

Issue Brief

Statute of Repose for Real Property Improvements

Key Points

- *Vermont does not have a repose statute in place to protect contractors and design professionals.*
- *Statutes of Repose bar legal actions after a specified period of time from the occurrence of a fixed event. A statute of repose would limit the time during which contractors and design professionals are exposed to liability.*
- *A total of 47 states have repose statutes in place for contractors and design professionals; 41 states have time frames of 10 years or less.*
- *Vermont DOES have a repose statute in place to protect medical professionals. It prescribes a time frame of seven (7) years (12 V.S.A. § 521).*
- *Vermont DOES have a statute of limitations in place that prescribes a time frame of six (6) years (12 V.S.A. § 511).*
- *Vermont DOES have a six year Statute of Repose for design and construction defects in condominiums and other common interest ownership communities (27A V.S.A. § 4-116)*

Position

Designers and constructors of buildings and other improvements to real property are exposed to life-long liability for their professional and business activities, unlike practitioners of other professions and businesses. Fairness and public policy require limiting that liability with a statute of repose, like that enacted in 47 other states.

Action Sought

A coalition of design and construction professionals proposes barring suits relating to design, construction and repair of improvements to real property ten years after the improvements are occupied or put in service. Exceptions would be made for express warranties, fraudulently concealed defects, and negligence of persons having actual possession or control of the improvement at the time of injury or damage.

Explanation and Justification

Under the “discovery rule” in Vermont law, a cause of action accrues when the plaintiff discovers, or should with reasonable diligence have discovered, either negligence or breach of contract and a resulting injury or damage. Statutes of limitations restrict the maximum time after discovery for filing suit to three years for personal injury or death and six years for property damage and breach of contract. Statutes of limitations prevent prejudice to a defendant by ensuring timely notice of claims, allowing the defendant to locate witnesses, and gather and preserve evidence. They also protect potential defendants from protracted fear of litigation. Statutes of limitation promote judicial economy and efficiency and prevent courts from dealing with cases seriously impaired by loss of evidence.

The application of the discovery rule to the design, construction and repair of improvements to real property deprives architects, engineers and contractors of these protections. An injury or damage may not occur until many years after the designer or contractor completed his work. As a result, these professionals are subject to possible liability throughout their professional lives, into retirement and even after death. Claims can be brought long after records and other evidence have been lost, memories faded, and witnesses disappeared. Buildings have a limited useful life, and normal wear and tear and maintenance can obscure or compound the cause of an injury or damage.

Forty-seven states have addressed this unfairness by enacting a statute of repose to limit the time for suit for a fixed period after completion of construction, 41 of them for 10 years or less. Vermont has recognized the principle of repose for design and construction defects in common interest ownership communities (27A V.S.A. § 4-116, 6 years or less); for injuries from medical malpractice (12 V.S.A. § 521, 7 years); for results of ionizing radiation (12 V.S.A. § 518, 20 years); and for breach of warranties in the sale of goods (9A V.S.A. § 2-725(2), 4 years). Vermont should protect architects, engineers and contractors from protracted liability as well.

Professional associations such as the American Institute of Architects, Vermont Chapter and Vermont American Council of Engineering Companies of Vermont support the enactment of a statute of repose for our state’s design and construction professionals. *For a complete list of coalition members in support of this effort, see the back of this document.*

We, the undersigned, strongly support the creation of a Statute of Repose for the construction and design community in Vermont.



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