

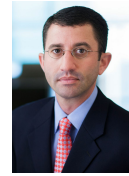
Fast & Furious Tort Law Changes, Part 2: Shorter Statute of Repose for Improvements

On April 13, 2023, Governor Ron DeSantis signed into law Senate Bill 360, known as “An act relating to causes of action based on three improvements to real property.” Like other recent tort law changes, including those discussed in our prior Alert on March 30, 2023, this new law has two major changes for pursuing subrogation claims in the State of Florida relating to the design, planning, and construction of improvements to real property.

First, the four-year statute of limitations for claims based on the design, planning, or construction of improvements to real property has a revised set of trigger dates. The time now runs from the earliest of a temporary certificate of occupancy, a certificate of occupancy, a certificate of completion, or the date a construction project was abandoned if uncompleted. Prior to this change, the trigger dates had included optional dates of the actual possession by the owner or the completion of the contract by the engineer, architect, or contractor, which have now been deleted. Critically, the new law leaves in place the discovery rule, in that for “latent” defects, the statute of limitations period of four years runs from the time the defect is discovered or should have been discovered. Second, the statute of repose for claims related to the design, planning, or construction of improvements to real property has been shortened from ten years to seven years, also running from the earlier of the above trigger dates. The new, shorter seven-year period presents a unique shift in the law for subrogation investigations, as those investigating building or construction-related claims need to move faster and not delay until the first-party claim is fully adjusted. An increase in the pace of investigations and prosecutions of subrogation claims will be needed.

These changes in the law in Florida apply to any action commenced on or after the effective date of the law, which is April 13, 2023, irrespective of when the cause of action accrued. However, for any action that would not have been barred before these changes under the prior ten-year statute of repose, claimants still have until July 1, 2024, to bring the action. This grace period of sorts gives claimants until July 1, 2024, to bring claims that would not have been barred under the former ten-year repose period.

Tort law in Florida has seen a lot of changes in the first part of 2023. Recovery professionals need to keep these changes in mind and recognize the new changes in Florida require a renewed dedication to early investigation of insurance claims with an eye toward subrogation potential.



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