

**WHEN CAN DESIGN
PROFESSIONALS
BREATHE EASY
REGARDING LIABILITY?**

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WHEN CAN DESIGN PROFESSIONALS BREATHE

EASY REGARDING LIABILITY?

Design professionals oftentimes encounter claims or lawsuits for work they have performed long after the project was completed. Claims of this nature usually arise from perceived defects which are not discovered until many years after the project is completed. The question that arises is when are design professionals safe from lawsuits involving long completed projects?

Typically, when someone is hurt or property is damaged, the party claiming a loss has the immediate right to bring a lawsuit. In other words, his or her "cause of action" or right to sue has matured or "accrued" at the time the injury takes place.

That right to bring a suit, however, does not last forever. All states, including Idaho, impose what are called statutes of limitation defining how long one has to file a lawsuit after a perceived wrong has occurred. In Idaho, there is a two year statute of limitation for personal injury, three years for property damage, and five years for a written contract, all starting from the date the injury or damage occurs.

With respect to architects and engineers, Idaho Code § 5-219(4) states in relevant part:

**Actions ... for professional malpractice--Within
two (2) years:**

....

(4) An action to recover damages for professional malpractice ... the cause of action shall be deemed to have accrued as of the time of the occurrence, act or omission complained of The term "professional malpractice" as used herein refers to wrongful acts or omissions in the performance of professional services by any person, firm, association, entity or corporation licensed to perform such services under the law of the state of Idaho.

Such language would appear to limit any A/E exposure to two years after the design or other activity in question took place. However, the case of *Stephens v. Stearns*, 106 Idaho 249 (1984), illustrated that such thinking is overly optimistic. There, an architect had failed to notice during his inspection tour that a stairway handrail had been omitted. More than two years after that inspection, a tenant in the building fell and injured herself. The Idaho Supreme Court ruled that the tenant's ability to bring a cause of action or lawsuit against the architect did not arise or accrue until she was injured, thus circumventing the two year language of § 5-219.

This case does not mean, however, that architects and engineers are cast into a perpetual legal limbo after a building, bridge or other project has been completed. To address this situation and allow A/E's to have some order in their professional lives, the Idaho Legislature enacted a "statute of repose" (I.C. § 5-241) which establishes a specific period of time that the A/E remains exposed for work on real property. It dictates that any applicable statute of limitation begins to run against:

[A]ny person by reason of his having performed or furnished the design, planning, supervision or construction of an improvement to real property, as follows:

(a) Tort actions, if not previously accrued, shall accrue and the applicable limitation statute shall begin to run six (6) years after the final completion of construction of such an improvement.

(b) Contract actions shall accrue and the applicable limitation statute shall begin to run at the time of final completion of construction of such an improvement.

Idaho Code § 5-241 operates as follows. Assume a building project was completed on January 1, 1990, and a person claimed they were hurt due to a defective staircase in that building in 1999. Could that person bring a lawsuit against the designer of the staircase? Section 5-241 dictates that any personal injury claim (a tort) would be deemed to have accrued within six years after the project was completed. Once it accrues, the appropriate statute of limitation would be activated at that time. Thus, on January 1, 1996, the two year statute of limitation for bodily injury would start running, despite the fact that no real injuries had occurred at that time. By January 1, 1998, the two year statute of limitation for such injuries would expire and forever bar any future claims of that nature. Thus, the person injured in 1999 would be outside the eight year window and would not be able to pursue a cause of action or claim against the designer. The same rationale applies to property damage, except that the designer is exposed for nine years (six years statute of repose and three years statute of limitation). Contract actions have a five year window, as they accrue at the completion of the project, according to § 5-241, and the statute of limitation runs for five years.

The only exception to this rule is when the A/E says or does something that makes the client forego the filing of a lawsuit. For example, assume a problem arises involving exterior cracking around the windows of a structure. The A/E tells the client or owner that the problem is easily correctable or the result of natural expansion and contraction. Further assume that the cause of cracking is actually due to the design of the structure and cannot be easily remedied. Assuming the client does not file a lawsuit until after the combined statute of repose and statute of limitation period or "window" has expired, Idaho courts have ruled that the A/E is "estopped" or precluded from asserting that the claim is barred by the passage of time. Stated otherwise, when the A/E is the reason why the lawsuit was not filed in time, it stands to reason that such a defense is not available under such circumstances.

CONCLUSION

A/E's are protected from claims arising long after a project has been completed. Depending upon the type of claim, the Idaho Legislature has crafted certain time limits, after which no further exposure exists for the design professional. In most circumstances these windows of exposure are as follows:

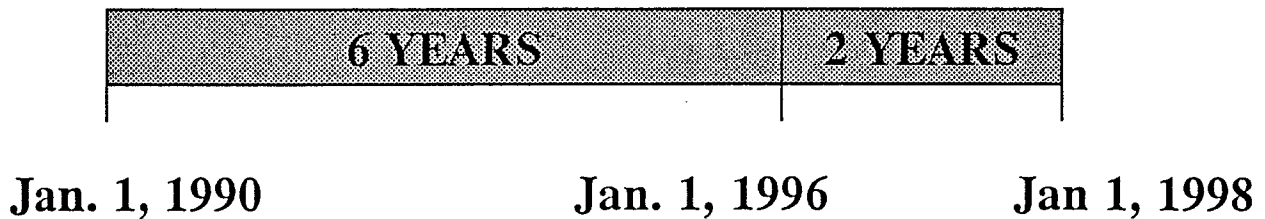
Written Contract - 5 years

Personal Injury - 8 years

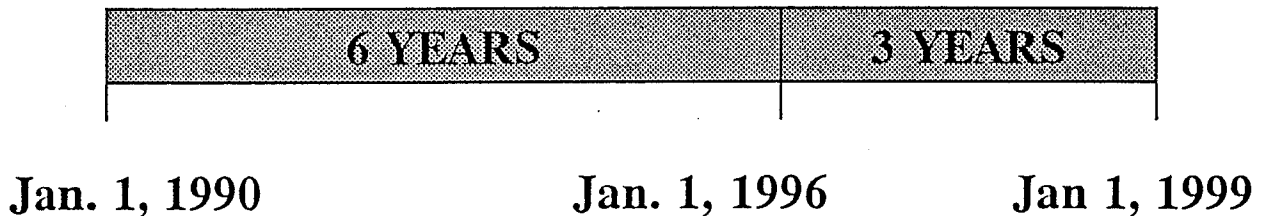
Property Damage - 9 years

HOW STATUTE OF REPOSE AND STATUTES OF LIMITATION WORK TOGETHER

PROFESSIONAL MALPRACTICE/ PERSONAL INJURY - 8 YEAR "WINDOW"



PROPERTY DAMAGE - 9 YEAR "WINDOW"



CONTRACT - 5 YEAR "WINDOW"

