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OP-ED

Veto SB 360, Gov. DeSantis. It makes residents in older condo buildings less safe / Opinion

BY DONNA DIMAGGIO BERGER

APRIL 11, 2023 3:36 PM





High-rise condos line the shores of Hallandale Beach in southern Broward County. *Miami Herald file photo*



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Last year, the Florida Legislature passed SB 4-D with the stated purpose of safeguarding the millions of Floridians living in older multifamily buildings. Known as the Condo Safety Law, SB 4-D requires periodic engineering inspections for buildings three stories and higher and mandates that associations reserve funds to pay for ongoing maintenance and repair projects.

How then, did the Florida Legislature this session pass SB 360, a bill that extinguishes homeowner rights and destroys developer/contractor accountability for the work they perform?

Certainly our legislators must understand that thousands of Floridians are struggling to pay massive special assessments to fund mandated maintenance and repair projects? Why would those same legislators determine that Floridians should not be able to receive the value of those multimillion-dollar projects? It is

hoped that Gov. DeSantis will understand that SB 360 undermines both the physical and fiscal security of millions of Floridians.

Safe buildings start with the developers who build them and the contractors who repair them. It's a simple concept. If the governor signs SB 360 into law or allows it to pass into law without his signature, nearly every Florida community association, at some point, will feel the following impacts:

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- The deadline by which a community association must take legal action against contractors and developers for latent or hidden construction defects will be shortened from 10 years to seven. Ultimately, this will compromise homeowner warranty protection because latent defects are defects that cannot be seen. This includes foundation issues, most structural defects, and leaks behind stucco and under roofs, for both new construction and renovations.

Many condominiums and cooperatives in Florida are moving forward with concrete renovations and repairs, roof replacements and other work deemed

necessary in their engineering reports. SB 360 will prevent associations from holding negligent contractors liable for their defective work product and poor performance.

- Developers and contractors could maintain control of an association long enough to run out the clock on the applicable statutes of limitations. Currently, the deadline for a developer to turn over control of a condominium association to the owners is seven years, at the latest. Even under the current 10-year statute of repose, boards must move quickly to preserve their associations' rights.

Under SB 360's new shortened seven-year statute of repose, it would be virtually impossible to protect the association's rights against a developer who decides to retain control of the association for up to seven years since the statutes only empower associations to bring those causes of action after the community is turned over from the developer to the owners.

- The new triggering action to start the clock running on the statutes of limitation would no longer be the issuance of a final certificate of occupancy and "actual possession by the owner" but instead will be the issuance of a temporary certificate of occupancy. A temporary certificate of occupancy is issued many months or even years before an owner closes and takes possession of the home. Naturally, an owner living in a unit is in a better position to notice and report construction defects than someone who has not yet closed and moved in.
- Developers and contractors would no longer be required to meet the minimum standards imposed by The Florida Building Code when an owner brings a private cause of action.

Unfortunately, SB 360 has been sent to the governor. It is now up to him to determine whether this new law making it more difficult to hold developers and contractors accountable makes sense with the heightened safety standards imposed on community associations.

If SB 360 becomes law, the net effect will be the imposition of a massive financial burden on the people who are least able to afford it — individual association members.

Donna DiMaggio Berger is a shareholder in Becker's Community Association Practice in Fort Lauderdale, Florida and is a member of the College of Community Association Lawyers.



DiMaggio Berger



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