

**RPPTL SECTION WHITE PAPER:  
PROPOSED AMENDMENT TO WARRANTIES  
CONDOMINIUM ACT, SECTION 718.203, FLORIDA STATUTES**

**I. SUMMARY**

The proposal adds a critical construction component, electrical elements, to components, or sometimes called “elements” for which a condominium’s contractor, the responsible subcontractor, and appropriate supplier, grant a three-year warranty. Subcontractor and supplier warranties are extended in favor of the contractor, and to the developer and the purchaser of each unit.

The proposal clarifies the definition of “completion” because of the potential that statutory warranties may extend for many years after construction. The existing five year warranty is clarified to provide that the five-year period runs from completion of construction.

Finally, language providing for the effective date of the statutory warranties with respect to certain condominium buildings under construction as of July 1, 1974 is deleted as no longer necessary.

**II. CURRENT SITUATION**

There are ambiguities in F.S. §718.203 that need to be clarified to provide certainty to the parties and avoid litigation. First, the desire to protect the consumer with warranties is undermined when mechanical and plumbing elements – considered major and specialized trades – should be subject to a three-year warranty in subsection (2)(a), while electrical elements – also considered a major and specialized trade with its own unique licensing requirements – should be subject only to the catch-all one-year warranty contained in subsection (2)(b). The net effect is that the *developer’s* warranty to the unit purchaser with respect to the electrical system is for three years, *see* F.S. §718.203(1)(e), but the developer’s corresponding warranty from the electrical subcontractor is effective for only one year. The contradiction significantly limits the developer’s ability to obtain cooperation from the responsible electrical subcontractor when an electrical work defect arises within the three-year developer warranty, but does not fall within the electrical subcontractor’s one-year warranty. This contradiction appears to have been an oversight when the statute was adopted.

Second, the statutory warranty’s purpose would be facilitated by providing the contractor the same remedy against subcontractors and suppliers that the statute grants to the developer and the unit purchasers. While the contractor typically is in contractual privity with the responsible parties, that is not always the case. For example, often it is a subcontractor who issues the purchase order for major systems to its supplier (e.g., air conditioning equipment from the manufacturer). In such instances, should the

responsible subcontractor go out of business, the contractor would be left with no effective means to procure corrective action by the responsible manufacturer.

Third, the warranties in subsection (1)(e) of F.S. §718.203 have uncertain start dates, as the statute currently provides an alternate start date of “1 year after owners other than the developer obtain control of the association” if that occurs *later than* three years after completion of construction. *See* F.S. §718.203(1)(e). Pursuant to F.S. §718.301(1)(g), turnover of the board of administration to the control of unit owners other than the developer may occur as many as seven years after the recordation of the declaration of condominium. Thus, even though the developer receives a warranty from the contractor and subcontractor with respect to, for example, the mechanical elements which is effective for only three years after completion of construction, *see* F.S. §718.203(2)(a), under the existing statute, the developer itself may be liable for the same mechanical elements for up to eight years after recordation of the declaration of condominium (i.e., one year after turnover, which may occur as many as seven years after recordation of the declaration of condominium). The statute currently states, however, the warranty shall extend “in no event more than 5 years”, but no date is provided from whence that five-year period is to commence.

Fourth, subsection (3) provides a definition of “completion of a building or improvement”, which is a phrase that appears nowhere in section 718.203, Florida Statutes, as currently worded.

Finally, subsection (6) is an anachronism and should be deleted. It may be safely assumed that all condominium buildings under construction as of July 1, 1974 either have been completed or construction was abandoned by this late date.

### **III. SECTION-BY-SECTION ANALYSIS**

The proposed changes are broken down for discussion purposes below by subsection:

A. Section 718.203(1)

Effect of Proposed Changes: The 5 year expiration period for the warranty as to the roof, structural components, mechanical, electrical and plumbing elements is clarified as running “from completion of construction of the building or improvement.”

B. Section 718.203(2)

Effect of Proposed Changes: The contractor, and the responsible subcontractors and suppliers, will grant a three-year warranty with respect to electrical elements of the construction; subcontractors and suppliers will grant to the contractor the same warranties already granted in favor of the developer and unit purchasers.

C. Section 718.203(3)

Effect of Proposed Changes: To conform to other changes made, the word “completion” is now the term defined in this subsection with reference to “the construction of a building or improvement”. This change removes the aforementioned ambiguity in the definition.

D. Section 718.203(6) and (7)

Effect of Proposed Changes: Subsection (6) is stricken and subsection (7) is renumbered to be new subsection (6).

E. Effective Date

The legislation would take effect July 1, 2010.

#### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

There should be no adverse fiscal impact on state and local governments. There may be a positive impact because the warranty may facilitate corrections before resources are required for code enforcement.

#### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The net economic impact should be negligible. The legislation allocates the risk for construction defects upon those responsible for any impact, consistent with the public policy expressed in the statute.

#### **VI. CONSTITUTIONAL ISSUES**

None.

#### **VII. OTHER INTERESTED PARTIES**

1. Florida Home Builders.
2. Community Associations Institute and other organizations consisting of condominium associations and their members.