

Florida Extends Filing Time for Claims Subject to the Statute of Repose

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Under Florida's construction-related statute of repose, Fla. Stat. § 95.11, actions based on the design, planning or construction of an improvement to real property are barred if not commenced within 10 years after the later of several possible dates, including the date of actual possession by the owner and the date of the issuance of a certificate of occupancy. The Florida Legislature recently amended the statute to extend the time within which defendants subject to a suit filed close to the end of the 10-year period can file claims. Under the revised law, a defendant can file "counterclaims, cross-claims and third-party claims up to 1 year after the pleading to which such claims relate is served." Regardless of when the cause of action at issue accrued, the law applies to actions commenced on or after July 1, 2018, except that any action that would not have been barred under Fla. Stat. § 95.11(3)(c) prior to the amendment may be commenced before July 1, 2019.

The revised law provides relief to defendants because, under the prior law, they had to file claims against other potentially responsible third parties before the expiration of the statute of repose. Under the new law, defendants can bring third parties into the action after the expiration of the 10-year statute of repose period.

Although the revised law provides relief to defendants by allowing them to pursue other responsible parties, the revised law may also be viewed as offering assistance to subrogating insurers proceeding as plaintiffs. The revised law may offer assistance to plaintiffs because, by allowing defendants to bring additional parties into the litigation that, previously, the plaintiff did not know were responsible, in part, for the construction defect at issue, there is a larger pool of money from which the plaintiff can seek to recover.

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