

NSPE Position Statement No. 10-1751—Statutes of Repose

Adopted: 2009

Latest Revision: September 2019

Sunset Date: September 2022

NSPE Contact; Committee on Policy and Advocacy

Professional Policy Supported: 10-Professional Practice

Position Statement: It is the position of the National Society of Professional Engineers (NSPE) to support the enactment of statutes of repose for claims against professional engineers. NSPE urges its state societies to seek the enactment of statutes of repose which bar actions against engineers after a certain period of time following the completion of services or the substantial completion of construction. Furthermore, NSPE urges the states to use the model, outlined below, as a resource in supporting statutes of repose at the state level.

Background:

Professional engineers face a substantial degree of liability exposure for property damage, economic damages, bodily injury, and wrongful death resulting from their alleged negligence in the design of improvements to real property that has long since been completed, and for which the engineer should not reasonably be held responsible due to reasons outside his or her realm of control. Most state legislatures have responded to this situation by adopting laws known as statutes of repose. Statutes of repose bar actions against design professionals after a certain period of time following the completion of services or the substantial completion of construction. Such statutes are based on the general legal principle that a potential defendant in a lawsuit should not be required to defend him/herself against “stale” claims that could easily be based upon faded memories, lost evidence, or witnesses who have since disappeared. For example, stale claims are a particular possibility in the construction industry, where the real property or facilities for which or to which services have been provided may last many decades, and during which time the engineer has had no control over operation and maintenance of the property or facility.

Model Statute of Repose

1. Except as otherwise provided in Section 2, no action to recover damages for injury to a person or for wrongful death or for damage to property, nor any act for contribution or indemnity for damages sustained on account of such injury or wrongful death or damage to property arising from any defect in the structure or improvement resulting from the design, planning, supervision of construction, or construction of an improvement to real property shall be brought against a professional engineer more than seven years after the completion of such improvement.
2. If by reason of such defect, an injury to the person, or an injury causing wrongful death or an injury to property occurs during the seventh year after completion, an action to recover damages for such injury or wrongful death or damage to property

may be brought within one year after the date on which such injury occurred, but in no event may such action be brought more than eight years after the completion of the improvement.

3. The limitations prescribed by this section shall not be asserted by way of defense by any owner, tenant, or other person in actual possession or control of such an improvement where the improvement constitutes the proximate cause of the injury or death.
4. For purposes of this section an improvement shall be deemed to be “completed” when the construction is sufficiently complete so that an improvement may be utilized by its owners or lawful possessor for the purposes intended. In the case of a phased project with more than one substantial completion date, the seven-year period of limitations for actions involving systems designed to serve the entire project shall begin at the substantial completion of each phase.