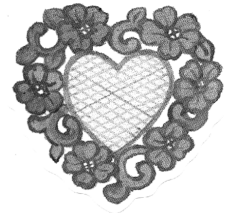




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Happy Valentine's Day



"Tip of the Month"

The Time Limit for Construction Negligence Suits

A plaintiff typically has only a statute of limitations time limit to be concerned about when filing a lawsuit. Plaintiffs in construction lawsuits, however, have two time periods to consider.

Under NH RSA 508:4, New Hampshire has a three-year statute of limitations for personal actions. This means that a plaintiff must file a lawsuit within three years of the time plaintiff discovers (or reasonably should have discovered) the injury or damages. The reason for this limitation is that it would be unfair to allow a claimant to claim damages long after witnesses and evidence may have faded or disappeared.

In a construction case, the date of discovery of the construction defect starts the three-year clock on the statute of limitations. But property owners sometimes encounter construction issues long after the building is built. These latent defects might appear years later.

The problem with this "discovery rule" in construction cases is that it could expose a contractor to negligence claims forever. Contractors would be forced to hold onto all project documentation and liability coverage for decades after projects are completed, just in case they have to defend against future claims. That brings us to the statute of repose.

NH RSA 508:4-b puts an eight-year time limit on the exposure of contractors to liability suits. This statute provides that actions for damages arising from the "design, labor, materials, engineering, planning, surveying, construction, observation, supervision or inspection" of any improvement to real property shall be brought within eight years from the date of substantial completion, unless the contractor has expressly guaranteed its work for a longer period of time.

However, this does not mean that a plaintiff can wait eight years to file the lawsuit for damages. The eight-year statute of repose simply allows time to discover the cause of action. Then, New Hampshire's three-year statute of limitations starts to run from the date of discovery.

This also means that if the plaintiff does not become aware of the construction defect until after eight years have passed from the project's completion, the plaintiff is barred from bringing suit against the contractor. An extension would only be granted in the case of fraudulent misrepresentation or fraudulent concealment of material facts.

Thus, in most cases, a contractor should hold onto the records relating to a job for at least eleven years (eight years repose plus three years limitation). After that, the contractor should be free from liability for construction defects.

If you need any help with construction liability questions, give us a call at 668-1971 or contact us by e-mail at *mailbox @ biz-patlaw.com*.

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