



Statutes of Repose

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STATUTES OF REPOSE

Statutes of repose generally bar a cause of action after a specified time period, regardless of whether or not any property damage has occurred within that period. Statutes of repose typically begin to run on the date of a causative event (such as defective construction or negligent manufacture), rather than the date the damages occur. The statute of repose differs from a statute of limitations because a statute of limitations sets a maximum period of time for bringing a legal action after damage has occurred. To illustrate, let's assume a building was damaged by fire and that the fire was caused by faulty electrical wiring installed by an electrician during the original construction of the building more than 10 years ago. Let's further assume that we are in the State of California which has a three year statute of limitations for bringing actions based on negligence and a 10-year statute of repose. Based upon these assumptions, a negligence lawsuit against the electrician must be brought within three years of the date of the fire. However, this does not end our inquiry. We must now look to the statute of repose and determine whether or not the negligence falls within California's statute of repose. Because the faulty electrical wiring was installed by the electrician more than 10 years prior to the fire loss, all claims would be barred against the electrician.

In general, there are two contexts in which statutes of repose are most commonly found: (1) product liability actions and (2) construction defect actions. The following is a summary of how statutes of repose generally operate in those contexts:

A. PRODUCTS LIABILITY

Most product liability statutes of repose use the date of manufacture, purchase or use as the starting point for the limitations. There are wide variations across jurisdictions, so it is

important to examine the statutory language closely to determine which date is the relevant date because they may differ. Often, the relevant date of manufacture or purchase is determined by examining the question from the manufacturer's standpoint, and not from the standpoint of the injured party. Thus, the period may begin to run from the date on which the manufacturer first manufactured the product, not the date the actual product causing injury was manufactured.

Twenty-three states have adopted a statute of repose for product liability claims. Most statutes vary between 10 and 12 years. However, Kentucky has a presumption of non-defectiveness if the loss occurs five years after the sale to the consumer or eight years after the product was first manufactured. In those states, such as California, that do not have a statute of repose for damages caused by a product, the statute of limitations (date of loss) sets the maximum time for bringing a legal action.

B. CONSTRUCTION OF REAL PROPERTY

Most construction claim statutes of repose begin running on the date the construction work is completed or substantially completed. This is typically a factual question and is best resolved on a conservative basis. Some states, such as Hawaii, use the publication of a notice of completion as the starting date. Some statutes apply different limitation periods to latent (hidden) and patent (obvious) defects. If repairs are made, the statute of repose may commence when those repairs are completed, rather than at the completion of original construction. Given the amount of variation among the states, it is important to determine the applicable law for each state.