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Client Advisory

New Law Gives Preferred Status to Associations When Calculating the Statute of Limitations for Construction Defect Claims Against Developers

On January 18, 2022, New Jersey Governor Phil Murphy signed into law an amendment to the statute of limitations applicable to construction defect claims arising in common interest properties such as community associations, condominiums, and co-ops. While the law still requires a claimant to file its lawsuit within six years of the time it knew or should have known of the defect (*N.J.S.A. 2A:14-1*), it does not start the clock on that six years until “an election is held and the owners comprise a majority of the board.”

If you are a developer that is already calculating the statute of limitations for construction defect claims from the date of transition (*i.e.*, when the “owners comprise a majority of the board”), this new law has little impact. But, if you are a developer that is calculating the statute of limitations based on the New Jersey Supreme Court’s decision in *The Palisades at Fort Lee Condo Ass’n, Inc. v. 100 Old Palisade, LLC*, 230 N.J. 427 (2017), then it’s time to reassess.

In *The Palisades*, the Court ruled that a “construction-defect lawsuit must be filed within six years from the time that the building’s *original or subsequent* owners first knew or, through the exercise of reasonable diligence, should have known of the basis for a cause of action.” *Id.* at 435 (emphasis added). In so ruling, the Court rejected the trial court’s conclusion in a common interest property construction defect case that the statute of limitations begins at the time of substantial completion of the construction. *Id.* at 434. It also rejected the appellate court’s conclusion that the statute begins to run when the association “undertook full unit-owner control of the building.” *Id.* Instead, the Court explained:

A condominium association does not enjoy a preferred status exempting it from this long-standing rule. If the owner of an apartment building does not file a timely construction-defect lawsuit and then sells the building to a new owner, who has no right to revive the claim, a construction-defect lawsuit does not spring to life when the new owner converts the apartments into condominiums.

Id. at 450.

With the amendment to *N.J.S.A. 2A:14-1* now being the law, however, it appears condominium associations (as well as homeowners associations and co-ops) *do* enjoy a preferred status. And that preferred status prevents the statute of limitations from running until after the development has transitioned from developer-control to homeowner-control.

If you have any questions about the effect of this law or other issues related to transition within a common interest property, please contact [William Ryan](mailto:wryan@archerlaw.com) at wryan@archerlaw.com or 856-354-3122 or [Josiah Contarino](mailto:jcontarino@archerlaw.com) at jcontarino@archerlaw.com or 201-498-8541.

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