

## What Oregon Architects Should Know About The Statute of Limitations Provision in the AIA's Forms of Contract Between Owner and Architect

By

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It is not uncommon during contract negotiations for the owner to strike from the AIA standard form of contract the provision relating to the running of the statute of limitations and for the architect not to push back and insist on the provision staying in the agreement. The architect may regret that decision later. If a construction defect claim allegedly attributable to the architect is made more than two years after the architect completed his or her work on the project, the stricken provision might very well have been a show stopper.

Paragraph 9.3 of the Abbreviated Standard Form of Agreement Between Owner and Architect (AIA Document B151 – 1997) and § 1.3.7.3 of the Standard Form of Agreement Between Owner and Architect (AIA Document B141 – 1997) provide:

“Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect’s services are substantially completed.”

ORS 12.135(2) is the applicable statute of limitations in Oregon for an owner’s claim against an architect. The statute provides for a two-year limitation period. In relevant part, it provides:

“an action against a person for the practice of architecture \* \* \* to recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising from the construction, alteration or repair of any improvement to real property shall be commenced within two years from the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered \* \* \*.”

Reading and applying the Oregon statute and the AIA provision together, the two-year statute of limitations commences to run either when the architect completes his or her services or when the project is substantially completed. As a matter of law, whatever claim the owner may have against the architect will be time barred two years after the earliest of those two events.

The standard provision appearing in AIA contracts has been uniformly applied by the courts in this manner. Take for example *Shultz v. J.D. Cooper*, 134 SW3d 618 (Ky. 2004). In that case, a homeowner brought an action against the architect that designed the homeowner’s residence. The house was substantially completed in 1988 but the owner did not discover the alleged defects in the house until 2001. The applicable statute of limitations

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provided that an action against an architect had to be brought within one year from the date when the cause of action was, or reasonably should have been discovered by the injured party. The standard AIA contract between the homeowner and architect provided that, "any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events no later than the relevant Date of Substantial Completion \* \* \* ." The Court of Appeals of Kentucky held that the contractual clause setting the accrual date of the homeowner's cause of action against the architect did not violate public policy and was enforceable. Because the homeowner brought his claim more than one year after substantial completion of the project, the action was time barred notwithstanding that the action might otherwise have been timely under the application of the discovery rule.

There is good reason to believe that an Oregon court would reach the same result as the court in *Shultz*. Oregon allows parties to a contract to stipulate that an action for a breach of contract must be brought within a certain period shorter than the applicable statute of limitations and, as long as the limitation is reasonable, it will be upheld. *Ausplund v. Aetna Indemnity Co.*, 47 Or. 10, 81 P. 577, 581 (1905); and *Beck v. General Ins. Co.*, 141 Or. 446, 18 P.2d 579 (1933).

The standard AIA forms of agreement provide for mediation, then binding arbitration of any disputes arising out of or related to the agreement. They further provide that, "In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations." By refusing to delete the standard provision relating to the running of the statute of limitations from the AIA contract, the architect can be reasonably assured that, once the two-year limitations provision has run, the owner will be barred from taking a claim against the architect beyond mediation.

To gain the full benefit of these provisions, the architect should carefully and expressly document the date of Substantial Completion and, if his or her services end before that date, when the architect's services are substantially completed.

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