

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 764

Judiciary II Committee Substitute Adopted 5/9/91

Short Title: Limitations for Actions/Surveyors.

(Public)

Sponsors:

Referred to:

April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ACTIONS FOR NEGLIGENT OR DEFICIENT SURVEYING OR PLATTING AGAINST REGISTERED LAND SURVEYORS BE COMMENCED WITHIN THREE YEARS AND IN NO EVENT MORE THAN TEN YEARS FROM THE ACT OR OMISSION GIVING RISE TO THE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-52 reads as rewritten:

"§ 1-52. Three years.

Within three years an action –

- (1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).
- (2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.
- (3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.
- (4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.
- (5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated.

- 1 (6) Against the sureties of any executor, administrator, collector or
2 guardian on the official bond of their principal; within three years after
3 the breach thereof complained of.
- 4 (7) Against bail; within three years after judgment against the principal;
5 but bail may discharge himself by a surrender of the principal, at any
6 time before final judgment against the bail.
- 7 (8) For fees due to a clerk, sheriff or other officer, by the judgment of a
8 court; within three years from the rendition of the judgment, or the
9 issuing of the last execution thereon.
- 10 (9) For relief on the ground of fraud or mistake; the cause of action shall
11 not be deemed to have accrued until the discovery by the aggrieved
12 party of the facts constituting the fraud or mistake.
- 13 (10) Repealed by Session Laws 1977, c. 886, s. 1.
- 14 (11) For the recovery of any amount under and by virtue of the provisions
15 of the Fair Labor Standards Act of 1938 and amendments thereto, said
16 act being an act of Congress.
- 17 (12) Upon a claim for loss covered by an insurance policy which is subject
18 to the three-year limitation contained in lines 158 through 161 of the
19 Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).
- 20 (13) Against a public officer, for a trespass, under color of his office.
- 21 (14) An action under Chapter 75B of the General Statutes, the action in
22 regard to a continuing violation accrues at the time of the latest
23 violation.
- 24 (15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S.
25 105-381.
- 26 (16) Unless otherwise provided by statute, for personal injury or physical
27 damage to claimant's property, the cause of action, except in causes of
28 actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to
29 the claimant or physical damage to his property becomes apparent or
30 ought reasonably to have become apparent to the claimant, whichever
31 event first occurs. Provided that no cause of action shall accrue more
32 than 10 years from the last act or omission of the defendant giving rise
33 to the cause of action.
- 34 (17) Against a public utility, electric or telephone membership corporation,
35 or a municipality for damages or for compensation for right-of-way or
36 use of any lands for a utility service line or lines to serve one or more
37 customers or members unless an inverse condemnation action or
38 proceeding is commenced within three years after the utility service
39 line has been constructed or by October 1, 1984, whichever is later.
- 40 (18) Against any registered land surveyor as defined in G.S. 89C-3(9) or
41 any person acting under his supervision and control for physical
42 damage or economic or monetary loss due to negligence or a
43 deficiency in the performance of surveying or platting as defined in
44 G.S. 1-50(7)."

1 Sec. 2. G.S. 1-50 reads as rewritten:

2 **"§ 1-50. Six years.**

3 Within six years an action –

4 (1) Upon the official bond of a public officer.

5 (2) Against an executor, administrator, collector, or guardian on his
6 official bond, within six years after the auditing of his final account by
7 the proper officer, and the filing of the audited account as required by
8 law.

9 (3) For injury to any incorporeal hereditament.

10 (4) Against a corporation, or the holder of a certificate or duplicate
11 certificate of stock in the corporation, on account of any dividend,
12 either a cash or stock dividend, paid or allotted by the corporation to
13 the holder of the certificate or duplicate certificate of stock in the
14 corporation.

15 (5) a. No action to recover damages based upon or arising out of the
16 defective or unsafe condition of an improvement to real property shall
17 be brought more than six years from the later of the specific last act or
18 omission of the defendant giving rise to the cause of action or
19 substantial completion of the improvement.

20 b. For purposes of this subdivision, an action based upon or
21 arising out of the defective or unsafe condition of an
22 improvement to real property includes:

23 1. Actions to recover damages for breach of a contract to
24 construct or repair an improvement to real property;

25 2. Actions to recover damages for the negligent
26 construction or repair of an improvement to real
27 property;

28 3. Actions to recover damages for personal injury, death or
29 damage to property;

30 4. Actions to recover damages for economic or monetary
31 loss;

32 5. Actions in contract or in tort otherwise;

33 6. Actions for contribution indemnification for damages
34 sustained on account of an action described in this
35 subdivision;

36 7. Actions against a surety or guarantor of a defendant
37 described in this subdivision;

38 8. Actions brought against any current or prior owner of the
39 real property or improvement, or against any other
40 person having a current or prior interest therein;

41 9. Actions against any person furnishing materials, or
42 against any person who develops real property or who
43 performs or furnishes the design, plans, specifications,
44 surveying, supervision, testing or observation of

- 1 construction, or construction of an improvement to real
2 property, or a repair to an improvement to real property.
- 3 c. For purposes of this subdivision, 'substantial completion' means
4 that degree of completion of a project, improvement or
5 specified area or portion thereof (in accordance with the
6 contract, as modified by any change orders agreed to by the
7 parties) upon attainment of which the owner can use the same
8 for the purpose for which it was intended. The date of
9 substantial completion may be established by written
10 agreement.
- 11 d. The limitation prescribed by this subdivision shall not be
12 asserted as a defense by any person in actual possession or
13 control, as owner, tenant or otherwise, of the improvement at
14 the time the defective or unsafe condition constitutes the
15 proximate cause of the injury or death for which it is proposed
16 to bring an action, in the event such person in actual possession
17 or control either knew, or ought reasonably to have known, of
18 the defective or unsafe condition.
- 19 e. The limitation prescribed by this subdivision shall not be
20 asserted as a defense by any person who shall have been guilty
21 of fraud, or willful or wanton negligence in furnishing
22 materials, in developing real property, in performing or
23 furnishing the design, plans, specifications, surveying,
24 supervision, testing or observation of construction, or
25 construction of an improvement to real property, or a repair to
26 an improvement to real property, or to a surety or guarantor of
27 any of the foregoing persons, or to any person who shall
28 wrongfully conceal any such fraud, or willful or wanton
29 negligence.
- 30 f. This subdivision prescribes an outside limitation of six years
31 from the later of the specific last act or omission or substantial
32 completion, within which the limitations prescribed by G.S. 1-
33 52 and 1-53 continue to run. For purposes of the three-year
34 limitation prescribed by G.S. 1-52, a cause of action based upon
35 or arising out of the defective or unsafe condition of an
36 improvement to real property shall not accrue until the injury,
37 loss, defect or damage becomes apparent or ought reasonably to
38 have become apparent to the claimant. However, as provided in
39 this subdivision, no action may be brought more than six years
40 from the later of the specific last act or omission or substantial
41 completion.
- 42 g. The limitation prescribed by this subdivision shall apply to the
43 exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

- 1 (6) No action for the recovery of damages for personal injury, death or
2 damage to property based upon or arising out of any alleged defect or
3 any failure in relation to a product shall be brought more than six years
4 after the date of initial purchase for use or consumption.
- 5 (7) a. No action against any registered land surveyor as defined in G.S.
6 89C-3(9) or any person acting under his supervision and control for
7 physical damage or for economic or monetary loss due to negligence
8 or a deficiency in the performance of surveying or platting shall be
9 brought more than 10 years from the the last act or omission giving
10 rise to the cause of action.
- 11 b. For purposes of this subdivision, 'surveying and platting' means
12 boundary surveys, topographical surveys, surveys of property
13 lines, and any other measurement or surveying of real property
14 and the consequent graphic representation thereof.
- 15 c. The limitation prescribed by this subdivision shall apply to the
16 exclusion of G.S. 1-15(c) and G.S. 1-52(16)."
- 17 Sec. 3. This act is effective upon ratification and applies to any action filed
18 on or after that date.