

Legal Scope

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Deadlines to File Claims

There are many different deadlines for filing claims on construction disputes. The most common deadlines are (1) contractual deadlines and limitations; (2) statutes of limitations; (3) statutes of repose; and (4) specific statutes that govern certain contracts. Most contractors are aware of these deadlines to some degree, but often conflate the different deadlines, which can cause confusion. Here's a primer to help:

Contractual Deadlines and Limitations. Each contract may contain specific deadlines for preserving or pursuing a claim. Sometimes these are strictly enforced, but other times they are not. As a general rule, you should always identify what must be done first, to preserve and notice claims. Often, this requires putting the other side on notice, invoicing the amount in dispute, and sometimes engaging in informal dispute resolution processes before filing a lawsuit. Additionally, it is permissible for a contract to specifically limit the statute of limitations, which shortens the amount of time to file a lawsuit in court. For example, warranties are often limited to one year.

Statutes of Limitations. Each state has its own statutory scheme for deadlines to file a lawsuit—these are called statutes of limitations. Often, different causes of action

have different statutory deadlines. For example, in Pennsylvania, a breach of contract must be filed within 4 years and a claim for negligence must be filed within 2 years. In Maryland, both contract and negligence must be filed within 3 years. There is often confusion as to when the specific deadline begins to commence, and that is a fact-specific analysis.

Statutes of Repose. Most states also have a “Statute of Repose” that is specific for the construction industry. Statutes of repose are similar, but different, than statutes of limitation. Statutes of repose exist because the defect or claim may be hidden, latent, or unknown until years later, and the statute of limitation might trigger/run many years after construction has been completed. To compare: a statute of limitation provides a time period to file a lawsuit from a specific triggering point. Statutes of repose, on the other hand, are viewed solely from the back-end. Thus, for example, in Pennsylvania, the statute of repose is 12 years, which means that once 12 years from the completion of the construction occurs, all potential claims are lost. Statutes of repose do not “give” 12 years to sue; to the contrary, it is a cut-off. No matter what, after 12 years, claims are forever lost. Keep in mind, that the statute of limitations is often shorter (e.g. 3 years, or 4 years), and once the deadline has passed the claim is also lost. Thus, statutes of repose only apply in the unique situation where the statute of limitations did not trigger to run for whatever reason, and many years have already passed.

Other Specific Statutes. Other specific statutes might provide unique statutes of limitations or deadlines. For example, mechanics' liens in Pennsylvania must be filed within 6 months of the last date of furnishing labor or materials. Also, subcontractors must give notice 30 days prior to filing, and other deadlines exist under the new Construction Notices Directory Law. In Maryland, mechanics' liens must be filed within 6 months as well, and subcontractors must provide notice within 4 months. Bonds also have unique deadlines: Often the bond claimant must wait 90 days before filing, and if it is a subcontractor, it must provide notice of the claim within those 90 days. Further, most bond claims must be filed within one or two years.

There are numerous deadlines to satisfy when pursuing a claim on a construction project. It is wise to seek counsel early whenever a dispute arises to ensure that all rights are preserved in case litigation is necessary.

The Numbers:

4.2%

- Year-to-date increase from 2018 for permits issued of new housing units in the U.S.
- 2 to 4 unit housing is the fastest growing type.
- Housing permits in the Southern and Western states are the fastest growing areas.

Source(s): US Census, Monthly New Residential Construction, CB18-194 (Dec. 18, 2018).



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Legal Scope is advertising material written by Jeffrey Bright, an attorney licensed in Pennsylvania and Maryland. For more information, contact Bright Law Firm. This newsletter is not legal advice. Unlike this newsletter, legal advice is specifically tailored to the facts, law and objectives unique to each circumstance.

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