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New Jersey Extension of Time for Certain Claims Against Real Estate Developers

Governor Phil Murphy recently signed bill S396/A4903 into law, which adjusts the statute of limitations on a damages claim against a real estate developer for construction defects in common-interest communities. The law amends N.J.S.A. 2A:14-1 to add subsection (c), providing that the period of time for filing a claim by a planned real estate development association shall be tolled "until an election is held and the owners comprise a majority of the board."

Generally, the statute of limitations for filing a claim for damages stemming from a construction defect expires six years from the date of substantial completion of the planned real estate development project, so long as the defect does not result in an unsafe condition. The legislature noted that the impetus for this amendment is the fact that the transition of control from a developer to an owner-controlled board for a planned real estate development could occur years after substantial completion of the project, which would leave little to no time for a damages claim to be filed against said developer. Despite the stated intent, the law may have several unintended consequences.

Although the law tolls the time an association has to file direct claims against a real estate developer and those "acting through, on behalf of, or at the behest of the developer," it does not expressly toll the time for claims against subcontractors. This could result in the expiration of the statute of limitations for claims by the developer or contractor against the contractor's subcontractors before the association's claims accrue under the law. Additionally, the law only tolls the time an association has to bring claims; a developer would not enjoy the same tolling of time to bring related contractual and/or tort claims against its own contractors if the association chooses not to sue the contractor directly.

Notably, the law does not change New Jersey's statute of repose, N.J.S.A. 2A:14-1.1(a), which provides that no construction defect claims may be made against any entity that performed work 10 or more years before the commencement of a construction defect lawsuit.

Should you have any questions concerning this legislation or land use matters in general, please contact the authors of this alert or any member of the Day Pitney real estate team.

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