

House Bill No. 1089

An act relating to construction contracting; amending s. 95.11, F.S.; revising commencement periods for actions founded on the design, planning, or construction of improvements to real property; amending s. 718.618, F.S., relating to converter reserve accounts and warranties; limiting applicability to certain improvements; providing an effective date.

WHEREAS, architects, engineers, and contractors of an improvement to real property may find themselves named as defendants in a damage suit many years after the improvement was completed and occupied, and

WHEREAS, to permit the bringing of such actions without an appropriate limitation as to time places the defendant in an unreasonable, if not impossible, position with respect to asserting a defense, and

WHEREAS, architects, engineers, and contractors have no control over an owner whose neglect in maintaining an improvement may cause dangerous or unsafe conditions to develop over a period of years, who uses an improvement for purposes for which it was not designed, or who makes alterations or changes that, years afterward, may be determined to be unsafe or defective and that may appear to be a part of the original improvement, and

WHEREAS, liability insurance for the engineer, architect, or contractor is more difficult and more expensive to obtain the longer he or she is exposed to potential liability after an improvement to real property has been completed, and

WHEREAS, Florida currently limits the liability exposure of architects, engineers, and contractors to a period of 15 years after completion of an improvement to real property, and

WHEREAS, liability insurance coverage is increasingly difficult and more expensive to acquire to cover a period of more than 10 years after an improvement to real property is completed, especially for small and medium-sized architecture, engineering, and construction firms, and

WHEREAS, liability insurance coverage for work on residential construction projects, such as condominiums, is generally not available to cover a period of more than 10 years after the improvement to real property is completed, and

WHEREAS, the increased cost of such insurance coverage and liability exposure adds to the total cost of construction and is ultimately borne by residential and commercial property owners, and

WHEREAS, Florida's current 15-year limit on liability is considerably longer than most other states, some of which have adopted limits as low as 5 years and most of which have adopted a 10-year limit, and

WHEREAS, the best interest of the people of the state will be served by reducing the period of time an engineer, architect, or contractor may be exposed to potential liability after an improvement has been completed, and

WHEREAS, a recent increase in the conversion of completed or partially completed buildings to condominiums has caused confusion regarding the scope of the warranties specified in sections 718.203 and 718.618, Florida Statutes, and necessitates the clarification of these statutes, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running 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 or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, 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 must be commenced within ~~10~~ 15 years after 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 or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.

Section 2. Subsection (9) is added to section 718.618, Florida Statutes, to read:

718.618 Converter reserve accounts; warranties.—

(9) This section applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. In such circumstances, s. 718.203 does not apply.

Section 3. The amendments to s. 95.11(3)(c), Florida Statutes, made by this act shall apply to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, prior to the amendments made by this act may be commenced before July 1, 2007, and if it is not commenced by that date and is barred by the amendments to s. 95.11(3)(c), Florida Statutes, made by this act, it shall be barred.

Section 4. This act shall take effect July 1, 2006.

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.