

HBA Directors & EO's,

At the Legislative Conference last week there was a lively discussion on the Statute of Repose. At that time Keith Smith, our Legislative Committee Chair, promised that we would compile and distribute a "white paper" on the Statute of Repose to clarify several issues. After discussions with HBA Legal Counsel we prepared a "white paper" as a reference material for any questions that might arise in the local HBA chapters on the Statute of Repose.

We hope you find the "white paper" informative and useful. Feel free to contact us if you need further clarification, or new questions arise.

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STATUTE OF REPOSE 2005 SUMMARY

On March 21, 2005 the SC General Assembly passed, as part of a comprehensive tort reform package, a change to the existing Statute of Repose law as it relates to the "improvement of real property." The only change to the existing Statute of Repose was that it was changed from 13 years to 8 years. The new 8-year Statute of Repose applies to all new homes that received a certificate of occupancy (CO) on or after July 1, 2005. Homes receiving their CO prior to July 1, 2005 continue to carry a 13-year Statute of Repose.

The Statute of Repose is a legal term which means a law passed by a legislature that bars a lawsuit a fixed number of years after the defendant acts in some way (constructs, manufactures, creates, etc), even if this period ends before the plaintiff has experienced an occurrence/accident.

The law clearly lists nine areas where lawsuits are prohibited after eight years of substantial completion of the improvement (date the Certificate of Occupancy is issued):

- (1) an action to recover damages for **breach of a contract** to construct or repair an improvement to real property;
- (2) an action to recover damages for the **negligent construction** or repair of an improvement to real property;
- (3) an action to recover damages for **personal injury**, death, or damage to property;
- (4) an action to recover damages for **economic or monetary loss**;
- (5) an action in contract or in tort or otherwise;

- (6) an action for contribution or **indemnification for damages** sustained on account of an action described in this section;
- (7) an action against a surety or guarantor of a defendant described in this section;
- (8) an action brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest in the real property or improvement;
- (9) an **action against owners or manufacturers of components, or against any person furnishing materials**, or against any person who develops real property, or **who performs or furnishes the design, plans, specifications, surveying, planning, supervision, testing, or observation of construction**, or construction of an improvement to real property, or a **repair to an improvement** to real property. HBA Legal Counsel reports that 99% of the construction lawsuits filed in this country are filed for breach of contract or negligent construction. Both of these are limited in SC to eight years by the Statute of Repose. The point is that 99% of the lawsuits for construction defects are covered by the eight-year Statute of Repose, and the other 1% may or may not be covered depending on the scenario.

The issue of gross negligence is not covered by the Statute of Repose. However, this is a much higher legal standard which requires the plaintiff attorney to clearly demonstrate and prove willful, purposeful, and deliberate acts by the builder to even have a chance to get the case classified as gross negligence.

Another legal term, the Statute of Limitations, is sometimes confused with the Statute of Repose. The State of Limitations limits the time from discovery of a problem until action is taken by the plaintiff, and operates within the Statute of Repose. For construction defects the Statute of Limitation is three years.

The responsibility for regulating home builder's moves to the Residential Building Commission (LLR) once the Certificate of Occupancy (CO) is issued. For the first two years after the CO is issued, all consumer construction complaints are referred by LLR back to the local building officials for investigation. For the third

through eighth year after the CO is issued, the Residential Building Commission sends out one of their LLR inspectors to investigate any consumer complaints. However, after eight years the Residential Building Commission does not investigate any construction defects. In the past the Commission use to investigate complaints for up to 10 years, but reduced the time period in 2005 when the Statute of Repose was lowered to eight years.