

PUBLICATION

Florida Shortens Time for Filing Construction-Related Suits, Imposes Materiality Threshold

April 25, 2023

On April 13, 2023, Governor Ron DeSantis signed Senate Bill No. 360 (the Act), an act that affords greater protection from suits to members of Florida's construction industry. The Act amends § 95.11, Florida Statutes, shortening the time that lawsuits based upon design, planning, or construction involving real property must be commenced, and altering the date that the statute of limitations period begins to run. Additionally, the Act amends § 553.84, Florida Statutes, imposing a materiality threshold for private causes of action based upon violations of Florida's Building Code.

Lawsuits must be commenced within time limits established by law. Statutes of limitation establish periods that usually start from the date a claim "accrues," such as the occurrence of the last event creating the cause of action, or when the injured party should have discovered a claim. Unlike statutes of limitations, statutes of repose, which are usually longer, typically run from the date of a definitive act without consideration of when the cause of action accrued.

The Act alters Section 95.11 to revise the start of the four-year statute of limitations, changing its potential "trigger" dates, and causing the period to start from whichever date occurs *earliest*, rather than the *latest*. The Act removes two potential trigger dates – the date of the owner taking possession of the improvement, and the date of completion or termination of a contract between certain design professionals and their employers. It also adds two new dates – the date of the issuance of a temporary certificate of occupancy, and the issuance of a certificate of completion. Because the statute of limitations will now start from the earliest of the trigger dates, the period to commence construction defect lawsuits is effectively shortened.

Similarly, the Act shortens Florida's ten-year statute of repose to seven years, changing the start of the period by altering its potential trigger dates, and causing the period to start from the *earliest* date, rather than the *latest*. The Act removes two potential trigger dates – the date of the owner's actual possession of the improvement and the date of completion or termination of a contract between certain design professionals and their employers. Likewise, the Act adds two new trigger dates – issuance of the temporary certificate of occupancy, and issuance of the certificate of completion.

Section 553.84 provides a private right of action to persons who are damaged as a result of violations of the Florida Building Codes Act and Florida Building Code. The Act amends this section to limit recovery for "material" violations only. The Act also amends the section to include a definition of "material violation," meaning "a Florida Building Code violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems."

Key Takeaways

The Act took effect on April 13, 2023, and the amendments to Florida's statute of limitations and statute of repose apply to any action commenced on or after the effective date, regardless of when the cause of action accrued. However, the Act provides a limited exception – any suit that would not have been barred under the previous repose and limitations periods may be commenced until July 1, 2024. Those exceptions that are not commenced by July 1, 2024, will be time-barred.

If you have any questions about this article or the new Act, please reach out to any member of Baker Donelson's [Construction Group](#).