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LEGISLATION TO SIGNIFICANTLY REFURBISH FLORIDA'S CONSTRUCTION DEFECT LAW MOVING THROUGH THE LEGISLATURE

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Florida SB 1246 (related HB 911) seeks major changes to Florida's construction defect law, Chapter 558, Florida Statutes, including repealing the pre-suit notice and opportunity to repair requirements (notice of claim, reasonable inspection of the property, and settlement offers) and requiring nonbinding arbitration in all construction defect cases. The bill was introduced on February 20, 2019 by Senator Tim Wright, who represents the 14th district, encompassing parts of Brevard and Volusia counties.

Under the proposed legislation, the arbitration must be commenced once all the proper parties have been joined to the action, but no later than 180 days after the action is brought. However, any party joined to the action after 180 days is still subject to mandatory, non-binding arbitration. Although arbitration is mandatory, it is not binding. Each party must elect in writing to be bound by the arbitration award within 30 days after it is rendered. If a party does not agree to be bound by the arbitration award, that party may proceed with a traditional lawsuit on any unresolved portions of the claim.

The bill also requires that specific findings be made by the fact-finder, be it the arbitrator or a judge or jury, if the parties opt not to be bound by the arbitrator's determination and pursue a lawsuit. The fact-finder must make specific written findings in determining the monetary award against a party (contractor, sub-contractor, etc.), including the nature of the defect, the amount awarded against each separate party, and the reasons the amount is being awarded against that party (including the amount of the award attributable to each party's repair or replacement of its own defective work and the cost to repair and replace damage cause to the non-defective work of other parties).

The bill will affect all construction participants, including developers, owners, contractors, subcontractors, suppliers, design professionals, and insurers who insure contractors, subcontractors, and others under policies containing written provisions containing a duty to provide a defense to a lawsuit. Mandatory, non-binding arbitration meets the definition of a "suit" in most policies and will likely trigger the insurance company's duty to defend the insured when an otherwise covered claim of construction defect is raised by a property owner. If the bill passes, it will be effective July 1, 2019. We are closely tracking this legislation.

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