

DELEGATING THE NON-DELEGABLE (DUTY)

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If you are a civil trial attorney, you have likely been stuck in the morass of non-delegable duties. Whether you represent a plaintiff or a defendant, knowing when a non-delegable duty exists, its characteristics, and how to employ it will aid your approach to litigation.

What Is A “Non-Delegable Duty”?

A non-delegable duty is not a separate cause of action and does not extend to every conceivable duty of care that may be owed to another. The non-delegable nature of a duty simply means that the legal responsibility for performance of that duty or duties cannot be contracted away. Non-delegable duties may arise through statute, contract, or common law, and are grounded in public policy. Non-delegable duties are commonly imposed on owners, lessees, or operators of property, and general contractors. Whether a duty is non-delegable is often (but not always) an issue of law.

Can You Delegate A Non-Delegable Duty?

The short answer is: no. But,

[h]olding a particular undertaking to be nondelegable means that responsibility, i.e., ultimately liability, for the proper performance of that undertaking may not be delegated. The term nondelegable does not preclude the delegation of the actual performance of the task. “Nondelegable” applies to the liabilities arising from the delegated duties if breached.”

Based on Florida law, then, a party can delegate its non-delegable duties; however, that party will remain legally liable for any breach by the contracted party.

Moreover, the existence of a non-delegable duty does not entirely preclude apportionment of fault to the contracted party under section 768.81, Florida Statutes. Thus, where parties (or non-parties) possess duties separate from the contracted non-delegable duties, or otherwise hold concurrent non-delegable duties, each party or non-party should remain responsible for its own percentage of fault.

Delegating Liability For The Non-Delegable Duty

Although the doctrine of joint and several liability has been abrogated, it continues to apply to non-delegable duties. Given the joint and several nature of these obligations, it makes sense that the legally responsible party can seek contribution or indemnity from the negligent, contracted party. While the law is not yet well-developed, the Florida courts have acknowledged the existence of these remedies when a party is held responsible for a breach of a non-delegable duty.

Conclusion

Given the evolving nature of Florida law addressing non-delegable duties, civil trial attorneys should remain cognizant of the allegations pled and analyze whether and to what extent non-delegable duties exist, whether any duties may be delegated, and how to best allocate fault and ultimate liability.

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