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Florida Senate Ponders Change to Construction Defect Statute

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The Florida Senate is considering a change to section 558.004, Florida Statutes, which is titled Notice and Opportunity to Repair. That statute currently requires a party asserting that a construction defect exists to serve a notice of claim on the party with whom the claimant contracted to perform work. The current version of section 558.004 requires notices of claim only to provide “reasonable detail sufficient to determine the general nature of each alleged defect and a description of the damage or loss resulting from the defect, if known.” Under the proposed legislation, Senate Bill No. 418, the Florida Senate is seeking to tighten the notice provision and require specificity. The amended statute contains additional language that would require a claimant to “identify the specific location of each alleged construction defect to enable the responding parties to locate all of the alleged construction defects without undue burden. The notice of claim must also identify 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.” [SB No. 418, FL. Stat. § 558.004\(1\)\(b\)](#). Failure to provide this information would constitute [prima facie](#) evidence of a defective notice of claim.

In addition, the proposed legislation provides for monetary sanctions when “the claimant proceeds with an action that includes any claims previously resolved by the payment of money, making repairs, or a combination of the two; or the claimant or its attorney knew or should have known that the alleged construction defects identified in the notice of claim were caused solely by the claimant or its agents, or would not be supported by the application of then existing law.”

We are closely following the bill’s status. Tighter requirements and the availability of sanctions would help contractors in defending against construction defect claims. At the same time, however, owners that met the new requirements of the proposed bill would likely have stronger claims given the additional evidence they would have supporting their defect claims. Check back to this website in the coming weeks for an update as to whether the legislature passes the bill and it becomes law.