

Understanding The Difference Between Statutes of Limitations and Statutes of Repose

By [Gary L. Wickert](#) on January 22, 2024



Subrogation professionals, like lawyers, must be constantly vigilant for deadlines, statutes of limitations, statutes of repose, and notice timelines which are set forth by the laws of the 50 states. Likewise, it is important to know and understand the differences between statutes of limitations and statutes of repose. They are both subrogation-killers.

Statutes of limitations (SOL's) are laws that limits the maximum time frame during which legal proceedings – civil or criminal – may be filed. It specifies a time period for commencing suit on a given claim that begins to run, or is triggered, when the cause of action accrues. When a cause of action “accrues” generally depends on the particular state involved, but it is usually when an accident occurs or when a claimant “discovers” the resulting injury. While a statute of limitations takes effect when a claim arises, a statute of repose bars the bringing of a suit after a set period of time, regardless of whether an injury occurred, or a claim has arisen.

The time limit for bringing suit as established by a statute of repose is triggered by a specified event, such as the substantial completion of an improvement to real property, the date a product was used, or the date a product was sold.

The purpose of a statute of limitations is to provide a level of protection for would-be defendants from unfair and/or stale legal actions filed after a long period of time. After a long period of time evidence relevant to the incident may be lost, discarded, or obscured and the memories of witnesses may have faded.

Statutes of repose are not the same as statutes of limitations, for which the clock starts ticking when the accident happens/cause of action accrues/plaintiff discovers the injury. Statutes of repose emphasize a defendant's entitlement to be free of liability after a certain amount of time passes. It is a law that extinguishes a right of action after a specified period of time has elapsed, regardless

of whether the cause of action has accrued. Courts generally find that statutes of repose begin to run without interruption once the triggering event occurs.

Statutes of repose in the construction world involve improvements to real property. The clock on most of these statutes begins to run from the date of “substantial completion” of a construction project. The definition of “substantial completion” varies from state to state, but in most states, a project is substantially complete when it can be used for its intended purpose. If a construction project is not absolutely complete, however, the remaining work or defects must be relatively minor and unimportant. The statute of limitations might give a homeowner four (4) years to file a construction defect claim against a builder or contractor after the defect is discovered. But if a state’s statute of repose is seven (7) years from the time the construction is substantially completed, and the defect is not discovered until the fifth year, the building owner has only have two (2) years to file a claim.

Statutes of repose also come into play when product defects cause damage or injury. if a defective product first sold to a consumer more than ten years ago causes an injury, a ten-year statute of repose (that starts on the product’s original date of purchase) might bar a claim even if the statute of limitations (which starts on the date of injury) does not.

All fifty (50) states currently have statutes of repose, varying in both the type of claim covered by the statute and the length of the repose period. Forty-six (46) states have a statute of repose which apply to actions involving real property design, engineering, and construction. However, nineteen (19) states also have statutes of repose limiting product liability claims. Some states also have statutes of repose when medical malpractice is involved.

MWL has prepared a 51-jurisdiction chart detailing the law of each state with regard to each state’s relevant statutes of limitation and statutes of repose. The chart can be found [HERE](#). The chart also contains relevant law for each state on the diligence required when attempting to obtain service of process. Filing suit within the statute of limitations may not be enough if the plaintiff doesn’t aggressively seek and obtain service of process on each defendant within a reasonable or prescribed period of time. It covers not only statutes of limitation, but also statutes of repose involving construction defect/improvement to real property cases, product liability cases, and medical malpractice actions.

For questions regarding the applicable statute of limitations or repose applicable to your case, please contact Gary Wickert at gwickert@mw-law.com.

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