

**STATUTE OF LIMITATIONS - REAL  
PROPERTY IMPROVEMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

AN ACT RELATING TO THE JUDICIAL CODE; AMENDING THE PROVISIONS CONCERNING THE STATUTES OF LIMITATION AND REPOSE FOR IMPROVEMENTS TO REAL PROPERTY; CREATING A SEPARATE STATUTE OF LIMITATIONS FOR SURVEYORS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

**78-12-21.7**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

**78-12-21.5**, (Renumbered from 78-12-25.5, as last amended by Chapter 149, Laws of Utah 1997)

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78-12-21.5**, which is renumbered from Section 78-12-25.5 is renumbered and amended to read:

~~[78-12-25.5].~~        **78-12-21.5. Actions related to improvements in real property.**

(1) As used in this section:

(a) "Abandonment" means that there has been no design or construction activity on the improvement for a continuous period of one year.

~~[(a)]~~ (b) "Action" means any claim for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach of duty ~~[that causes injury to persons or property]~~ arising out of or related to the design, construction, or installation of an improvement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law.

~~[(b)]~~ (c) "Completion of improvement" means the date of substantial completion of an improvement to real property as established by the earliest of:

(i) a Certificate of Substantial Completion;

(ii) a Certificate of Occupancy issued by a governing agency; or  
(iii) the date of first use or possession of the improvement[; ~~or (iv) the date the map of the survey is filed under Section 17-23-17 with respect to real property].~~

~~[(e)]~~ (d) "Improvement" means any building, structure, infrastructure, road, utility, or other similar man-made change, addition, modification, or alteration to real property.

~~[(d)]~~ (e) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, proprietorship, or any other legal or governmental entity.

~~[(e)]~~ (f) "Provider" means any person contributing to, providing, or performing studies, plans, specifications, drawings, designs, value engineering, cost or quantity estimates, surveys, staking, construction, and the review, observation, administration, management, supervision, inspections, and tests of construction for or in relation to an improvement.

(2) The Legislature finds that:

(a) exposing a provider to suits and liability for acts, errors, omissions, or breach of duty after the possibility of injury or damage has become highly remote and unexpectedly creates costs and hardships to the provider and the citizens of the state;

(b) these costs and hardships include liability insurance costs, records storage costs, undue and unlimited liability risks during the life of both a provider and an improvement, and difficulties in defending against claims many years after completion of an improvement;

(c) these costs and hardships constitute clear social and economic evils;

(d) the possibility of injury and damage becomes highly remote and unexpected [~~as to claims for breach of contract or warranty six years following completion of the improvement or the abandonment of construction and, as to all other claims,]~~ ten years following completion or abandonment;

(e) except as provided in Subsection (7), it is in the best interests of the citizens of the state to impose the periods of limitation and repose provided in this chapter[; and] upon all causes of action by or against a provider arising out of or related to the design, construction, or installation of an improvement.

~~[(f) it is in the best interests of the citizens of this state to impose a period of limitation~~

requiring that an action against a provider be brought within a five-year period following discovery of the act, error, omission, or breach of duty that forms the basis of the action.]

(3) (a) An action by or against a provider based in contract or warranty shall be commenced within six years of the date of completion of the improvement or abandonment of construction. Where an express contract or warranty establishes a different period of limitations, the action shall be initiated within that limitations period.

~~[(3)(a)]~~ (b) ~~[An action]~~ All other actions by or against a provider shall be commenced within ~~[five]~~ two years from the earlier of the date of discovery of ~~[the act, error, omission, or breach of duty]~~ a cause of action or the date upon which ~~[the act, error, omission, or breach of duty]~~ a cause of action should have been discovered through reasonable diligence. ~~[(b)]~~ If the ~~[act, error, omission, or breach of duty]~~ cause of action is discovered or discoverable before completion of the improvement or abandonment of construction, the ~~[five]~~ two-year period begins to run upon completion or abandonment.

~~[(4)]~~ Subject to Subsection (3), no action for breach of contract or warranty may be commenced against a provider more than six years after completion of the improvement or abandonment of construction. In the event the act, error, omission, or breach of duty is discovered in the first through the sixth year of the six-year period, the injured person has five additional years from the date of discovery to commence an action.]

~~[(5)]~~ (4) ~~[Subject to Subsections (3) and (4), no]~~ Notwithstanding Subsection (3)(b), an action may not be commenced against a provider more than 12 years after completion of the improvement or abandonment of construction. In the event the ~~[act, error, omission, or breach of duty]~~ cause of action is discovered or discoverable in the ~~[seventh through the]~~ eleventh or twelfth year of the 12-year period, the injured person shall have ~~[five]~~ two additional years from ~~[the]~~ that date ~~[of discovery]~~ to commence an action.

~~[(6)]~~ (5) ~~[Subsections]~~ Subsection (4) ~~[and (5) do]~~ does not apply to an action against a provider:

(a) who has fraudulently concealed ~~[the]~~ his act, error, omission, or breach of duty, or the injury, damage, or other loss caused by his act, error, omission, or breach of duty; or

(b) for a willful or intentional act, error, omission, or breach of duty[; or (c) for breach of a written express warranty where the warranty period extends beyond six years as provided in Subsection (4)].

~~[(7)]~~ (6) If a person otherwise entitled to bring an action did not commence the action within the periods prescribed by Subsections (3) and (4) ~~[and (5)]~~ solely because that person was a minor or mentally incompetent and without a legal guardian, that person shall have two years from the date the disability is removed to commence the action.

(7) This section shall not apply to an action for the death of or bodily injury to an individual while engaged in the design, installation, or construction of an improvement.

(8) The time limitation imposed by this section shall not apply to any action against any person in actual possession or control of the improvement as owner, tenant, or otherwise, at the time any defective or unsafe condition of the improvement proximately causes the injury for which the action is brought.

(9) This section does not extend the period of limitation or repose otherwise prescribed by law or a valid and enforceable contract.

(10) This section does not create or modify any claim or cause of action.

~~[(10)]~~ (11) This section applies to all ~~[claims and]~~ causes of action that accrue after ~~[April 29, 1991]~~ May 3, 1998, notwithstanding that ~~[the act, error, omission, or breach of duty occurred, or]~~ the improvement was completed or abandoned before ~~[April 29, 1991]~~ May 3, 1999.

Section 2. Section **78-12-21.7** is enacted to read:

**78-12-21.7. Within five years -- Boundary surveys.**

An action against a surveyor for acts, errors, or omissions in the performance of a boundary survey filed pursuant to Section 17-23-17 shall be commenced within five years of the date of the filing.