

HUSCH BLACKWELL



Claims Against Developers: When They do it Wrong

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1. Breach of Fiduciary Duty by Developer – As it relates to his/her controlling the board;

- a. Statute of limitations. 2 years. See, *Zastrow v. Journal Communications, Inc.*, 291 Wis. 2d 426, 718 N.W.2d 51 (2006). It is an intentional tort and therefore two year statute applies under §893.57.

2. Negligent Supervision of Contractors and Sub-Contractors.

- a. This claim is usually covered by insurance.
- b. Developer would have a duty under common law to ensure that the project is constructed in accordance with the building codes and the respective industry standards

3. Misrepresentation

- a. See §703.33 – Untrue statement or omission of material fact. Any seller who in disclosing information required under subs. (1) and (2) makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within one year after facts constituting a cause of action are or should have been discovered.
- b. Statute of limitations. 3 years from discovery (when you knew or should have known).

4. Breach of Warranty

- a. Make the Punch Lists as broad as possible.
- b. Statute of limitations. 6 years from Breach.

5. Breach of Contract

- a. Who are the purchase contracts with?
- b. Many times that entity was always just a shell, only owning the real estate.
- c. Statute of limitations. 6 years from Breach.

6. Violation of Chapter 100.18(1) Wis. Stat. – Fraudulent Representations

- a. No person, firm, corporation or association, or agent or employee thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate... or anything offered by such person, firm, corporation or association, or agent or employee thereof, directly or indirectly, to the public for sale, ... or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, ... shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, . . . which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.
- b. Statute of limitations. No more than 3 years after occurrence of unlawful act or practice.
§100.18(11)(b)(3).

7. Violation of Chapter 895.80 Wis. Stat. – Property Damage or Loss

- a. (1) Any person who suffers damage or loss by reason of intentional conduct that occurs on or after November 1, 1995, and that is prohibited under... 943.20 ..., has a cause of action against the person who caused the damage or loss.
- b. (2) The burden of proof in a civil action under sub. (1) is with the person who suffers damage or loss to prove a violation ...
- c. (3) If the plaintiff prevails in a civil action under sub. (1), he or she may recover all of the following:
 - i. (a) Actual damages, including the retail or replacement value of damaged, used, or lost property, whichever is greater ...
 - ii. (b) All costs of investigation and litigation that were reasonably incurred, including the value of the time spent by any employee or agent of the victim.
 - iii. (c) Exemplary damages of not more than 3 times the amount awarded under par. (a). No additional proof is required under this section for an award of exemplary damages under this paragraph.

8. Violation of Chapter 893.52 – Negligent Damage to Property

- a. No contract exists or is required by between Developer & Association.
Tallmadge, 86, Wis. 2d 356.
 - i. Statute of limitations. 6 years from Breach.

9. Violation of Interstate Land Sales Full Disclosure Act (“ILSA”)

- a. Passed in 1968 to protect consumers from unscrupulous swampland salesmen.
(See 11th Circuit Cases – Florida in 2009)
- b. Requires developers to deliver their product within two years to be exempt from ILSA's onerous requirements, such as
 - i. Providing a building report to the buyer;
 - ii. Registering with the U.S. Department of Housing and Urban Development.
- c. It is a way for a buyer to get out of their purchase contracts with developers and get back deposits.