

Pennsylvania's Construction Statute of Repose Under Attack

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By Anthony Potter



For more than 40 years, Pennsylvania's Construction Statute of Repose (SOR) has given contractors, engineers, and architects the assurance that liability for completed projects eventually comes to an end. That is because, after 12 years from substantial completion, all claims are barred, no matter when the alleged defect is discovered.

That certainty, however, is under direct attack in Pennsylvania. Currently, two cases are pending before the Pennsylvania Supreme Court seeking to expand liability in ways that undermine the statute's purpose and create indefinite exposure for architects, engineers, and construction contractors. In our role as A/E/C industry advocates, Offit Kurman was engaged by leading construction industry associations to file friends of the court briefs (amicus briefs) in both appeals to Pennsylvania's highest court.

[Offit Kurman Advocates for AEC Groups in Key PA Construction Case](#)

[Nine AEC Professional Associations Advocate in Pennsylvania Supreme Court Case](#)

What is the Construction Statute of Repose?

A statute of repose, by definition, sets a definitive event for the statutory period to begin and then provides for an expiration period that is not tolled. The statute of repose differs fundamentally from a statute of limitations because repose can operate to bar a lawsuit before a cause of action accrues. By contrast, a statute of limitations runs from the time of injury or reasonable discovery of harm. For more than 40 years, the Pennsylvania Construction Statute of Repose has created a hard cutoff point for lawsuits brought against architects, engineers, and contractors who furnish design, planning, and construction services for any improvement to real property. Generally, this requires any such suit to be brought within 12 years of substantial completion. Once the repose period expires, all claims are barred, even if the defect was hidden or the injury occurred later.

There are various policy considerations for the adoption of a construction statute of repose. First, unlike most products and services, architectural, engineering, and construction services that improve real property are intended to long outlive the owner. Because the intent is for buildings and infrastructure projects to have long life spans, which include renovation and rehabilitation, state legislatures have typically limited the time period during which construction professionals can be held liable for alleged design and construction defects. The reality is that there is a practical balance: involving years elapsing, records being lost, memories fading, and the individuals who were involved on the projects being unavailable, as a result of retirement or death, that makes defending against stale claims exceptionally difficult. By creating a clear endpoint, construction statutes of response protect the A/E/C industry while also ensuring predictable costs for owners and the public.

State legislatures within 48 of the United States have adopted a construction statute of repose. Pennsylvania's 12-year statute

of repose ranks as one of the two longest statutes of repose in the country.

***Aloia v. Diament* – The Meaning of “Lawfully Performing”**

The first challenge seeks to nullify the construction statute of repose arguing that the statutory provision which states that a person “lawfully performing” means that if a plaintiff alleges any violation of a regulation or building code the statutory period does not start to run. In *Aloia v. Diament*, a homeowner argues that because the construction of the home’s exterior envelope allegedly violated building codes, the contractor was not “lawfully performing” the construction work. On that basis, the plaintiffs contend the 12-year repose period never began to run, leaving the claims alive decades later.

Offit Kurman’s amicus brief, filed on behalf of leading national and state design professional associations, including the American Institute of Architects and American Council of Engineering Companies, makes clear that plaintiffs’ argument completely erases Pennsylvania’s construction statute of repose by not paying attention to the plain and unambiguous text and purpose. Nearly every design and construction defect claim involves alleged code and regulatory violations; if “lawfully performing” meant “perfect,” the repose period would never commence to run.

Instead, “lawfully performing or furnishing” design or construction services clearly means *authorized*, meaning that the design professional or contractor was licensed or otherwise permitted to perform the work. This interpretation aligns with Black’s Law Dictionary (“authorized or sanctioned by law”) and with the legislative purpose of the statute of repose. In other words, “lawfully performing” modifies the qualifications of the architect or engineer, not whether every detail of the design complies with every regulatory or code provision.

Clearfield County v. Transystems* – Public Projects and *Nullum Tempus

The second case on appeal to the Pennsylvania Supreme Court arises from renovations to the Clearfield County Jail. The original construction of the Clearfield County Jail was substantially completed in 1981. In 2021, more than 40 years after its substantial completion, the county alleged design and construction defects in the original design and construction seeking to avoid the construction statute of repose by invoking *nullum tempus occurrit regi*—the ancient common law doctrine that “time does not run against the king.” The county argues that *nullum tempus* exempts it from the 12-year bar.

Offit Kurman was asked by nine design professional and construction associations, including ACEC-PA and all Pennsylvania Chapters of the Associated Builders and Contractors, to prepare an amicus brief in opposition to the county’s position. The amicus brief emphasizes three main points:

- **Statutory Finality** – The construction statute of repose eliminates causes of action after 12 years, thereby legislatively abrogating the common law doctrine of *nullum tempus*.
- **Sovereign Immunity Limits** – *Nullum tempus* is a privilege of the Commonwealth itself, not counties or municipalities.
- **Voluntary Contracting** – Even if *nullum tempus* applied more broadly to a statute of repose, it cannot shield a governmental entity voluntarily entering into design and construction contracts to improve real property.

If accepted, Clearfield’s argument would mean every public project remains open to claims indefinitely, driving up insurance premiums, discouraging bidders, and ultimately increasing costs for public improvements for the taxpayers of the Commonwealth.

Proposed Legislative Reforms to the Statute of Repose

Because of the importance of the statute of repose, Offit Kurman has provided legal advice to associations within the A/E/C industry on legal reforms to bring the 12-year statute of repose in line with statutes adopted by other states, so that Pennsylvania is not at a competitive disadvantage. In addition, the legislative coalition of A/E/C trade associations is seeking to address the potential negative outcome of either of the Supreme Court appeals. Senate Bill 399 is currently referred to the Senate Judiciary Committee and would shorten Pennsylvania’s statute of repose from 12 years to six, bringing it closer to the

national norm.

Why It Matters

If either appeal reverses the findings of the trial courts or if legislative reforms are not adopted, the impact on Pennsylvania's construction economy will be profound. The potential ramifications include:

- **Indefinite Liability** – Design professionals and contractors would face claims long after projects reach substantial completion, even into retirement or estate administration.
- **Insurance Burdens** – Design Professionals and contractors would be required to carry liability insurance indefinitely, even when such coverage almost certainly is not available.
- **Increased Costs** – Design Professionals and contractors will build risk premiums into proposals and bids for public and private projects, passing costs directly to taxpayers and owners.

The construction statute of repose was enacted in 1965 to prevent exactly these outcomes. Offit Kurman's Construction Practice Group continues to work with A/E/C design and construction to protect the industry.

Franklin C. Miller, Jr., Counsel at Offit Kurman, played a key role in supporting Anthony Potter with the preparation of the amicus brief. We also acknowledge the valuable contributions of Law Clerk Robyn St. Hilaire to this article.