

Future of Pennsylvania's Construction Statute of Repose Hinges on Pennsylvania Supreme Court Ruling

March 17, 2025
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The Pennsylvania Supreme Court will decide a pivotal case that could significantly impact the construction industry and the application of the state's construction Statute of Repose. *Aloia v. Diamant* raises key questions about how the phrase "lawfully performing or furnishing" design or construction services should be interpreted within the statute. The ruling could have far-reaching consequences for architects, engineers, contractors, and property owners, potentially altering the way construction defect claims are litigated in Pennsylvania.

In *Aloia v. Diamant*, the Superior Court of Pennsylvania upheld a trial court's ruling that applied Pennsylvania's Twelve-Year Statute of Repose to bar claims related to construction defects and deficiencies. The Pennsylvania Supreme Court has now accepted an appeal from the homeowners, seeking to clarify the statutory interpretation of the phrase "lawfully performing or furnishing" in the context of construction services under the Statute of Repose.

Several prior appeals to the Pennsylvania Superior Court have challenged the application of the construction Statute of Repose, particularly in cases where plaintiffs allege that design or construction deficiencies violate the applicable building code. Notable cases include *Johnson v. Toll Bros.*, 302 A.3d 1231 (Pa. Super. 2023), *Tibbit v. Eagle Home Inspections*, 305 A.3d 156 (Pa. Super. 2023) and *Venema v. Moser Builders*, 284 A.3d 208 (Pa. Super. 2023).

The plaintiffs in *Aloia* argue that the Statute of Repose should not apply where there are allegations that the design or construction was not "lawfully performed" due to violations of the building code. This argument raises significant concerns for architects, engineers, and contractors, as it could allow plaintiffs to bypass the Statute of Repose merely by alleging a building code violation—potentially nullifying the statute's protective function.

Legislative Response: Senate Bill 336

Recognizing the ongoing disputes over the Statute of Repose, the legislative affairs committee of AIA-Pennsylvania introduced Senate Bill 336 on January 31, 2023. The bill sought to amend Pennsylvania's construction Statute of Repose by reducing the period from twelve years to six years, bringing Pennsylvania in line with most states and providing a legislative definition for "lawfully." However, the bill was not enacted, leaving Pennsylvania with one of the longest construction Statutes of Repose.

Key Legal Issues in *Aloia v. Diamant*

The plaintiffs contend that the trial and appellate courts erred in dismissing their claims based on the Statute of Repose before trial. The case facts reveal that building permits were issued for the home's construction, and a certificate of occupancy was granted on March 30, 2006. Additional certificates of occupancy were issued on February 20, 2007, following the completion of

an addition and basement improvements. The plaintiffs, who purchased the home in 2016, filed suit on March 5, 2021, alleging latent construction defects. The contractor invoked the twelve-year Statute of Repose as a defense.

The Legal Implications of the Pennsylvania Supreme Court's Decision

Pennsylvania's construction Statute of Repose provides an absolute bar to claims filed more than twelve years after the substantial completion of a construction project. Unlike a Statute of Limitations, which limits the timeframe in which a lawsuit may be filed but allows for exceptions under equitable doctrines (such as the repair doctrine or discovery rule for latent defects), the Statute of Repose is a strict cutoff for liability.

The Pennsylvania Supreme Court's decision in *Aloia* will have significant implications for the construction industry. If the court adopts the plaintiffs' interpretation of "lawfully performed," it could render the Statute of Repose ineffective by allowing plaintiffs to avoid its application through allegations of building code violations. Such a ruling could expose architects, engineers, and contractors to indefinite liability, fundamentally altering the legal landscape of construction defect claims in Pennsylvania.

The outcome of *Aloia v. Diamant* is eagerly anticipated by construction professionals, developers and legal practitioners alike. A ruling in favor of the plaintiffs could reshape Pennsylvania's construction litigation framework, potentially extending liability well beyond the current twelve-year period. Conversely, a decision upholding the Statute of Repose's current interpretation would reinforce the finality intended by the statute, providing greater certainty for construction professionals. Until the Supreme Court renders its decision, the industry remains in a state of uncertainty regarding the long-term enforceability of Pennsylvania's construction Statute of Repose.