

# Florida's Fourth District Court of Appeal Rules Pre-Suit Notice under Chapter 558, Florida Statutes, is an "Action" for Purposes of the Statute of Repose

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On September 12, 2018, Florida's Fourth District Court of Appeal rendered its opinion in *Gindel v. Centex Homes, et al.*, which will impact construction defect litigation, and particularly the application of the ten-year statute of repose to construction defect cases. In *Gindel*, homeowners sought to recover damages from their homebuilder for alleged construction defects in their homes. The homeowners closed on and took possession of their homes in March 2004. In February 2014, they served on the builder pre-suit notices of defects pursuant to Chapter 558, Florida Statutes. Several months later, in May 2014, the homeowners filed suit against the builder.

The trial court granted summary judgment to the builder based upon the statute of repose, finding that the homeowners failed to file suit within the ten-year repose period. On appeal, the Fourth District Court of Appeal reversed the trial court's ruling. The Fourth District held that the homeowners' service of their pre-suit notice under Chapter 558 constituted an "action" for purposes of the statute of repose, and therefore the homeowners had commenced their "action" within ten years. To reach this conclusion the Fourth District compared the definition of "action" used in the statute of repose with the definition of "action" under Chapter 558. The Fourth District found that the definitions are separate and distinct, and that an "action" under the statute of repose includes pre-suit proceedings under Chapter 558. The Fourth District also reasoned that "Chapter 558 was not intended as a stalling device in order to bar claims," and that construction defect claimants should not be penalized for "rightly complying with the mandates of the statute." Therefore, the Fourth District found that the homeowners' claims were timely.

This holding will impact pending and future cases alleging construction defects, at least from a statute of repose standpoint. For more information regarding this holding, conflicts or issues it appears to create in the law, and questions it poses going forward, please contact our attorneys at MPD.