337012

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 91 - 236
and insert:

(12) ACTIONS RELATING TO AN IMPROVEMENT TO REAL PROPERTY.—

(a) *Running of time to commence action.*—An action founded on the design, planning, or construction of an improvement to real property must be commenced within the timeframes set forth in this section or the action is time barred.

1. The time to commence the action runs from the date of actual possession by the owner, the date of the issuance of a

certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is earliest. For the purposes of this subparagraph, the term "completion of the contract" means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

2. Counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

3. If the action is based on construction that is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced.

(b) *Limitations and repose periods.*—

1. An action founded on the design, planning, or construction of an improvement to real property may be commenced within 4 years after the time to commence an action begins to run.

337012

2. An action involving a latent defect may be commenced within 4 years after the facts giving rise to the cause of action are discovered or should have be discovered through the exercise of due diligence. However, the action may not be commenced more than 5 years after the time for commencing an action begins to run for a one-family, two-family, or three-family residence not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith and 10 years for any other improvement.

Section 2. Subsection (2) of section 627.441, Florida Statutes, is amended to read:

627.441 Commercial general liability policies; coverage to contractors for completed operations.—

(2) A liability insurer must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b). The period of such coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in s. 95.11(12) ~~s. 95.11(3)(c)~~.

Section 3. Present subsections (8) through (15) of section 558.004, Florida Statutes, are redesignated as subsections (9) through (16), respectively, a new subsection (8) is added to that section, and paragraphs (b) and (c) of subsection (1) and subsection (7) of that section are amended, to read:

558.004 Notice and opportunity to repair.—

(1)

(b)1. The notice of claim must include an inspection report

337012

that is verified pursuant to s. 92.525 by a contractor, engineer, building code inspector, or other inspector who has a state license and experience relevant to the type of construction that is the basis of the claim. The report must include all of the following:

a. A short statement describing the relevant experience and licenses of the person conducting the inspection.

b. A description of each alleged construction defect, a clear description of the location of the defect; pictures, videos, and any results of testing which pertain to the defect; and, if known, an explanation of the damage resulting from the defect.

c. A description of how the inspection was conducted, including a description of any specialized equipment used during the inspection or of any tests conducted.

d. An explanation of whether or to what extent and how the property owner or person acting at the direction of the property owner inspected, maintained, repaired, or renovated a portion of the structure containing the alleged defect since the owner took possession of the structure.

2. The preparation of an inspection report in bad faith constitutes grounds for discipline by any relevant licensing board or agency.

3. The claimant and the person preparing the inspection report do not have an ~~describe in reasonable detail the nature of each alleged construction defect and, if known, the damage or loss resulting from the defect. Based upon at least a visual inspection by the claimant or its agents, the notice of claim must identify the location of each alleged construction defect~~

337012

~~sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no~~ obligation to perform destructive or other testing for purposes of this notice.

(c) The claimant shall endeavor to serve the notice of claim within 15 days after discovery of an alleged defect, but the failure to serve notice of claim within 15 days does not bar the filing of an action, subject to s. 558.003. This subsection does not preclude a claimant from filing an action sooner than 60 days, or 120 days as applicable, after service of written notice as expressly provided in subsection (6), subsection (7), or subsection (9) ~~(8)~~.

(7)(a) A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of such acceptance or rejection on the person making the offer within 45 days after receiving the settlement offer.

(b) If the claimant rejects the settlement offer, the claimant must include the reasons for rejecting the offer in the notice rejecting the offer. If the claimant believes that the settlement offer omitted reference to any portion of the claim or was unreasonable in any manner, the claimant must include in the notice the items that the claimant believes were omitted and state in detail all known reasons why the claimant believes the settlement offer is unreasonable.

(c) Upon receipt of a claimant’s notice of rejection and the reasons for such rejection, the person served with the rejection, within 15 days after receipt of the notice, may make a supplemental offer of repair or monetary payment, or both, to the claimant.

337012

(d) If the claimant rejects a supplemental offer to repair the construction defect or to settle the claim by monetary payment or a combination of both, the claimant must serve written notice of the claimant's rejection on the person making the supplemental offer. The notice must include all known reasons for the claimant's rejection of the supplemental settlement offer.

(e) If a claimant initiates an action without first accepting or rejecting the offer or supplemental offer, the court shall stay the action upon timely motion until the claimant complies with this subsection.

(8)(a) If the claimant rejects a timely settlement offer or supplemental offer provided to remedy the alleged construction defect at no cost to the claimant, in any action brought for that defect, the claimant may not recover attorney fees from the offeror on any basis unless the claimant proves by a preponderance of the evidence that, at the time of the offer, additional repairs beyond those offered were necessary to remedy the defect. This paragraph does not apply to any claim for attorney fees based on a contract between the claimant and the offeror.

(b) If a claimant accepts an offer made pursuant to paragraph (5)(b), paragraph (5)(c), or paragraph (5)(e) or a supplemental offer made pursuant to paragraph (7)(c), the claimant must, within 90 days after the acceptance, enter into a contract with one or more appropriately licensed contractors to complete the repairs necessary to remedy the alleged construction defect. The offeror or insurer shall pay directly to the contractor or contractors, from the accepted monetary

337012

payment, the amounts necessary to begin and to continue the repairs as the work is performed and expenses are incurred. The offeror or insurer may not require the claimant to advance payment for the repairs. The repairs must be completed within 12 months after the claimant enters into the contract for repairs, absent mutual agreement between the offeror or insurer and the claimant.

Section 4. Section 558.0045, Florida Statutes, is created to read:

558.0045 Construction defect actions.—

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 3 - 7

and insert:

amending s. 95.11, F.S.; revising the limitations period for certain actions founded on the design, planning, or construction of an improvement to real property; amending s. 627.441, F.S.; conforming a cross-reference; amending s. 558.004, F.S.; requiring a notice of claim to include an inspection report that is verified by the person conducting the inspection; specifying the required contents of the report; providing that a bad faith preparation of an inspection report constitutes grounds for discipline; specifying that the person preparing the inspection report does not have an obligation to perform certain testing; requiring