

## OREGON STATUTES OF LIMITATIONS - GENERALLY

ORS chapter 12 sets out most of the statutes of limitations or refers you to other chapters where particular statutes of limitations are set forth. Identifying the applicable statute of limitations – and knowing how its language will be construed by the court – is critically important, so make sure you consider carefully those things.

When calculating a statute of limitations:

- Exclude the first day or day of the occurrence;
- Include the last day;
- If the last day falls on a holiday, weekend, or furlough day when courts are closed, include the next judicial day.
- Civil procedural statutes providing that something must be done within one or more years are to be computed by “calendar years.” ORS 174.120.

For example, if the date of the occurrence is on January 1, 2010 and the statute of limitations is 2 years, you start counting on January 2, 2010. Absent application of a discovery rule, the 2-year time limit would expire on January 1, 2012, unless that day is a Saturday, Sunday or legal holiday, in which case the statute would expire on the next day that is a judicial working day.

An action is deemed commenced on the date of filing a complaint if service is completed in the proper manner within 60 days from the filing date. Otherwise, an action is deemed commenced on the date of proper service of the complaint. However, ORS 12.220 provides that, notwithstanding ORS 12.020, if an action was timely filed (but not served within 60 days) and dismissed on a ground not adjudicating the merits (including lack of service), a plaintiff can bring a new action based on the same claim which will not be time-barred if (1) the defendant had actual notice of the filing of the original action within 60 days after the action was filed; (2) the new action is filed within 180 days after the judgment dismissing the original action is entered.

The following are the most commonly used statutes of limitations:

1 year	Garnishments (1 year from delivery of writ)
2 years	Personal injury, including actions by minors and other incapacitated persons against government entities. If a minor or other incapacitated person is suing an entity other than a governmental agency, then it is 1 year after the disability ceases, but not more than 5 years, and 1 year after death.

Unless a policy provides a longer period, the statute of limitations for bringing a UM/UIM claim requires either that, within two years of the date of the accident, the insured sues the insurer or, if the insured sues the uninsured or underinsured tortfeasor, then within two years of the date of settlement or final judgment, the insured must formally institute arbitration or sue the insurer.

3 years	Wrongful death (but see special notice requirements for tort claims against public bodies and dram shops, as described below).
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5 years	Contracts on real property (5 years from date of maturity of final payment)
6 years	Property damage <sup>1</sup> and most other contracts
10 years	Title to real property (adverse possession)
180 day notice	<b>TORT CLAIMS</b> - All public bodies, including state, local, and intergovernmental agencies, school districts, some hospitals, individuals and entities listed in ORS 30.260-30.300, must be given proper notice of a claim, in writing, within 180 days of the date of the occurrence. You may exclude the first 90 days if the injured party is unable to give notice because of the injury or because of minority or other incapacity. In a wrongful death claim, the personal representative has one year to give proper notice.

**DRAM SHOP** - The person asserting the claim to give a claim notice to a licensee, permittee or social host before a personal injury claim or wrongful death claim can be commenced. For a personal injury claim, notice must be given within 180 days after injury occurs, or within 180 days after the discovery of a claim, whichever is later. For a wrongful death claim, notice must be given within one year after death, or within one year after discovery of the claim by the person asserting the claim, whichever is later. The claim period for personal injury and wrongful death claims is tolled when the claimant is: (1) under 18 years of age; (2) unable to give notice by reason of injury, financial incapability or incapacity; or (3) unable to determine the tortfeasor is liable because that person asserts a right against self-incrimination and cannot be compelled to reveal the identity of the tortfeasor or the facts establishing liability.

**NEGLIGENCE - PROPERTY DAMAGE:** There is an ongoing dispute in Oregon as to whether the statute of limitations for a negligence claim involving damage to real property is six years or two years from the date of accrual.

ORS 12.080(3) provides that “[a]n action . . . for interference with or injury to any interest of another in real property, excepting those mentioned in . . . ORS 12.135 . . . shall be commenced within six years.”

Recently, however, the Oregon Supreme Court issued an opinion in a construction defect case with the following statement:

Tort claims arising out of the construction of a house must be brought within two years of the date that the cause of action accrues, but, in any event, within 10 years of the house being substantially complete. ORS 12.110; ORS 12.135. Tort claims ordinarily accrue when the plaintiff discovers or should have discovered the injury. *Berry v. Branner*, 245 Or. 307, 311-312, 421 P2d 996 (1966).

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<sup>1</sup> See “NEGLIGENCE - PROPERTY DAMAGE” note below.

*Abraham v. T. Henry Const. et al*, 350 Or 29, 34 n 3, 249 P3d 534 (2011), recon. denied (May 5, 2011).

At least one Oregon trial court has relied on the footnote in *Abraham* in dismissing a construction defect case based on the plaintiff's failure to file its claim within two years of accrual. See *Liberty Oaks Homeowners Assoc. v. Liberty Oaks, LLC et al*, C096255CV, Wash. Co. Cir. Ct., (filed Oct. 15, 2009). The judgment entered by the trial court granted "[a]ll motions for summary judgment based on Plaintiff's failure to commence the action within two years of accrual and the Supreme Court's recent decision in *Abraham v. T. Henry Const., Inc.*, 350 Or 29 (2011)." The plaintiff in *Liberty Oaks* filed its notice of appeal June 29, 2011.

**PRODUCT LIABILITY CIVIL ACTIONS** - ORS 30.905 (dealing with product liability civil actions) has a "discovery rule" and provides that, in the event of death, such actions must be commenced before the earlier of (1) 3 years after the date of death; (2) 10 years after the product was first purchased for use or consumption; or (3) the expiration of any statute of repose for an equivalent civil action in the state where the product was manufactured, or, if manufactured in a foreign country, an equivalent civil action in the state where the product was imported. These amendments apply to causes of action that arise on or after January 1, 2010. Review the current text for applicability and revival provisions for specific causes of action.

Note: ORS 12.160 eliminates the tolling of the statute of limitations by reason of imprisonment. Any person affected may bring an action within the time that would otherwise have been allowed under *former* ORS 12.160, whichever expires earlier.

## **OTHER COMMONLY MISSED STATUTES OF LIMITATION**

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| 2 years | <i>California</i> personal injury and wrongful death actions. CCP Section 335.1 effective 1/1/03. Consult counsel in California and review applicable statutes for more information. |
| 3 years | <i>Washington</i> personal injury actions. Consult counsel in Washington and review applicable code provisions for more information.   |