

## **Statute of Limitations – How long do you have to file a law suit?**

Legal View

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Many times I am asked how long one has to file a law suit. As with every legal claim, to answer this question I first need to know what the facts for the claim are, and when the event occurred that gave rise to the claim. A statute of limitations prescribes the time during which an action must be brought. In Colorado, different time periods apply to different claims, and sometimes there may be more than one applicable statute of limitations, again, depending on what happened and who or what entity may have been involved. The purposes of statutes of limitations are to discourage unnecessary delay, preclude the prosecution of stale claims and promote justice. A cause of action generally accrues on the date both the injury and its cause are known, or should have been known, by the exercise of reasonable diligence. This is commonly referred to as the “discovery rule.” However, if the “at fault” party is a government entity or employee, the Colorado Governmental Immunity Act also requires that written notice be given to the “government” within 182 days after discovery of the injury. Thus, the attorney may need to give proper notice to a public entity *sooner* than the applicable statute of limitations may expire to preserve the claim.

### **Can a Statute of Limitations Be Extended?**

In certain circumstances, the applicable statute of limitation may be extended by an express agreement by the parties. In this case, the parties would enter into what is called a “tolling agreement,” and thereby modify and extend a statutory period of limitation. This can be very useful tool in a case where a shorter statute of limitations may apply, such as in a medical malpractice claim that involves analysis of a complex event or series of events which may involve numerous parties and extensive records of treatment. In such case, the parties execute a tolling agreement indicating they wish to toll any applicable statutes of limitations to afford the parties an opportunity to explore settlement and the plaintiff agrees to hold off on filing a lawsuit. A tolling agreement can promote a fair and reasoned settlement of the claim while saving time and money in the long run. However, some statutory limitation periods cannot be extended, even by agreement, if jurisdictional limits are involved.

### **What is a Statute of Repose?**

Generally, statutes of repose limit suits being filed *after* a certain date. One example is when claims are brought against a contractor for a construction defect. Such claims typically must be asserted within two years after the claim for relief arises, but such an action cannot be brought more than *six years* after substantial completion of the construction work. The six-year statute of repose serves to cut off liability for the contractor if the construction defect is found more than six years after work was finished. This limitation applies even if the potential plaintiff timely files suit within the two year limitations period after discovering the injury, but may preclude the claim going forward if beyond six years after the work was complete. As with statutes of limitation, statutes of repose may also be tolled by agreement of the parties.

Knowing how long the law provides for a legal claim to be filed will be based on whether the claim arises from a car accident, acts of negligence, fraud, a breach of contract, construction defects, an intentional act or other acts, or a combination of such acts. And specifically, who or what entity is involved, and committed such acts as there may be statutory notices that need given to preserve a claim even before a statute of limitation runs its course. At the other end of the spectrum, a claim might be considered “stale,” and thereby barred, if it arises many years later. If you feel that something happened to you that may give rise to a claim, or that your actions may have caused injury or damages to another party, you may be well advised to seek counsel to preserve your claim or to protect yourself or your company from a claim being asserted later. Time is truly “of the essence” in most legal matters and a judge may ultimately tell you *it's too late*.

Do you have a legal question? Send your inquiry to attorney Jeff Kelley ([Jeff@klfpc.com](mailto:Jeff@klfpc.com)). Appointments for in person legal counsel are available in both Black Hawk and Denver offices.

*Note: While every effort has been made to ensure the accuracy of this information, it is published for general information and not intended to provide specific legal advice as individual situations will differ and require full analysis by an attorney of the specific facts involved.*