

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 644
SENATE BILL 120

AN ACT TO AMEND STATUTES OF LIMITATION CONCERNING IMPROVEMENTS
TO REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-50(5) is rewritten to read as follows:

- "a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.
- b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:
 - 1. actions to recover damages for breach of a contract to construct or repair an improvement to real property;
 - 2. actions to recover damages for the negligent construction or repair of an improvement to real property;
 - 3. actions to recover damages for personal injury, death or damage to property;
 - 4. actions to recover damages for economic or monetary loss;
 - 5. actions in contract or in tort or otherwise;
 - 6. actions for contribution or indemnification for damages sustained on account of an action described in this subdivision;
 - 7. actions against a surety or guarantor of a defendant described in this subdivision;
 - 8. actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;
 - 9. actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.
- c. For purposes of this subdivision, 'substantial completion' means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

- d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.
- e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.
- f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and G.S. 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.
- g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2)."

Sec. 2. This act shall become effective October 1, 1981, but shall not affect pending litigation.

In the General Assembly read three times and ratified, this the 22nd day of June, 1981.