



Legal Help, Information, and Resources

WHAT IS A STATUTE OF REPOSE



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Most people have heard of a statute of limitations, a law that limits the amount of time that a plaintiff has to initiate a cause of action against a defendant. However, there is a related set of laws, statutes of repose, that may also create a time-bar to the filing of a lawsuit, without regard to the merits of the claim.

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What is a Statute of Repose

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A statute of repose defines a fixed period of time following which a lawsuit is time-barred. Once the statutory period ends, no matter what other facts may exist, the statute of repose provides an absolute

defense to liability.

Although it is possible for states to pass statutes of repose for any type of legal action, the statutes are most common in product liability cases, as well as in premises liability cases that are based upon alleged defects in design or construction. Most states also have statutes of repose for medical negligence claims.

- In cases of defective product claims, a statute of repose will typically start to run on the date of manufacture or the date of first sale.
- For claims alleging injury from defective design or construction of real property, a statute of repose will typically start to run on the date of substantial completion of the construction or improvement underlying the claim.
- For professional negligence claims, such as medical malpractice, a statute of repose will typically start to run either on the date of the alleged action or omission that gave rise to the injury, or upon the completion of professional services related to the claimed injury.

Statutes of repose may also apply in other contexts, such as by limiting the amount of time an estate has to commence a wrongful death action on behalf of a deceased claimant, or limiting the amount of time a creditor has to bring an action against an estate once notice has been properly issued or published.

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How Does a Statute of Repose Work

A cause of action accrues when all of the elements of the potential claim exist. In personal injury cases, that is normally the date of an injury. A plaintiff cannot bring a cause of action until it accrues.

A statute of repose cuts off the plaintiff's ability to recover damages from a cause of action following the passage of a defined time period. In some cases the statute of repose may run *before* a cause of action accrues.

For example, with a ten year statute of repose for defective airplane design and manufacture, even though the plaintiff may have a very strong case of negligence against the manufacturer and may have very serious injuries, once the statute of repose expires any actual or potential cause of action not already filed with a court is extinguished. If a plane crashes due to a latent defect after the statute of repose has expired, the statute cuts off the plaintiff's cause of action.

Although a plaintiff runs the risk of having a cause of action declared frivolous if it is filed after the expiration of a statute of limitations or repose, it is the defendant's obligation to raise the statute of

repose as an affirmative defense to a lawsuit. If the defendant fails to properly raise that defense, the statute of repose may be deemed waived.

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What is the Difference Between a Statute of Limitations and Statute of Repose

There are two key differences between a [statute of limitations](https://www.expertlaw.com/library/limitations_by_state/index.html) (https://www.expertlaw.com/library/limitations_by_state/index.html) and a statute of repose:

1. **When the Statute Starts to Run:** A statute of limitations will normally start to run when a cause of action accrues, or when a plaintiff reasonably should have discovered the cause of action. A statute of repose will often start to run on a fixed date that precedes the accrual of the cause of action,
2. **Extension of the Limitations Period:** A statute of limitations will often be subject to extension (tolling) based upon the facts of a case. States will often extend (toll) a statute of limitations based upon such factors as late discovery, a defendant's absence from the state, the defendant's fraudulent concealment of the cause of action, or the plaintiff's infancy or mental incapacity. A statute of repose is not subject to extension and, once the period of repose expires, the cause of action is extinguished.

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Why Do States Have Statutes of Repose

The principal reasons to pass statutes of repose include:

- **Fairness:** Legislators recognize that after the passage of a certain amount of time it can become difficult to defend against a lawsuit, due to fading memories, unavailable witnesses, the loss of evidence, and similar factors.
- **Judicial Efficiency:** Both statutes of limitation and statutes of repose reduce the number of cases that are filed in court, and dispose of an additional subset of claims without the need for complicated hearings or trials.
- **Finality:** For certain types of claim, such as claims against an estate, it makes sense to provide for a final date after which no further claims can be made. If there were no cut-off date for claims against an estate it would become difficult for a court to approve a final settlement and distribution of its assets, and heirs would be at risk of being ordered to return part or all of their inheritances to the estate in order to cover its liability for a late claim.

- **Lobbying:** Legislatures have responded to lobbying efforts by certain special interests, particularly product manufacturers, by passing laws that protect those groups from liability.

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