

Pennsylvania Supreme Court Entertains Oral Argument on Significant Construction Statute of Repose Appeal in *Aloia v. Diament Building Corp*

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On March 12, 2026, the Pennsylvania Supreme Court heard oral arguments in *Aloia v. Diament Building Corp.*, a closely watched appeal that could significantly affect the future of Pennsylvania’s Construction Statute of Repose. The key question presented to the Court is how the statutory phrase “lawfully performing” design or construction services will be interpreted.

Pennsylvania’s Construction Statute of Repose has long provided architects, engineers, and contractors with a defined endpoint for liability arising from improvements to real property. Unlike the statute of limitations, which begins to run when an injury occurs or is discovered, the Pennsylvania statute of repose establishes a firm cutoff for claims, without regard to discovery or other equitable tolling.

The dispute in *Aloia* arises from a residential construction project completed in the mid-2000s. Certificates of occupancy were granted in 2006 and 2007 to the original owner. In 2021, more than a decade later, homeowners who purchased the home in 2016 filed suit alleging latent construction defects. The contractor invoked the construction statute of repose as a complete bar to the claims. Both the trial court and the Superior Court determined that the twelve-year repose period applied to the claims alleging building code violations, dismissing the homeowners’ claims.

Key Themes from Oral Argument

On appeal to the Pennsylvania Supreme Court, the homeowners advance an interpretation of the statute, asserting that the repose period did not apply where the construction work was alleged to violate the applicable building code. The homeowners asserted that a design professional or contractor who was alleged to have violated the building code was not a person “lawfully performing or furnishing” construction services, and, therefore, the construction statute of repose was inapplicable to the homeowners’ claim. At argument, the Court repeatedly framed the central issue as whether “lawfully performing” requires compliance with all code requirements or, instead, requires that the individual or person be lawfully entitled to perform the services (i.e. authorized).

Interpreting the phrase “any person lawfully performing” to require full compliance with any and all applicable statutes, building codes, and regulatory requirements would effectively nullify the construction statute of repose, exposing design professionals, contractors, and subcontractors to claims decades after substantial completion. At argument, the Court discussed the statute’s underlying purpose was to promote a robust building industry, preventing unlimited liability by protecting those who work within the industry’s regulatory framework (i.e. licensing and permitting requirements). Additionally, the Court engaged in questioning focused on the fact that the failure to comply with building codes constitutes a construction deficiency, and that the homeowners’ reading makes other provisions of the statute, which require claims for design or construction deficiencies to be

brought within 12 years, mere surplusage. Further along these lines, the Court also questioned the statutory or regulatory authority of an individual to bring a private cause of action to enforce the building code, noting that no violations were issued by the code official and, therefore, the homeowners were necessarily pursuing deficiency claims squarely within the construction statute of repose.

The Court also engaged in a robust discussion regarding the structure of the statute itself. Looking to the grammatical structure, justices noted that the structure of the statutory phrase, “a person lawfully performing or furnishing,” in which the term “lawfully performing” modifies the term person rather than the terms building or improvement. The Court also scrutinized the statutory structure, as the contractor emphasized that the homeowners’ interpretation effectively rewrites the statute by inserting an additional exception into subsection (a), which establishes the general rule, rather than looking to subsection (b), in which the legislature expressly set forth the statutory exceptions.

The Supreme Court’s decision in *Aloia* stands poised to shape the contours of construction liability in Pennsylvania and will determine whether the Commonwealth’s longstanding statute of repose will remain a meaningful barrier against stale claims against design professionals and contractors.

Offit Kurman through Anthony S. Potter, Franklin C. Miller, and Robyn St. Hilaire represented the American Institute of Architects (“AIA”), AIA-Pennsylvania, the American Council of Engineering Companies (“ACEC”), ACEC/PA, the Structural Engineers Association of Pennsylvania, the Pennsylvania Society of Professional Engineers, the Pennsylvania Society of Land Surveyors, and the Pennsylvania-Delaware Chapter of the American Society of Landscape Architects as Amici Curiae before the Pennsylvania Supreme Court.