



CONSTRUCTive Talk

Construction Law Committee Newsletter, a committee of the Florida Bar Real Property, Probate & Trust Law Section



Sanjay Kurian, Esq.
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Pensacola, FL
Vice Chair



Brett Henson, Esq.
Tampa, FL
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Tampa, FL
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Deland, FL
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CHAIR REPORT

By: Sanjay Kurian, Esq., Becker & Poliakoff, Fort Myers, FL

Hello CLCers,

It has been my great pleasure to serve as the Chair of the CLC over the last two and a half years. For those that do not know, the CLC is a committee of the Florida Bar's Real Property Probate and Trust Law Section ("RPPTL"). As of today, the CLC consists of 560+ members running the full gamut of construction law in the state of Florida. The breadth and scope of construction knowledge within the CLC's membership is impressive.

As a sign of its growth and importance within RPPTL, this year the CLC was given a third Vice Chair position. The Chair and all Vice Chairs sit on the RPPTL executive council and adding another seat is a recognition of the CLC's growth and prominence. That would not have been possible without all the work put in by the prior Chairs and Vice Chairs of the CLC. The Vice Chairs of the CLC are Bruce Partington, Jason Quintero, and Brett Henson, all of whom are behind the scenes

undertaking various tasks for the benefit of the CLC.

One of my goals as chair was to revive this newsletter, and after a few starts and stops, Constructive Talk has returned. I would love to take the credit but credit goes to the editors and contributors to this publication. Constructive Talk is intended to communicate information to the whole CLC from its leadership, the work of the various subcommittees, the Construction Law Institute, and the Construction Review Course.

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Articles and Submissions:

Here at **CONSTRUCTive Talk**, we are always looking for timely articles, news and announcements relevant to Construction Law and the Construction Law Committee. If you have an article, an idea for an article, news or other information that you think would be of interest to Construction Law Committee members, please contact: Peter J. Kapsales, Esq. at pkapsales@milnelawgroup.com or Hilary Morgan at hmorgan@shermanhoward.com.

BECOME A
Contributor

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Another goal was to reinvigorate the many CLC subcommittees. Many of the subcommittee chairs have been appointed in the last two years and many others have taken on new subcommittees. All of the subcommittee chairs have put time and effort into making their subcommittee into a benefit for the membership. I am impressed with all of the energy and leadership being shown by the various subcommittee chairs and know that the CLC will continue to grow and be in good hands as those members become the future leaders of the CLC.

I never anticipated when starting my legal career that I would be a construction lawyer. Over twenty-two years (time flies!), I have been fortunate to work with and against many of you and hope to do so for many more years. I am proud to be a construction lawyer and in closing this column, I wish all of you the best as this year ends and the new one begins.

- Sanjay Kurian, Esq.

OTHER

News

**INSURANCE COVERAGE LAW BOARD CERTIFICATION
SEEKS SUPPORT**

Debbie Crockett
dscrockett@napleslaw.com

Recently, through the RPPTL Insurance and Surety Committee (ISC), the application for the creation of a new board certification in Insurance Coverage Law was submitted. This practice area includes issues, disputes, and matters among or between insurers, policyholders, or third-party beneficiaries concerning the rights, duties, and coverages that arise out of policies, with subspecialties being first-party, third-party, bad faith/extracontractual claims, and state regulatory procedures and practices.

If you'd like to join the more than 250 attorneys who have already signed the E-Petition pledging to seek this board certification if approved, contact ISC co-chair, Debbie S. Crockett (DSCrockett@NaplesLaw.com) for more info about how you can show your support.

Legislative Update

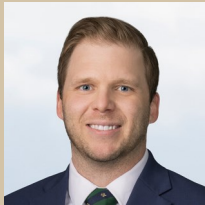
By: Dara Lindquist, Kari Hebrank, and Richard Anderson



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The 2024 Legislative Session saw the passage of several bills which will affect the construction industry. Below are some of the highlights:

Mandatory Home Construction Warranties and Warranty Transfers

Section 553.837, Florida Statutes, effective July 1, 2025, mandates that builders of newly constructed homes in Florida provide a one-year warranty to homebuyers. The warranty covers equipment, material, or workmanship defects resulting in a material violation of Florida Building Code, effective upon closing or initial occupancy, whichever occurs first. Builders must address any qualifying defects reported by homeowners within the first year. This new requirement strengthens consumer protections by ensuring homeowners are guaranteed a baseline warranty, regardless of any express warranty the builder might offer. Builders already providing express warranties may face administrative burdens managing warranty transfers and must review and potentially adjust their existing terms to ensure compliance with the new law but can benefit from enhanced buyer trust and market appeal.

Building Construction Regulations and System Warranties

Amendments to section 559.956, Florida Statutes, effective July 1, 2024, prohibit conditioning an HVAC system warranty upon product registration for residential properties sold on or after July 1, 2024. Newly enacted section 559.957, Florida Statutes, effective July 1, 2024, mandates that the full length of an HVAC system warranty begins on the installation date if installed by a licensed contractor. Manufacturers, distributors, or retailers offering warranties or product registration forms must clearly state that registration is optional and not required to maintain warranty rights or coverage duration. Together these statutes ensure consumers retain full warranty benefits for the life of the warranty regardless of whether they complete registration.

Unsolicited Proposals for Public-private Partnerships

On March 4, 2024, the Florida Legislature approved HB 781, amending procurement procedures for public-private-partnerships ("P3 Projects") as outlined in § 255.065, Florida Statutes.

Beginning on July 1, 2024, where a responsible public entity receives an unsolicited proposal for a P3 Project, the requirement that such public entity publish notice of its intent to accept other proposals for the same project has been abolished.

In lieu of the requirement that P3 Projects be opened to public bidding on unsolicited proposals, public entities will now be able to proceed with unsolicited proposals for qualifying projects so long as such public entities hold duly noticed public meetings where the proposal is presented, public commentary is allowed, and the public entity determines the proposal is in the public's interest.

(Continued from page 3)

Public Works Projects

HB 705 and its companion SB 742 modify the definition of “public works projects” in § 255.0992, F.S., to add “local or” for public works projects funded with local dollars. This will prevent local governments from excluding certain contractors from the bidding process, imposing wage and employment conditions on contractors, or mandating specific hiring and training protocols.

HB 705 was amended to allow for local preference only if the public works project is solely financed by local dollars by the local government. It was also amended to provide an exception for the provision of goods, services or work incidental to the public works project, such as security services, janitorial services, landscaping and maintenance services, transportation services—anything that does not require a construction contracting license or involve supplying or carrying construction materials for a public works project.

Workplace Heat Illness & Injury Preemption

HB 433 preempts the regulation of heat illness & injury policies for workers to the State to keep local governments from enacting their own policies that may be duplicative or in conflict with OSHA requirements. The bill also prohibits local governments from giving preference in competitive solicitations based on an employer’s heat exposure requirements. HB 433 became a political football on the last two days of Session but ultimately passed with limited provisions related to preemption of local wage and employee benefits ordinances beginning in 2026 when the minimum wage increases to \$15 an hour. It also prohibits local governments from using evaluation factors, qualification of bidders, or otherwise awarding preferences based on wages or employee benefits.

Continuing Contracts

The bill increases the maximum cost for each individual project procured pursuant to the Consultant’s Competitive Negotiation Act (CCNA) from \$4 million to \$7.5 million, plus an annual increase based on the consumer price index (CPI). This limitation applies to projects procured under the CCNA by the state, counties, municipalities, school districts, special districts, and other political subdivisions. The Department of Management Services must annually adjust and publish the annual change to the individual project maximum cost limit based on the June-to-June CPI.

Tolling of the Repose Period

Before the 2024 legislative session, section 718.124, Florida Statutes tolled the statute of limitations (but not the statute of repose) for construction defect actions until majority unit owner control of the board. *Sabal Chase Homeowners Ass’n, Inc. v. Walt Disney World Co.*, 726 So. 2d 796, 799 (Fla. 3d DCA 1999). However, effective July 1, 2024, section 718.124 has been amended to toll both the limitations and repose periods until a majority of unit owners have been elected to the board. See Chapter 2024-244, Laws of Florida.

Submissions

Do you have an article, case update, or topic you would like to see in CONSTRUCTive Talk? Submit your article, note, or idea to:

pkasales@milnelawgroup.com or hmorgan@shermanhoward.com

Editor's Corner



Peter J. Kapsales, Esq.
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ABA Forum on Construction Law

Tony Lehman
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The ABA Forum on Construction Law will be hosting its Mid-Winter Meeting in Tampa, FL and will focus on representation of Owners. The program is titled "Maximizing Returns: Proven Strategies for Owners and Developers." If you'd like to learn more about getting involved in the Forum generally, including sponsorship opportunities, feel free to reach out to Tony.

ADR

Reese Henderson, Bryan Rendzio
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The ADR Subcommittee is continuing to expand and to provide ongoing updates for the CLC group. We are still seeking more members who actively want to assist with our ADR section. We would also encourage any interested members to submit an article to the CLC on any ADR-related topic.

Certification Exam

Bruce Alexander, Dara Lindquist
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The Construction Law Certification Committee is currently drafting the 2025 examination and remains on track to complete the initial draft by the deadline. Additionally, we are actively working to promote board certification. We are pleased to report an 85% pass rate for the 2024 exam and hope to see continued improvement in the future.

Certification Review Course

Scott Pence, Greg Hutt
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The Advanced Construction Law Certification Review Course will be held from March 6-8, 2025 at the JW Marriot Grande Lakes in Orlando, Florida.

(Continued from page 5)

Construction Law Institute

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The Construction Law Institute will be held from March 6-8, 2025 at the JW Marriot Grande Lakes in Orlando, Florida.

Construction Litigation

Jason Lambert, Michael Feinberg
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The Litigation Subcommittee meets the first Thursday of every month at 11:00am via Zoom. The Subcommittee examines recent case law developments and procedural issues of interest to construction litigators. To join the Subcommittee Zoom call or read recent case law updates, please click [here](#).

Construction Regulation

James Gonzalez, Chris Cobb
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Florida House Bill 1383 (2023) and Senate Bill 1142 (2024) introduce 13 new certified specialty contractor license categories, with voluntary licensure overseen by the Construction Industry Licensing Board (CILB). These categories include structural aluminum enclosures, marine dock work, structural masonry, rooftop solar installation, and window and door installation. Local licensing requirements, initially set to expire in 2024, are extended to 2025, giving local governments more time to transition. By 2025, CILB must establish rules for these specialties, allowing contractors to apply for voluntary statewide licenses without mandatory exams.

Construction Transactions

Claramargaret Groover, Alex Leon
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The Construction Transactions Subcommittee provides practical resources to construction transactional attorneys to refer to when drafting, updating, or customizing construction contracts.

Contractor's University

David Zulian, James Barlow

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Contractor's University will be setting up regional workshops which offer CEU credit through practical seminars for contractors across the state on various topics such as lien law and contract clause tips.

Construction Legislation

Sean Mickley, Nick Elder

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The 2025 Legislative Session will take place from March 4, 2025 to May 2, 2025. The RPPTL has approved the CLC's proposed legislative position to amend Section 95.11(3)(b), Florida Statutes (design and construction defect statute of limitations and statute of repose).

In-House Counsel

David Ehrlich, Joe Darr

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The In-House Counsel Subcommittee is exclusively comprised of Florida in-house counsel practicing in the construction field, including owners/developers, contractors, subcontractors, designers, and insurance/surety providers. The Subcommittee held a meeting in September 2024 on implementation of a corporate ESI program. The Subcommittee's next meeting will be in November 2024 on the topic of key contract provisions.

Membership

David Zulian, Mark Smith

dazulian@napleslaw.com, msmith@careyomalley.com

The CLC's membership includes 555 members. If you are aware of a RPPTL Section member who would like to become a member of the CLC, please contact David and Mark.

Newsletter

Peter Kapsales, Hilary Morgan
pkapsales@milnelawgroup.com, hmorgan@shermanhoward.com

Publication dates for the 2025 Bar year are January 2025 and April 2025. Please submit shorter form articles for inclusion in an upcoming edition to Peter and Hilary, which should be 1000 words or less. Special thanks to Sierra Van Allen for her assistance in helping to finalize this edition of CONSTRUCTive Talk!

Pro Bono

Pam Holcombe, Hardy Roberts
pamela@anastasiaalaw.net, hroberts@careyomalley.com

In April 2024, Elizabeth Ferguson presented her Construction Defect Litigation CLE at the JaxBar and it is available at no cost to Legal Aid staff and pro bono volunteers. There are many ways, both small and large, for CLC members to assist the provision of pro bono services. In addition to taking a pro bono case, we also need folks to assist as liaisons to local Legal Aid organizations, helping with outreach and education, and assisting with subcommittee administrative and organizational work. Please contact Pamela or Hardy with your offers to help or if you are interested in attending the next CLC Pro bono meeting on December 13, 2024.

KUDOS TO CLC MEMBER PRO BONO VOLUNTEERS

The Pro Bono Subcommittee would like to recognize the following CLC members who have provided pro bono services to clients referred by Legal Aid organizations throughout the state:

Rhonda Hollander - Broward Legal Services
Robert Butt - Three Rivers
Sherry Eisele - Seminole County Legal Aid
John Tucker - Clay County office of Jacksonville Area Legal Aid
Reese Henderson - Jacksonville Area Legal Aid

Publications

Andrew Foti, Michael Rothfeldt
afoti@stearnsweaver.com, mrothfeldt@carltonfields.com

The Publications Subcommittee is seeking submissions for ActionLine for the 2025 bar year. Articles should be 1000-3000 words in length and the submission deadlines are January 15, 2025, April 15, 2025, and June 15, 2025. The subcommittee is also seeking submissions for the Florida Bar Journal on behalf of the section. These submissions should be 3000-5000 words in length. Please reach out to Andrew or Michael if you are interested.

Government Contracts

Lisa Colon

lisa.colon@saul.com

The Government Contracts subcommittee meets the fourth Friday of the month at noon. The subcommittee welcomes members who have experience in the field of government construction contracts, and the work of the subcommittee focuses on tracking case law as well as regulatory and administrative changes and cases that affect government contracting, including small business and MBE/WBE programs.

Website

Jack Taylor, Klarika Caplano

jack.taylor@forthepeople.com, klarika@coats-schmidt.com

The CLC webpage can be found [here](#) and is regularly updated with monthly meeting minutes and agendas, CLE materials and course numbers for credit, case law and legislative updates, and subcommittee information.

CLE

Sean Sullivan, Jill Dutmers

ssullivan@beckerlawyers.com, jdutmers@shutts.com

The CLE Subcommittee hosts a monthly free CLE for Construction Law Certification credit on the second Monday of every month. Please contact Sean and Jill if you would like to present a topic in 2025.



The next meeting of the CLC Pro Bono Subcommittee is scheduled for December 3, 2024, at noon via Zoom. Please use the following link or Zoom meeting information to join us:

<https://us06web.zoom.us/j/4134876923?pwd=X0FSKtEy1ydnQLEETscI1TVn7jfbIU.1&omn=82515418467>

Meeting ID:
413 487 6923
Passcode:
CLCPB-1213



FOR CLC PRO BONO

According to [a December 2023 article in The Florida Bar News](#), “Florida has a poverty rate . . . of 13.1% compared to the national poverty rate of 11.5%. And . . . 1.7 civil legal aid attorneys serving every 10,000 Floridians, compared to the national average of 2.8 . . .”

Our Construction Law Committee has over 550 members statewide. We have a unique opportunity to help our members meet their annual pro bono goals by providing critical services within their specific area of expertise—construction law—to those who otherwise would not have access to legal representation.

The CLC’s Pro Bono Subcommittee has three primary goals:

1. **Build Connections:** We are establishing relationships with legal aid organizations statewide that serve clients needing pro bono construction law services. We aim to identify committee members willing to serve as liaisons with their local legal services providers.
2. **Provide Educational Resources:** We plan to offer educational content to legal aid societies and attorneys handling pro bono construction law matters, helping them better serve low-income clients.
3. **Foster Local Networks:** We want to encourage and facilitate the creation of local networks of attorneys ready to provide or assist with construction-related pro bono services in their communities.

Last year, the CLC helped with 8-10 pro bono matters through the Subcommittee. We aim to significantly increase this as we go forward. While those who are willing and able to take a pro bono case are greatly appreciated, we also need folks to assist by serving as liaisons with local Legal Aid organizations, helping with outreach and education, and assisting with subcommittee administrative and organizational work. If you are will to help or serve as a liaison with a local aid or pro bono program, please email the Sub-Committee Co-Chairs, Pamela Holcombe and Hardy Roberts at pamela@anastasiaweb.net and hroberts@careyomalley.com.

Subcommittee Practice

Interested in joining the Construction Law Committee?

It's as easy as 1, 2, 3:

1. Become a member of the Florida Bar.
2. Join the Real Property Probate and Trust Law Section.
3. Email David Zulian and Mark Smith at dazu-lian@napleslaw.com and msmith@careyomalley.com advising you would like to join the CLC and provide your contact information.

Get On Board!

Interested in getting involved? Contact one of the persons listed below.

ABA Forum Liaison - Tony Lehman (alehman@hlpwlaw.com)

ADR - Reese Henderson (reese.henderson@gray-robinson.com) and Bryan Rendzio (brendzio@milesadr.com)

Certification Exam - Bruce Alexander (bruce@bgalawadr.com) and Dara Lindquist (dlindquist@carltonfields.com)

Certification Review Course - Scott Pence (spence@carltonfields.com) and Greg Hutt (ghutt@trenam.com)

Construction Law Institute - Brad Weiss (brad@bmwlawyers.net), Trevor Arnold (trevor.arnold@gray-robinson.com), and Haley Maple (hmaple@ksmlawyers.com)

Construction Litigation - Jason Lambert (Jason.Lambert@hwlaw.com) and Michael Feinberg (michael.feinberg@ansbacher.net)

Construction Regulation - James Gonzalez (jgonzalez@cobbgonzalez.com) and Chris Cobb (ccobb@cobbgonzalez.com)

Construction Transactions - Claramargaret Groover (cgroover@bplegal.com) and Alex Leon (aleon@haberlaw.com)

CLE Subcommittee - Sean Sullivan (ssullivan@beckerlawyers.com) and Jill Dutmers (jdutmers@shutts.com)

Legislative Subcommittee - Sean Mickley (smickley@gouldcooksey.com) and Nick Elder (nelder@cobbgonzalez.com)

Membership Subcommittee - David Zulian (dazulian@napleslaw.com) and Mark Smith (msmith@careyomalley.com)

Newsletter - Peter Kapsales (pkapsales@milnelawgroup.com) and Hilary Morgan (hmorgan@shermanhoward.com)

Pro Bono Subcommittee - Pam Holcombe (pamela@anastasiaalaw.net) and Hardy Roberts (hroberts@careyomalley.com)

Publications Subcommittee - Andrew Foti (afoti@stearnsweaver.com) and Michael Rothfeldt (mrothfeldt@carltonfields.com)

Website Subcommittee - Jack Taylor (jack.taylor@forthepeople.com) and Klarika Caplano (klarika@coats-schmidt.com)