NEW JERSEY LEGISLATURE AMENDS STATUTE OF LIMITATIONS FOR DEFECT CLAIMS BROUGHT BY CONDOMINIUM AND HOMEOWNERS' ASSOCIATIONS

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Common interest communities in New Jersey likely have more time to assert construction and design defect claims under the New Jersey Legislature's 2022 amendment to N.J.S.A. 2A:14-1. Condominium associations, cooperative corporations, and other real estate development associations now have six years from transfer of control of the association from the developer to the unit owners - rather than from substantial completion of the project - to bring a claim for construction and design defects.[1]

The amendment represents a significant change in New Jersey law, influenced by, if not a direct result of, the New Jersey Supreme Court's decision in *Palisades at Fort Lee Condominium Association, Inc. v. 100 Old Palisade, LLC* (Palisades).[2] In *Palisades*, the court concluded that a condominium defect claim accrues upon "substantial completion" of a project, regardless of whether the sponsor or the unit owners are in control of the condominium's association at that time.[3] The court also found that the discovery rule applies to such claims, such that the accrual could be delayed based on when the owner knew or should have known of the existence of a claim.[4] However, the date on which any owner (including the developer) knew or should have known of the claim would trigger the statute of limitations, even if the subsequent owner did not learn of the claim until a later date. Depending on when prior owners knew or should have known of the alleged defects, the window to file a lawsuit could thus close before the unit-owner controlled association had the opportunity to file suit.

The court offered a solution for associations in this situation: in certain circumstances, the association could assert a cause of action against the seller for "fraudulent concealment" of the defect "or some other cause of action."[5] That language offered associations like the one in Palisades another remedy: to bring causes of action against the developer-appointed board members, who purportedly chose not to bring a lawsuit against the developer and others involved in the construction and design prior to the running of the statute of limitations. The amendments to New Jersey's statute of limitations render such a solution unnecessary.

On 18 January 2022,[6] Governor Murphy signed Senate Bill 396 into law, amending the statute of limitations for construction defect claims for planned real estate developments.[7] The six-year statute of limitations now will not start running until control of the condominium or homeowner's association transfers from the developer to the unit owners.[8] Thus, an association has six years from the date that control of the board transitions to the unit owners' control to bring a claim for construction defects. This eliminates the possibility that the statute of limitations for defect actions could expire before the unit owners take control of the board.

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For developer-appointed board members, the amendment is significant as it renders it unnecessary for associations to drag the individual board members into lawsuits. A unit-controlled board can now directly sue the developer prior to the running of the statute of limitations, leaving little to no incentive to sue prior board members.

Developers must be aware of this change to the statute of limitations, which potentially elongates their window of liability. Developers can no longer rely on substantial completeness of a project to determine the beginning of their potential liability, but instead must wait until transition of control for the statute to begin to run. It is imperative that developers, contractors, design professionals, and others associated with the construction of planned real estate developments, reassess their window of liability under this amendment.[9]

FOOTNOTES

1 N.J.S.A. § 2A:14-1(c).

2 *Palisades at Fort Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC*, 230 N.J. 427 (2017). *Palisades* seemingly had an influence on this new legislation. In the statement accompanying the bill, the Assembly Judiciary Committee provided, "[t]he transition from developer control and the assumption of control by the unit owners pursuant to an election can occur years after the project's substantial completion, leaving little or no time within the six-year window for the owner-controlled board to decide to file a claim against a developer, even when legitimate defects exist." Assembly Judiciary Committee Statement to Senate, No. 396 (May 12, 2021).

3 *Id*. at 454.

4 *Id*. at 452.

5 *Id*. at 450.

6 Act of Jan. 18, 2022, ch. 379, 2021, Pub. L. 2021, c.379 (signed by Governor Murphy 18 January 2022).

7 This amendment is retroactive, so it applies to all causes of action, regardless of whether they accrued before the legislation was enacted, where final judgment has not been entered as of 18 January 2022. N.J.S.A. 2A:14-1 ("Any cause of action involving a condominium, cooperative, or other planned real estate development. . . that has not been subject to a final judgment dismissing the claim as of the effective date of [the amendment] shall be subject to the terms of this subsection.").

8 N.J.S.A. 2A:14-1 ("The period of time for the filing of a claim by a condominium association, cooperative corporation, or other planned real estate development association against a developer or any person acting through, on behalf of or at the behest of the developer under subsection a. of this section, shall be tolled until an election is held and the owners comprise a majority of the board[.]").

9 It is important to note that the amendment has no effect on New Jersey's ten-year statute of repose, N.J.S.A. 2A:14-1.1.

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