The Defense of Time Limitations in Construction Defect Cases

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Potential liability of contractors for construction defects does not end upon the completion of a project. A contractor's risk of liability for construction defects is determined by two types of defenses with different time limitations: statutes of limitations and a statute of repose.

Statutes of limitations set the time limit for when a party has to file a lawsuit — these time limits vary depending on the type of claim. In construction defect claims, South Carolina law sets the statute of limitations at three years. South Carolina courts have determined that the three year clock begins to run at the time the claimant knows that a claim exists, even if the claimant does not need to know the exact claim or potential defendants. It is the duty of the claimant to then undertake an investigation to determine his claims and against whom he should assert them.

On the other hand, a statute of repose is a defense used to set an outer limit and complete bar on potential claims without consideration as to when the claimant discovers the construction defect. South Carolina Code Ann. Section 15-3-640 sets forth the statute of repose limitations period. In 2005, the South Carolina General Assembly amended this statute, reducing the limitations period from thirteen to eight years. This amendment applies to projects that reach substantial completion after July 1, 2005. Recently, the South Carolina Supreme Court further clarified the statute in finding the "substantial completion" means that degree of completion of a project or improvement, upon attainment of which the owner can use the same for the purpose for which it was intended. *Ocean Winds Corp. of Johns Island v. Lane, 556 S.E.2d 377 (2001)*. In Ocean Winds, the Court found that windows could be used for their intended purpose upon the completion of installation; therefore, the statute of repose for claims against the manufacturer of the windows began to run upon completion of the window installation as opposed to the completion of the project or improvement.

If a construction defect claims is not brought within eight years from substantial completion, regardless of when it is discovered, it is time barred. If the date of substantial completion of the project of the project is not agreed upon by the parties, the date of the certificate of occupancy will constitute proof of substantial completion of the project.

Statutes of repose are based on the economic best interests of the public. In enacting these laws, the legislature balances the respective rights of potential plaintiffs and defendants in disallowing potential claims to exist forever. Whether you are a potential plaintiff or defendant, it is important to know which time limitations apply to you. Contractors should be

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aware that completed projects may still impose liability risks, and claimants must keep in mind the necessity of quickly bringing claims upon the discovery of construction defects.

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