

# Construction Law Committee

## Memorandum of Committee Minutes

To: All Construction Law Committee Members  
The Florida Bar: Real Property, Probate and Trust Law Section

From: Robert E. Doan, Secretary

Re: Meeting Minutes – February 13, 2022

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**RECORDING ATTENDANCE:** NOTE: Recording your attendance helps track participation and gives you a record to look back on when reporting CLE. Use the link distributed by Sanjay Kurian to record your attendance for this meeting.

**1. Opening:** Chair Sanjay Kurian called the meeting to order at 11:32 a.m.

Sanjay Kurian, Vice-Chair Bruce Partington and Secretary Robert Doan were also in attendance.

The minutes from the January 9, 2023, meeting were distributed by Rob Doan on January 9 and by Sanjay yesterday. Minutes were approved.

### **2. Subcommittee Reports:**

A. ABA Forum on Construction Law Liaison: Tony Lehman ([alehman@hlpwlaw.com](mailto:alehman@hlpwlaw.com)) is the Forum Liaison.

Tony reported: Upcoming national meetings will be held as follows:

The Mid-Winter meeting took place in San Juan earlier this month.

In early March the Trial Academy will take place in Dallas, TX. This is a limited attendance advanced trial skills seminar. It takes place March 8-11. Registration should open in early December. There are still a few spots open for the seminar.

The 2023 Annual Meeting will be in Vancouver BC in April, on April 12-15 at the JW Marriot. The topics will focus on "The Future of Construction Law."

The Forum's leadership has initiated a fellowship program for diverse construction lawyers with the goal of drawing diverse construction lawyers into the ranks of active, long-term Forum members. The Forum's Diversity Fellowship is intended to identify diverse construction lawyers who have demonstrated interest in the Forum and are therefore potential candidates for future Forum leadership. [Click here to learn more.](#)

B. ADR Subcommittee: Deborah Mastin and Giselle Leonardo are co-chairs. Anyone who is interested in participating, please contact [deborahmastin@gmail.com](mailto:deborahmastin@gmail.com) or [gleonardo@leonardoarbitration.com](mailto:gleonardo@leonardoarbitration.com).

C. Certification Exam: Jared Gillman ([jared@gillmanlawpa.com](mailto:jared@gillmanlawpa.com)) is the new chair. Katie Heckert ([kheckert@carltonfields.com](mailto:kheckert@carltonfields.com)) is vice-chair. No report this month.

D. Certification Review Course: Scott Pence ([spence@carltonfields.com](mailto:spence@carltonfields.com)) and Greg Hutt ([ghutt@trenam.com](mailto:ghutt@trenam.com)) are the incoming co-chairs. No report.

E. Construction Law Institute: Brad Weiss ([brad@bmwlawyers.net](mailto:brad@bmwlawyers.net)) is the incoming Chair. Deb and Sanjay reported that the dates will be March 16-18<sup>th</sup>. Thursday will be the traditional golf tournament (will be at a nearby Marriott this year, transportation provided) and evening welcome reception with a full day of programming on Friday, and until just after lunch Saturday. Registration links will go out in the next couple weeks.

F. Construction Litigation: Ryan Sullivan ([ryan@npw-law.com](mailto:ryan@npw-law.com)) Lucien Johnson ([Lucien.johnson@gray-robinson.com](mailto:Lucien.johnson@gray-robinson.com)) are the new co-chairs. Lucien reported via email. The Litigation Subcommittee continues to conduct monthly telephonic meetings on the first Thursday every month at 1130AM. The next meeting will be in April at 1130AM, and will feature another monthly case law update. They are looking for CLE webinar topics for the future if you are interested. If you would like to receive the emails, email Ryan or Lucien at the email addresses above. They have considered presenting on SB2A. If anyone is interested in presenting, please let them know.

G. Construction Regulation: Chris Cobb is the chair ([CCobb@cobbgonzalez.com](mailto:CCobb@cobbgonzalez.com)) and James Gonzalez ([jgonzalez@cobbgonzalez.com](mailto:jgonzalez@cobbgonzalez.com)) is co-chair. No report this month. This subcommittee will continue to work on presenting new construction licensing issues related to contractors, architects, engineers, mostly at the state level, as well as changes to the administrative code related to licensure. Next CILB is in Melbourne.

H. Construction Transaction Subcommittee. Claramargaret Groover ([cgroover@beckerlawyers.com](mailto:cgroover@beckerlawyers.com)) is chair. The AIA has generated new documents meant to help owners and contractors identify the reasonable financial status of the owner. One is an Owner's statement and the other is a request form to be used by the Contractor. These fall under Article 2 of A201. They are not published yet, but coming soon.

The goal of this subcommittee is to provide a practical resource to construction transactional attorneys to refer to when drafting / updating / customizing standard AIA docs. There will be an annual or semi-annual report form the subcommittee that notes which cases related to certain sections of the standard AIA docs.

I. Contractor's University: Chair, David Zulian ([dazulian@napleslaw.com](mailto:dazulian@napleslaw.com)) reported. Debbie Crockett is co-chair ([dscrockett@napleslaw.com](mailto:dscrockett@napleslaw.com)). Email Debbie if you would like the zoom link for the meeting. They are setting up regional workshops and moving forward as expected. No report this month.

J. Legislative Subcommittee: Sean Mickley ([smickley@whitebirdlaw.com](mailto:smickley@whitebirdlaw.com)) and Bret Henson ([bhenson@shumaker.com](mailto:bhenson@shumaker.com)) are Co-Chairs. Brett reported. HB 85 relates to amending the statute of repose. The subcommittee met to discuss it. It reduces the

window from 10 years to 7 and proposes new trigger dates to start the clock. It also adds a new definition to "improvement" to include a dwelling unit in a multi-family structure. It would also add a definition to materiality with respect to defects. The group proposed adding a definition to the triggering section to capture "approval of the authority having jurisdiction," to cover scenarios where there is no TCO, CO or final inspection, such as site work.

Lee reported that this bill has a lot of support and is likely to pass. The committee is not supporting or opposing due to a split in nature of owner/contractor representative split. Same for the condo committee. The goal, accordingly, is to make it the most technically correct bill it can be. The whitepaper has been submitted to the Homebuilder's Association and the Condo Committee. The Condo Committee has a recommendation for a tweak. The AGC is also looking at it.

Sanjay Kurian moved forward the legislative subcommittee's technical comments on to all concerned parties as the official position of the CLC. Bruce Partington seconded. The motion passed without opposition.

K. Membership Subcommittee: The chair is David Zulian. His email address is [dazulian@napleslaw.com](mailto:dazulian@napleslaw.com). David reported by email there are currently 549 members. If you are aware of anyone that would like to become a member of the committee, let David or an officer of CLC know. You must be a member of RPPTL to join.

L. Newsletter: Peter Kapsales ([pkapsales@milnelawgroup.com](mailto:pkapsales@milnelawgroup.com)) is chair of this committee. Ben Johnson ([bjohnson@beckerlawyers.com](mailto:bjohnson@beckerlawyers.com)) is the new co-chair. Peter reported they are always looking for new articles. Articles should be at least 750-1000 words and have far less formal requirements than Action Line or the Bar Journal. Send submissions of ideas to Peter if you are interested in submitting.

M. Pro Bono Subcommittee: Elizabeth Ferguson ([ebferguson@mdwccg.com](mailto:ebferguson@mdwccg.com)) is the chair of this subcommittee. They are working on a statewide CLE for use by pro bono organizations statewide. Anyone interested in joining the subcommittee or in receiving referrals for pro bono assignments should contact Elizabeth Ferguson ([ebferguson@mdwccg.com](mailto:ebferguson@mdwccg.com)) for more information. Volunteering attorneys work in conjunction with legal aid counsel on cases. No formal report this month.

N. Publications: Nick Elder ([nelder@cobbgonzalez.com](mailto:nelder@cobbgonzalez.com)) is the chair. Andrew Foti ([ajf@katzbarron.com](mailto:ajf@katzbarron.com)) is co-chair. Articles for Action Line should be 3000 words. Nick reported: January 15 will be the next ActionLine deadline (1000 - 3000 words). Florida Bar Journal feature articles should be 7000 words or less and columns should be 4500 or less. If you have any ideas for articles or would like to peer review articles of others, please email Nick or vice-chair Andrew Foti for ideas or to volunteer to peer review.

O. Small Business Programs: Lisa Colon Heron ([lcolon@smithcurrie.com](mailto:lcolon@smithcurrie.com)) is the chair. No report today but there will be a CLE this summer.

P. Website: Jack Taylor ([jtaylor@angius-terry.com](mailto:jtaylor@angius-terry.com)) and Jackeline Rodriguez ([jrodriguez@hamiltonmillerlaw.com](mailto:jrodriguez@hamiltonmillerlaw.com)) are the new co-chairs. Visit [rpptl.org](http://rpptl.org) and you can then access the CLC webpage. Last month's minutes and speaker materials are on the website.

Q. CLE: Jade Davis ([jadavis@shumaker.com](mailto:jadavis@shumaker.com)) is the chair.

You can contact Jade if you are interested in presenting or to request a topic. There are spots available in 2023. There is a CLE presentation speaker needed for the March Executive meeting in Sandestin.

**REMINDER: Each committee member is responsible for posting their own CLE credits on TFB website; neither the committee nor subcommittee can do so.**

**3. New Business:** N/A

4. Continuing Legal Education Presentation:

Our CLE presenters for this meeting were Mark Smith and Hardy Roberts on "The Role of the Qualifying Agent: Duties, History, and Litigation" The CLE began at 11:58 a.m. and concluded at 12:50 pm.

**5. Closing:**

The meeting was adjourned at 12:50 p.m.

**REMINDER:** The next regularly scheduled meeting of the committee will be held on Monday, March 13, **2023**, beginning at 11:30 a.m., via Zoom. The Zoom link and dial in information will be distributed by email from Sanjay Kurian to the construction official business listserv prior to the meeting, but unless there is an unexpected change, should be: Zoom Link

Join Zoom Meeting <https://beckerlawyers.zoom.us/j/82503132938>

Meeting ID: 825 0313 2938

Below is the attendance list for the meeting, as of the time of adjournment:

2/13/2023 8:01:31	Daniel Marquez	dmarquez@vplaw.com
2/13/2023 9:47:05	Peter K. Buckley	Pkbuckley@smithcurrie.com
2/13/2023 11:12:48	Davisson Dunlap III	davissoniii@dunlapshipman.com
2/13/2023 11:17:37	Alan Tannenbaum	atannenbaum@tlhlegal.com
2/13/2023 11:21:21	Elizabeth Ferguson	ebferguson@mdwgc.com
2/13/2023 11:25:23	Raul Alvarez	ralvarez@cspalaw.com

2/13/2023 11:27:27	Tony Lehman	alehman@hlpwlaw.com
2/13/2023 11:27:54	David Wainer	wainer@fordmiller.com
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2/13/2023 11:28:11	Bruce King	bking@carltonfields.com
2/13/2023 11:28:26	Benjamin Crego	bcrego@broward.org
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2/13/2023 11:30:07	Jade Davis	jadedavis1013@gmail.com
2/13/2023 11:30:10	Michelle Kane	michelle@bennettlegalgroup.com
2/13/2023 11:30:15	Jeffrey Bogert	Jeffrey.bogert@mc-atty.com
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2/13/2023 12:00:07	Ben Johnson	bjohnson@beckerlawyers.com
2/13/2023 12:00:26	Hayley Newman	Hnewman@insurancedefense.net
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2/13/2023 12:00:28	Kim Ashby	kashby@foley.com
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2/13/2023 12:07:52	Chip Bachara	cbachara@bacharagroup.com
2/13/2023 12:15:41	Peter Vilmos	pvilmos@burr.com
2/13/2023 12:19:13	Ben Vitale	bvitale@vitalefirm.com
2/13/2023 12:20:45	Daniel Zorrilla	dz@obcci.com
2/13/2023 12:49:14	Stefanie Salomon	ssalomon@pecklaw.com
2/13/2023 12:49:18	C. David Harper	charper@foley.com
2/13/2023 12:49:27	Stefanie Salomon	ssalomon@pecklaw.com
2/13/2023 12:49:40	Sean Mickley	smickley@whitebirdlaw.com

# Construction Law Committee

## Memorandum of Committee Minutes

To: All Construction Law Committee Members  
The Florida Bar: Real Property, Probate and Trust Law Section

From: Robert E. Doan, Secretary

Re: Meeting Minutes – March 13, 2022

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**RECORDING ATTENDANCE:** NOTE: Recording your attendance helps track participation and gives you a record to look back on when reporting CLE. Use the link distributed by Sanjay Kurian to record your attendance for this meeting.

**1. Opening:** Chair Sanjay Kurian called the meeting to order at 11:32 a.m.

Sanjay Kurian, Vice-Chair Bruce Partington and Secretary Robert Doan were also in attendance.

The minutes from the February 13, 2023, meeting were distributed by Rob Doan on February 13 and by Sanjay yesterday. Minutes were approved.

### **2. Subcommittee Reports:**

A. ABA Forum on Construction Law Liaison: Tony Lehman ([alehman@hlpwlaw.com](mailto:alehman@hlpwlaw.com)) is the Forum Liaison.

Tony reported: Upcoming national meetings will be held as follows:

The 2023 Annual Meeting will be in Vancouver BC in April, on April 12-15 at the JW Marriot. The topics will focus on "The Future of Construction Law." There are still spaces available. It will be Cary Wright's last meeting as Chair of the Forum. Lee Weintraub will be moderating a panel on Public Private Partnerships.

Additional upcoming meetings include: The Fall meeting will be September 28-29 in Washington D.C.

The Forum's leadership has initiated a fellowship program for diverse construction lawyers with the goal of drawing diverse construction lawyers into the ranks of active, long-term Forum members. The Forum's Diversity Fellowship is intended to identify diverse construction lawyers who have demonstrated interest in the Forum and are therefore potential candidates for future Forum leadership. [Click here to learn more.](#)

B. ADR Subcommittee: Deborah Mastin and Giselle Leonardo are co-chairs. Anyone who is interested in participating, please contact [deborahmastin@gmail.com](mailto:deborahmastin@gmail.com) or [gleonardo@leonardoarbitration.com](mailto:gleonardo@leonardoarbitration.com).



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D. Certification Review Course: Scott Pence ([spence@carltonfields.com](mailto:spence@carltonfields.com)) and Greg Hutt ([ghutt@trenam.com](mailto:ghutt@trenam.com)) are the incoming co-chairs. Scott reported they are all set and ready to go this week Thursday – Saturday. There are still a few spots available on the review course side. The room block is officially closed but if there is space available they will still offer the block rate.

E. Construction Law Institute: Brad Weiss ([brad@bmwlawyers.net](mailto:brad@bmwlawyers.net)) is the incoming Chair. Deb reported that the dates will be March 16-18<sup>th</sup>. Thursday will be the traditional golf tournament (will be at a nearby Marriott this year, transportation provided) and evening welcome reception with a full day of programming on Friday, and until just after lunch Saturday. The room block is officially closed but if there is space available they will still offer the block rate. Total attendance is above 500 attendees.

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I. Contractor's University: Chair, David Zulian ([dazulian@napleslaw.com](mailto:dazulian@napleslaw.com)) reported. Debbie Crockett is co-chair ([dscrockett@napleslaw.com](mailto:dscrockett@napleslaw.com)). They are setting up regional workshops and moving forward as expected. David reported they are back up and running. The next planning meeting is April 4 at noon. Email Debbie or David if you would like the zoom link for the meeting.

J. Legislative Subcommittee: Sean Mickley ([smickley@whitebirdlaw.com](mailto:smickley@whitebirdlaw.com)) and Bret Henson ([bhenson@shumaker.com](mailto:bhenson@shumaker.com)) are Co-Chairs. Sanjay reported for them. HB 85

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The committee is not supporting or opposing due to a split in nature of owner/contractor representative split. The bill is working its way through committee and likely to pass.

Other bills include: Lee reported the lien law glitch bill HB331/SB624 is still alive as well. Sanjay will send out the subcommittee's tracking sheet to the listserv.

K. Membership Subcommittee: The chair is David Zulian. His email address is [dazulian@napleslaw.com](mailto:dazulian@napleslaw.com). David reported by email there are currently 549 members. If you are aware of anyone that would like to become a member of the committee, let David or an officer of CLC know. You must be a member of RPPTL to join.

L. Newsletter: Peter Kapsales ([pkapsales@milnelawgroup.com](mailto:pkapsales@milnelawgroup.com)) is chair of this committee. Ben Johnson ([bjohnson@beckerlawyers.com](mailto:bjohnson@beckerlawyers.com)) is the new co-chair. They are always looking for new articles. Articles should be at least 750-1000 words and have far less formal requirements than Action Line or the Bar Journal. Send submissions of ideas to Peter or Ben if you are interested in submitting.

M. Pro Bono Subcommittee: Elizabeth Ferguson ([ebferguson@mdwgc.com](mailto:ebferguson@mdwgc.com)) is the chair of this subcommittee. They are working on a statewide CLE for use by pro bono organizations statewide. Anyone interested in joining the subcommittee or in receiving referrals for pro bono assignments should contact Elizabeth Ferguson ([ebferguson@mdwgc.com](mailto:ebferguson@mdwgc.com)) for more information. Volunteering attorneys work in conjunction with legal aid counsel on cases. There is a case in need of an attorney in Broward County currently.

N. Publications: Nick Elder ([nelder@cobbgonzalez.com](mailto:nelder@cobbgonzalez.com)) is the chair. Andrew Foti ([ajf@katzbarron.com](mailto:ajf@katzbarron.com)) is co-chair. Articles for Action Line should be 3000 words. Nick reported: January 15 will be the next ActionLine deadline (1000 - 3000 words). Florida Bar Journal feature articles should be 7000 words or less and columns should be 4500 or less. If you have any ideas for articles or would like to peer review articles of others, please email Nick or vice-chair Andrew Foti for ideas or to volunteer to peer review.

O. Small Business Programs: Lisa Colon Heron ([lcolon@smithcurrie.com](mailto:lcolon@smithcurrie.com)) is the chair. No report today but there will be a CLE this summer.

P. Website: Jack Taylor ([jtaylor@angius-terry.com](mailto:jtaylor@angius-terry.com)) and Jackeline Rodriguez ([jrodriguez@hamiltonmillerlaw.com](mailto:jrodriguez@hamiltonmillerlaw.com)) are the new co-chairs. Visit rpptl.org and you can then access the CLC webpage. Last month's minutes and speaker materials are on the website.

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You can contact Jade if you are interested in presenting or to request a topic. There are spots available in 2023. We are awaiting approvals for the last couple CLE numbers.

**REMINDER: Each committee member is responsible for posting their own CLE credits on TFB website; neither the committee nor subcommittee can do so.**

**3. New Business:** N/A

**4. Continuing Legal Education Presentation:**

Our CLE presenters for this meeting will be Scott Kiernan (Orlando) and Sean Sullivan (Ft. Lauderdale) of Becker Poliakoff, on "Non-delegable duty, Vicarious Liability, and Direct Claims against Subcontractors and Design Professionals". The CLE began at 11:48 a.m. and concluded at 12:52 pm.

**5. Closing:**

The meeting was adjourned at 12:52 p.m.

**REMINDER:** The next regularly scheduled meeting of the committee will be held on Monday, April 10, **2023**, beginning at 11:30 a.m., via Zoom. The Zoom link and dial in information will be distributed by email from Sanjay Kurian to the construction official business listserv prior to the meeting, but unless there is an unexpected change, should be: Zoom Link

Join Zoom Meeting <https://beckerlawyers.zoom.us/j/82503132938>

Meeting ID: 825 0313 2938

Below is the attendance list for the meeting, as of the time of adjournment:

3/13/2023 9:29:41	Anthony M. Soto	sotoan@gtlaw.com
3/13/2023 9:46:24	Chris Bracken	cbracken@thefund.com
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**RPPTL’s Construction Law Committee’s Legislative Subcommittee Technical Advice**  
**Concerning HB85**

In response to House Bill 85 (2023), the CLC’s Legislative Subcommittee met on January 31, 2023 to discuss technical advice to be provided to RPPTL to be passed along to the RPPTL’s Lobbyist. The following is the collective technical advice on HB 85:

1. At Lines 26 – 28 and Lines 38 – 43, HB 85 introduces the concept of commencing the statute of limitations or statute of repose, among other ways, upon issuance of a temporary certificate of occupancy and the issuance of a certificate of completion, as well as adding “the date of the issuance of a” to certificate of occupancy.
  - a. **Technical Comments:** It appears that the Legislature is attempting to capture all potential notices that would trigger the completion of the work on a construction project. The attempt, however, does not capture the reality of certain construction projects, including construction remodel projects or large infrastructure projects, for example. Specifically, in a construction remodel project, the governmental authority having jurisdiction over the project usually only performs a final inspection, which either passes or fails the work in place. In a large infrastructure project, the government will usually only perform a final inspection and issue a notice of final acceptance of the work in place. Because a temporary certificate of occupancy, certificate of occupancy, and a certificate of completion do not encompass all of the potential triggering events of the conclusion of the work, the addition of these terms does not fix any problems with Section 95.11(3)(c), Fla. Stat.

It is instead recommended that the Legislature create a new defined term of “final acceptance”, which should include a list of the potential triggering events that would constitute final acceptance. Examples of such triggering events would include a certificate of occupancy, a certificate of completion, successful final inspection by the governmental authority having jurisdiction over the project, or notice of final acceptance. These potential triggering events are merely suggestions to assist in defining the term “final acceptance.”

The term “temporary certificate of occupancy” should not be used as the work is usually not complete when a temporary certificate of occupancy is issued. For example, a “temporary certificate of occupancy” can be issued before fixtures or finishes are installed on a project.



2. At Lines 69 – 73, HB 85 introduces the addition of Section 5 to 95.11(3)(c), Fla. Stat., as follows: “5. Notwithstanding any provision of this section to the contrary, *each dwelling unit within a multi-dwelling building* must be considered its own improvement for purposes of determining the limitations period set forth in this paragraph.”

- a. **Technical Comments:** In reviewing the House of Representatives [Staff Analysis](#) for this CS/HB 85, it appears that the above-emphasized language was taken from the Florida Building Code. (See Page 5, “Multi-Dwelling Buildings”). The referenced Florida Building Code provisions refer to “dwelling units” within the context of condominium buildings, cooperative buildings, multi-family homes, and townhomes. However, in the case of a townhome association under Chapter 720, Fla. Stat. or a condominium association under Chapter 718, Fla. Stat., the term “unit” is usually a defined term in the Declaration of Covenants, which may conflict with the proposed end to be achieved by this new addition to Section 95.11(3)(c), Fla. Stat.

Additionally, in an apartment complex, or multi-family homes, the individual units may not be individually permitted or given a certificate of occupancy, whereas condominium units and townhomes are likely individually permitted and receive their own certificate of occupancy or completion. Because the phrase “dwelling unit” encompasses apartment buildings, or multi-family homes, that are not individually permitted and would not receive a certificate of occupancy or completion beyond what is issued for the building as a whole, this language is problematic, because the triggers for the statute of limitations and statute of repose under 95.11(3)(c) are based, at least in part, on the issuance of a certificate of occupancy or completion.

It is also worth noting that in Spring Isle Condominium Association, Inc. v. Herme Enterprises, Inc., the Fifth District Court of Appeal did not reach the merits of whether the issuance of a certificate of occupancy for a townhome within a community association commenced the repose period for each particular townhome. See 328 So. 3d 1120, 1124 (Fla. 5th DCA 2021) (finding that subcontractor’s failure to come forward with sufficient evidence at summary judgment regarding the completion date for contracts precluded the trial court from entering summary judgment, as trial court lacked requisite facts to determine which of the four triggers for the statute of repose occurred latest). Further, on January 25, 2023, the Second District Court of Appeal heard oral argument on this issue in the case of Westpark Preserve Homeowners Association, Inc. v. Pulte Home Corporation d/b/a/ Pulte Homes, et. al. (Case No. 21-2084).

In sum, while the purpose of adding Section 5. in HB 85 is commendable, it may not be workable as currently drafted. If the Legislative were to proceed with including Section 5. in HB 85, then there must be clarifying language to better

define what constitutes a “dwelling unit” and that, perhaps, the end of the sentence of 95.11(3)(c)(5) should state: “, but only if the dwelling unit itself receives a certificate of occupancy or certificate of completion” or something similar.