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New Florida Statute Allows Limitation of Design Professional Liability

Over the past fourteen years, third parties have been able to maintain a direct negligence cause of action against an individual design professional, such as an architect or engineer, arising out a construction project, despite the contractual arrangements being with the design professional's employer.¹ A new Florida statute will soon change this law.

In other words, if a general contractor contracted with an architectural firm to perform design work, and an architect employed by the architectural firm was negligent in the design, then the owner (the contractor's client) could maintain its defect claims against the contractor, the architect (assuming no economic loss issues), *and the individual architect personally*. Or, in the case of a design/build firm, the action could be maintained individually against the architect employed by the design/build firm.

A recent Florida statute that becomes effective July 1, 2013, changes this common law. This new statute, Section 558.0035, allows firms providing professional services, including design/build contractors, to limit by contract the liability of their individual design professionals (architects, interior designers, landscape architects, engineers, surveyors or geologists) so long as:

- (a) The contract is made between the business entity and a claimant or with another entity for the provision of professional services to the claimant;
- (b) The individual employee who will perform the professional services is not a party (signatory) to the contract itself;
- (c) The contract must include a prominent statement, in uppercase font that is at least five point sizes larger than the rest of the text that, pursuant to this statute, an individual employee or agent may not be held individually liable for negligence;
- (d) The business entity must maintain any professional liability insurance that is required under the contract; and
- (e) Any damages are solely money damages (the statute does not extend to personal injuries or property that is not the subject of the contract).

The new statute is a significant departure from the Florida common law of the past fourteen years. Now, individual design professionals may enjoy limited liability when working for corporate design and engineering firms, similar to the law in many other U.S. jurisdictions. The law also changes an owner's expectations regarding who may be responsible for alleged design or engineering defects.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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¹ See *Moransais v. Heathman*, 744 So.2d 973 (Fla. 1999) (other holding related to economic loss rule reversed by later case).

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