

Top 5 Developments in Florida Law That Developers Should Know

Commentary by Jason Kellogg



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South Florida developers are as sophisticated as any, but the South Florida construction industry is as dynamic as any. As a result, developers must keep an eye on changes to the laws that affect the industry.

Here are five legal developments that developers should be aware of.

1. CHANGES TO THE CONSTRUCTION DEFECTS STATUTE

Since the Legislature enacted Chapter 558 back in 2003, the law has been employed effectively by developers to stem the tide of defects lawsuits by owners. The law requires owners to go through a presuit notice, inspection and negotiation process before filing construction defects claims.

Earlier this year, Florida lawmakers passed amendments to Chapter 558 that favor developers. For instance, the presuit notice requirement no longer applies only to fully completed construction, but also to homes and units that have received only temporary certificates of occupancy.

In addition, the revised law requires owners to identify the locations of each alleged construction defect, a requirement that should streamline the inspection process for developers and contractors.

2. CHANGES TO THE CONDOMINIUM TERMINATION STATUTE

Florida lawmakers also passed changes to the statute that governs the termination of condominiums. During the recession, there were several high-profile instances where developers purchased the bulk of a condominium's units, then used the condominium termination statute to force the building's remaining owners to sell their units for fair market value—even if that

value was less than the owners paid for the units. This year's amendments attempt to address that unfortunate scenario.

Now, unit owners who are current on their mortgages and condo association fees not only get fair market value, they also receive a satisfaction of their first mortgage if that mortgage exceeds fair market value. And if the unit owners are original owners who maintain the units as homestead property, they would receive their original purchase price, even if it exceeds fair market value.

The amendments also give some unit owners the ability to rent their units for 12 months before moving out of them, and a 1 percent relocation fee. Finally, the changes include a new arbitration provision that requires disputes over termination issues to go to binding arbitration.

3. DEVELOPERS CAN BEGIN TO BENEFIT FROM THE 2012 STATUTE ON OFFSITE IMPROVEMENT WARRANTIES

In 2012, lawmakers passed a statute that prevented the application of implied warranties of fitness, merchantability or habitability to "offsite improvements," which include common new construction elements such as driveways and drainage. Soon after the law was passed, the Florida Supreme Court issued an opinion barring the statute's retroactive application.

The court held it unconstitutional to deny implied warranties to buyers who purchased homes and condominiums prior to law's enactment. However, the court left open the statute's application to buyers at future developments or projects.

In his dissent, Justice Charles Canady emphasized that the constitutionality of the bill's future application "properly remain for another day." Developers that built projects in the 2012 and 2013 and are now seeing warranty claims that include offsite improvements may now be able to use the statute to limit their war-

ranty exposure.

4. BIGGER DEPOSITS MAY MEAN MORE LAWSUITS IF THE CONDOMINIUM MARKET DECLINES AGAIN

Recent reports have expressed some concern that the latest explosion of new condominium developments may ultimately cause another condo bust. But because developers have been asking for and receiving deposits of up to 50 percent, others counter that developers have been much more prudent, and the industry itself is much more stable, than in 2007 and 2008.

To the extent murmurings of another bust continue to resonate, those higher deposits may actually have a destabilizing effect. Buyers who have invested large amounts of cash up front seem to be more willing to invest in lawsuits to get that money back, even in the face of a developer-friendly legal landscape.

5. KNOW YOUR SUBS BECAUSE CONSTRUCTION DEFECTS LITIGATION IS COMING

The construction boom is bound to bring with it construction defects litigation. This trend may be ignited further by the shortage of skilled subcontractors working on these projects.

Although reports seem to indicate that the situation is improving, the plumbing, electrical and mechanical trades experienced a dearth of experienced workers. This trend was due in part to many of them fleeing the industry during the economic downturn.

In any event, developers would be wise to look into the talent being used to build their projects, to make sure that inexperienced tradesmen are not creating expensive problems for lawyers to find down the road.

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