

STATUTE OF REPOSE

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill reduces the statute of repose for real estate improvements from twelve to nine years.

Highlighted Provisions:

This bill:

- ▶ changes the statute of repose for improvements on real property to nine years.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-12-21.5, as renumbered and amended by Chapter 123, Laws of Utah 1999

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

Section 1. Section **78-12-21.5** is amended to read:

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.

(b) "Action" means any claim for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach of duty 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.

(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.

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

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

(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 [~~ten~~ seven] years following completion or abandonment; and

(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 upon all causes of action by or against a provider arising out of or related to the design, construction, or installation of an improvement.

(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.

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

(4) Notwithstanding Subsection (3)(b), an action may not be commenced against a provider more than [~~12~~] nine years after completion of the improvement or abandonment of construction. In the event the cause of action is discovered or discoverable in the [~~eleventh or twelfth~~] eighth or ninth year of the [~~12~~] nine-year period, the injured person shall have two additional years from that date to commence an action.

(5) Subsection (4) does not apply to an action against a provider:

(a) who has fraudulently concealed 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.

(6) If a person otherwise entitled to bring an action did not commence the action within the periods prescribed by Subsections (3) and (4) 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.

H.B. 96

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(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.

(11) This section applies to all causes of action that accrue after May 3, [~~1998~~] 2003, notwithstanding that the improvement was completed or abandoned before May 3, [~~1999~~] 2004.