can be found at <https://www.flsenate.gov/Session/Bill/2017/0377/ByCategory/?Tab=BillHistory>.

Feel free to contact us for more information.

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