S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 11, 2009

Introduced by M. of A. MILLER, BURLING, ERRIGO, TOWNSEND, WALKER -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, McDONOUGH, OAKS -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to civil actions against professionals; and to repeal section 214-d, subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of the civil practice law and rules, relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 214-d of the civil practice law and rules is REPEALED and a new section 214-d is added to read as follows:

S 214-D. LIMITATIONS ON CERTAIN ACTIONS AGAINST PROFESSIONAL ENGINEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, LAND SURVEYORS OR CONSTRUCTION CONTRACTORS. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, NO ACTION TO RECOVER DAMAGES FOR INJURY TO THE PERSON OR FOR WRONGFUL DEATH OR FOR DAMAGE TO PROPERTY NOR ANY ACTION FOR CONTRIBUTION OR INDEMNITY FOR DAMAGES SUSTAINED ON ACCOUNT OF SUCH INJURY OR WRONGFUL DEATH OR DAMAGE TO PROPERTY ARISING FROM ANY DEFECT IN THE STRUCTURE OR IMPROVEMENT RESULTING FROM THE DESIGN, PLANNING OR SUPERVISION OF CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY SHALL BE BROUGHT AGAINST A PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR MORE THAN TEN YEARS AFTER THE COMPLETION OF SUCH IMPROVEMENT.

2. IF, BY REASON OF SUCH DEFECT, AN INJURY TO THE PERSON OR AN INJURY CAUSING WRONGFUL DEATH OR AN INJURY TO PROPERTY OCCURS DURING THE TENTH YEAR AFTER COMPLETION, AN ACTION TO RECOVER DAMAGES FOR SUCH INJURY OR WRONGFUL DEATH OR DAMAGE TO PROPERTY MAY BE BROUGHT WITHIN ONE YEAR AFTER THE DATE ON WHICH SUCH INJURY OCCURRED, BUT IN NO EVENT MAY SUCH ACTION BE BROUGHT MORE THAN ELEVEN YEARS AFTER THE COMPLETION OF THE IMPROVEMENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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3. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, IN THE EVENT THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL HAVE REDUCED THE PERIOD DURING WHICH AN ACTION AGAINST A PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR COULD HAVE OTHERWISE BEEN BROUGHT PURSUANT TO ANY OTHER PROVISION OF LAW, RULE OR REGULATION, THE CLAIMANT SHALL, IN THAT EVENT, BE ENTITLED TO INSTITUTE ANY SUCH ACTION FOR A PERIOD OF ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION.

4. THE LIMITATIONS PRESCRIBED BY THIS SECTION SHALL NOT APPLY TO ACTIONS BROUGHT BY ONE IN CONTRACTUAL OR PROFESSIONAL PRIVITY WITH THE ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR AND SHALL NOT BE ASSERTED BY WAY OF DEFENSE BY ANY PERSON IN ACTUAL POSSESSION OR CONTROL AS OWNER, TENANT, OR OTHERWISE, OF SUCH AN IMPROVEMENT AT THE TIME ANY DEFECT IN SUCH IMPROVEMENT CONSTITUTES THE PROXIMATE CAUSE OF THE INJURY OR DEATH FOR WHICH IT IS PROPOSED TO BRING AN ACTION.

5. FOR PURPOSES OF THIS SECTION AN IMPROVEMENT SHALL BE DEEMED TO BE "COMPLETED" (A) WHEN, AFTER THE IMPROVEMENT HAS BEEN STARTED, A PERMANENT CERTIFICATE OF OCCUPANCY IS ISSUED BY THE MUNICIPALITY IN WHICH THE IMPROVEMENT IS SITUATED, IF SUCH IS REQUIRED OR IS ACTUALLY ISSUED PURSUANT TO LAW OR REGULATION; OR (B) IF A PUBLIC IMPROVEMENT, UPON THE ACCEPTANCE OF THE IMPROVEMENT BY THE OWNER, IF A CERTIFICATE OF OCCUPANCY IS NOT REQUIRED AND HAS NOT BEEN ISSUED; OR (C) ON THE EARLIER OF THE FOLLOWING DATES, IF THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION DO NOT APPLY (I) FOUR MONTHS PRIOR TO THE LAST DAY ON WHICH A MECHANIC'S LIEN, RESULTING FROM WORK PERFORMED OR MATERIALS FURNISHED WITH RESPECT TO SUCH IMPROVEMENT, CAN BE FILED; OR (II) UPON THE OWNER'S FINAL PAYMENT FOR SERVICES RENDERED OR MATERIALS SUPPLIED WITH RESPECT TO SUCH IMPROVEMENT.

6. AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL MEAN A PERSON LICENSED OR REGISTERED AS AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION CONTRACTOR, PURSUANT TO THE PROVISIONS OF THE EDUCATION LAW OR ANY PARTNERSHIP, CORPORATION OR ANY OTHER ENTITY LAWFULLY PERFORMING ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL OR SURVEYING SERVICES.

S 2. Subdivisions 4 and 5 of section 214 of the civil practice law and rules, as separately amended by chapters 485 and 682 of the laws of 1986, are amended to read as follows:

4. an action to recover damages for an injury to property except as provided in [section] SECTIONS 214-c AND 214-D;

5. an action to recover damages for a personal injury except as provided in sections 214-b, 214-c, 214-D and 215;

S 3. Subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of the civil practice law and rules are REPEALED.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.