

The Design Professional's Saving Grace: Statutes of Repose and the Elimination of Perpetual Liability on Construction Projects

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Statutes of repose are laws that cut off a right of action after a specified period, regardless of whether a cause of action has accrued. In the states in which these statutes of repose are enacted, they serve the important function of barring actions against design professionals after a specified period of time has run from the occurrence of some event, typically the completion of services or substantial completion of a project.

Architects and engineers face significant pressure to complete projects in a good and workmanlike manner and in accordance with applicable design standards, codes, and specifications. The responsibility they bear is often magnified by their dual roles on a project. Typically, they are tasked with not only designing a complete and fully functional project but also reporting on and inspecting the work of multiple trades and contractors. It is these significant obligations undertaken by design professionals that can also lead to substantial liability when things go wrong.

Statutes of repose provide a measure of finality to the design professional. Without them, a design professional could be subject to perpetual liability after completion and acceptance of a project. It also protects design professionals from having to defend claims where evidence, documents, and witnesses are no longer available or where owner modifications or improper maintenance may have caused or contributed to the alleged defect.

Statutes of repose “reflect the legislative conclusion that a point in time arrives beyond which a potential defendant should be immune from liability for past conduct.” *Village Lofts at St. Anthony Falls Association v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430, 439 (Mn. 2020) (citations omitted). When applicable, statutes of repose can be used to the design professional's benefit to eliminate causes of action and prevent stale claims that arise years after a project has been completed and the improvement has been turned over to the property owner.

If you are interested in learning more about the statutes of repose in the states in which you are conducting business, the Professional Liability attorneys at Sandberg Phoenix can help.