

New York Considering Legislation That Would Create Statute of Repose For Construction

New York is considering legislation, which, if enacted, would create a statute of repose limiting the number of years after completion of a construction project that legal action may be asserted against a contractor. New York currently remains the only state without a statute of repose for construction. Earlier this year, however, the New York State Legislature introduced Bills S04127 and A01706 (the "Bill"), which would impose a 10-year period of repose in which an injured party may bring suit against a design professional and/or a contractor for bodily injury or property damage resulting from a construction defect.

Currently, contractors and design professionals have exposure to bodily injury and property damage claims resulting from construction defects for an unlimited number of years after completion of a project. If enacted, the Bill would limit the period of repose to 10 years after the project is completed, which is deemed to occur upon substantial completion or acceptance by the owner. An additional 1-year grace period is provided for an injured party to file suit where bodily injury or property damage occurs in the tenth year after completion. The Bill notably limits the applicability of the 10-year statute of repose to third-party actions and thereby preserves the existing 3-year and 6-year statutes of limitation applicable to actions asserted by an owner or client for professional malpractice and breach of contract, respectively.

The New York Legislature cited the continued rise in the cost of insurance in New York as a primary driver of the proposed Bill. The Bill is also intended to bring further certainty to the scope of post-operational risk that design professionals and contractors are exposed to, and in turn, reduce the high cost of insurance for construction projects in New York. Although there is clear support in the New York Assembly and Senate for the enactment of such legislation, the Bill was only recently referred to Committee for further review and remains in the early stages of the legislative process.

SDV will continue to monitor the proposed legislation, which can be found [here](#), and provide updates regarding the status of the Bill.

For more information, contact Richard Brown at RBrown@sdvlaw.com and Anna Perry at APerry@sdvlaw.com or call 203.287.2115.

¹A01706 was introduced on January 11, 2021 by the Assembly and S04127 was introduced on February 2, 2021 by the state senate. The content of the Bills is the same.

²If these two events do not occur, the improvement may be deemed completed upon the earlier of (I) Four months prior to the last day on which Mechanic's lien, resulting from work performed or materials furnished with respect to such improvement, can be filed; or (II) upon the owner's final payment for services rendered or materials supplied with respect to such improvement.

³There is an important distinction between statutes of limitation and repose, in that statutes of limitation govern the time within which suit may be brought once a cause of action has accrued. A statute of repose limits the time within which an action may be brought, but it is entirely unrelated to the accrual of a cause of action and can, in fact, bar a cause of action before it has accrued.