

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 1940

INTRODUCER: Regulated Industries Committee and Senator Clary

SUBJECT: Real Property Improvements

DATE: March 30, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute decreases the period within which an action based on design, planning, or construction of an improvement to real property may be filed from 15 years to 10 years. It provides that warranties of the developer under s. 718.618, F.S., apply to the conversion of a condominium if construction of the improvement started before it was designated by the developer as a condominium. It provides that s. 718.203, F.S. does not apply to such a conversion.

This committee substitute substantially amends the following sections of the Florida Statutes: 95.11 and 718.618.

II. Present Situation:

Limitations other than for the recovery of real property

Section 95.11(3)(c), F.S., provides an action, other than for the recovery of real property, shall be commenced within four years for actions founded on the design, planning or construction of an improvement to real property with the time running from:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy, the date of abandonment of construction if not completed; or
- The date of completion or termination of the contract with engineer, architect or contractor and his or her employer;

whichever is later. If the action involves a latent defect, however, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action for a latent defect must be commenced within 15 years after

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy, the date of abandonment of construction if not completed; or
- The date of completion or termination of the contract with engineer, architect or contractor and his or her employer;

whichever date is latest.

Warranties

Section 718.203(2), F.S., provides that the contractor, and all subcontractors and suppliers, grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

- For three years from the date of completion of construction of a building or improvement, a warranty for the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.
- For one year after completion of all construction, a warranty as to all other improvements and materials.

Section 718.203(6), F.S., provides that nothing in the section affects a condominium as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings on which construction has been commenced prior to July 1, 1974.

Converter reserve accounts; warranties

Section 718.618(1), F.S., provides that when existing improvements are converted to ownership as a residential condominium, the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7).

Section 718.618(6), F.S. provides, in part, that a developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium and reserve accounts are funded in accordance with this section. As an alternative to establishing reserve accounts, or when a developer fails to establish the reserve accounts, the developer shall be deemed to grant a unit owner an implied warranty of fitness and merchantability for purposes or uses intended.

III. Effect of Proposed Changes:

Limitations other than for the recovery of real property

The committee substitute amends s. 95.11(3)(c), F.S., by changing the period within which actions based upon certain improvements to real property may be filed from the latest to the earliest of either:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy, the date of abandonment of construction if not completed; or
- The date of completion or termination of the contract with engineer, architect or contractor and his or her employer.

within which actions based upon certain improvements to real property may be filed. It decreases the time within the action for a latent defect must be commenced from 15 to 10 years.

According to a representative for the Florida A.G.C. Council, Inc., a trade organization representing commercial general contractors, Florida's 15-year time period for bringing these type of actions is considerably longer than the period permitted in other states, most of which have adopted a 10-year limit. The national average is 9.2 years.

Converter reserve accounts; warranties

It creates s. 718.618(9), F.S., to provide that this s. 718.618, F.S., applies to the conversion on an existing improvement if construction of the improvement started before it was designated by the developer as a condominium. It provides that s. 718.203, F.S. does not apply to such a conversion.

This provision would mean that only the warranties from the developer would apply when a building is commenced for some purpose other than a condominium.

Applicability of Act

The committee substitute provides that s. 95.11(3)(c), F.S., as amended by this act, applies to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued. However, an action that would not have been barred by that section before July 1, 2006, may be commenced before July 1, 2007, but if such action is not commenced by that date and it is barred by s. 95.11(3)(c), F.S. as amended by this act, it is forever barred.

Effective Date

The committee substitute provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For unit owners of condominiums that are new construction but which were converted mid-construction, the bill now provides that the unit owners will not be covered by warranties provided by the contractor.

C. Government Sector Impact:

No.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
