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# Protection Limits for the Construction Industry

*All 50 states, by law, limit the amount of time an injured party is allowed to sue for damages. These laws preclude claims filed after the designated time period from recovery, and they apply to both contract and tort claims actions.*

Generally, there are two types of statutes that limit the ability to bring claims against a contractor: statutes of limitations and statutes of repose. Although these terms are frequently used interchangeably, they actually operate quite differently. While statutes of limitations and statutes of repose both establish a time period during which a lawsuit may be brought, they are generally very different with respect to when "the clock starts ticking" for each. When determining how much time an injured party has to file a suit, they must decide: 1) When the event "accrued" for purposes of the statute of limitations; and 2) When the statute of repose was triggered and began running.

The differences between the triggers of the two statutes stem, in large part, from the differences in the statutes. Statutes of limitations are intended to reduce a defendant's (the contractor's) liability by requiring the plaintiff (claimant) to file suit in a timely manner following their alleged injury or breach. Statutes of repose, on the other hand, eliminate the negligent or breaching party's liability after a specified number of years have passed following the completion, or substantial completion, of a project.

## Statutes of Limitation

Most states apply what is called a "discovery rule" to determine when a claim has accrued for purposes of applying their statute of limitations. Under the discovery rule, the statute of limitations generally begins to run on the day the injured party either knows or should have known that they had a potential claim.

The practical effect of the discovery rule is that the statutes of limitations can subject contractors to liability for a potentially indefinite period of time after they complete their work! For example, suppose a general contractor completes his work on an office building on March 1, 1990. On January 1, 2004, nearly 14 years later, a person is injured inside the building. Should this occur in a state which recognizes the discovery rule and has a 6-year statute of limitations, the injured person could potentially file suit against the contractor until January 1, 2010 – almost 20 years from the date the contractor finished the job!

## Statutes of Repose

Designed to address the contractor's "window of liability," statutes of repose block causes of action that arise after a set number of years following the completion (or substantial completion) of work. In most states, the event triggering the clock on the statute of repose is the date when construction becomes substantially complete. Once the repose period is initiated, it runs for the number of years specified by law until it eventually expires. Therefore, unlike the 'accrual' basis for statutes of limitations, statutes of repose establish a specific date when the contractor's liability comes to an end. This exemption of liability holds true even if the injury does not occur until after the repose period expires, regardless of how quickly a suit is filed.

Statutes of repose first appeared in the mid-1960s to protect contractors, architects, engineers and other people involved in design or construction from litigation arising from work long since completed. The logic behind the statutes is that real property (buildings and other permanent types of construction) and their improvements are typically used over long periods of time. They often undergo changes and are affected by many forces and events after completion. These issues have been recognized and addressed by the various state legislatures, who ultimately deemed statutes of repose necessary.

## Statutes of limitations and statutes of repose restrict the timeframe in which a claimant/plaintiff may file a lawsuit against a contractor.

At the same time, it is important to note that an injured party is not without remedy. If an injury is truly the result of negligent actions, there may be a cause of action against the property owner, tenant or maintenance contractor. While most states' statutes of repose block claims against the contractor involved in the original construction, they do not provide that same protection for those who own, possess or control the property at the time of the injury.

### For Example

The difference between statutes of limitations and statutes of repose is demonstrated in the exhibit on the opposite page.

### Scenario A

In this instance, a 6-year statute of limitations applies, but there is no statute of repose. If an individual sustained an injury on January 1, 2004 and wanted to sue the general contractor for his or her injuries, the applicable statute of limitations would give that party 6 years following their injury (until January 1, 2010) to file suit. Any claim filed within that timeframe would be considered.

### Scenario B

Assume the same injury circumstances as scenario A, but in this instance the state has an 8-year statute of repose and no statute of limitations. The plaintiff would have no cause of action against the general contractor because the injury occurred 9 months after the statute of repose expired.

### Scenario C

In most situations, the statute of limitations will run within the statute of repose. In this illustration, a 6-year statute of limitations and an 8-year statute of repose both exist. The plaintiff was injured on January 1, 1996 and filed suit on February 28, 2002. In this scenario, the claim is filed within the 8-year statute of repose, but outside the 6-year statute of limitations. The plaintiff's claim would be dismissed as untimely.

### Scenario D

This example also assumes a 6-year statute of limitations and an 8-year statute of repose. Although the injury occurred prior to either statute's expiration, the claim wasn't filed until after the statute of repose expired and, therefore, would be barred. This example illustrates how the statute of repose operates as an outside limit for filing claims, even if the statute of limitations has not expired.

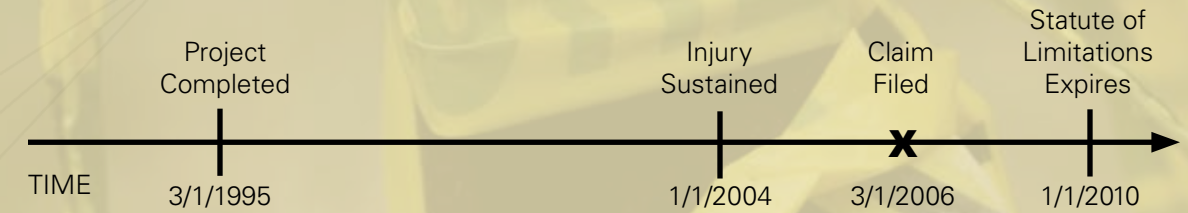
### Limiting Protection

Statutes of limitations and statutes of repose restrict the timeframe in which a claimant/plaintiff may file a lawsuit against a contractor. Together, these statutes provide property owners sufficient time to make a claim following the discovery of construction errors, while at the same time protect contractors from claims that have long since become stale. Likewise, they provide an injured third party the ability to make a claim against the original building contractor for alleged negligent work, but also protect that contractor from claims that he may not have control over or be associated with many years after the property has been put to use. These laws provide reasonable protection for contractors and the individuals who occupy their buildings.

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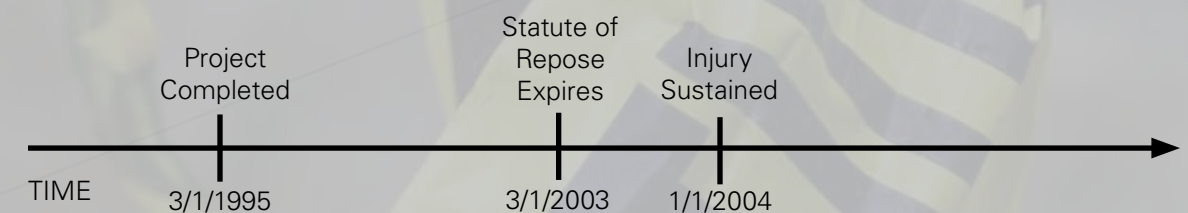
## ILLUSTRATIONS OF STATUTE APPLICATION<sup>1</sup>

### SCENARIO A: 6-year statute of limitations; no statute of repose



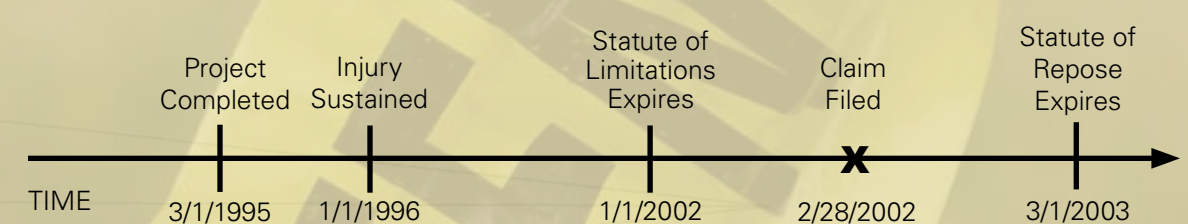
**CONCLUSION:** Statute of limitations for this injury is still running. Claim allowed.

### SCENARIO B: 8-year statute of repose; no statute of limitations.



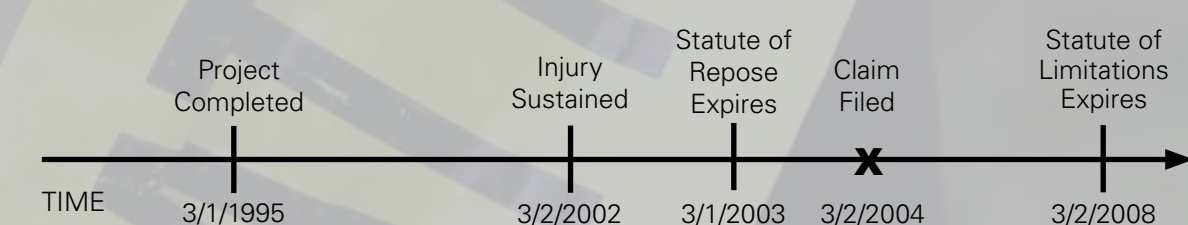
**CONCLUSION:** Statute of repose on this project expired before injury occurred. Claim barred regardless of date filed.

### SCENARIO C: 6-year statute of limitations; 8-year statute of repose



**CONCLUSION:** Statute of limitations expired before claim was filed. Claim barred.

### SCENARIO D: 6-year statute of limitations; 8-year statute of repose



**CONCLUSION:** Statute of repose on this project expired before claim was filed. Claim barred.\*

\*Some states allow a small amount of extra time to file a claim for injury sustained less than a specified amount of time (e.g., 1 year) before the statute of repose expires

<sup>1</sup>Source: International Risk Management Institute, Inc.