STATUTE OF REPOSE

BACKGROUND

The Statute of Repose is a statutory way to cut off legal rights if they are not acted on by a certain deadline. In Texas, the Statute of Repose is for a period of 10 years, which means an owner must file suit against the contractor for a construction defect during the first 10 years after substantial completion of the project.

PROBLEM

Ten years is much too long of a time period to allow a suit for construction defects. The Statute of Repose ranges from 4 to 8 years in 22 states. Too many factors enter into whether the claim is factual or just a play for insurance money.

SOLUTION

The Statute of Repose in Texas needs to be reduced to a shorter time period for the construction team to be liable for work on a project. Representative Morgan Meyer has filed **HB 1053**, which will move Texas to a 5 year Statute of Repose.

STATUTE OF REPOSE Detailed Information

Background: The Statute of Repose is a law created by the Texas Legislature to cut off legal rights to a claim for a construction defect by a certain deadline; passed in response to the volume of cases claiming latent construction defects and brought decades after completion of construction.

In Texas, the Statute of Repose is for a period of 10 years. This means that an owner must file a suit against the contractor for a construction defect during the first 10 years after substantial completion of the project. During this 10-year period, contractors are liable for damages, injury, or death, which arise from a deficiency in the construction or repair of an improvement to property.

Problem: While it is important that there be a finite time limit during which a claim for a construction defect can be brought against a contractor, 10 years is a long time to have potential liability issues hanging over the construction team. The odds are low that a true defect in construction will arise after 5 years. After 5 years, the line between defect and wear and tear gets very blurry. Improper or lack of maintenance to a building also presents a complicating factor. Importantly, documents and witnesses tend to be less available and harder to produce. Furthermore, on projects covered by a consolidated insurance program, the state only requires coverage for completed operations (the type of insurance that may provide coverage for after construction claims) for up to 3 years. Thus, contractors on these projects most often have no insurance for the years 4-10 that the consolidated insurance program does not cover.

Furthermore, to combat the lawsuits that are manufactured by consultants in the 9th year of a 10 year statute of repose, a shorter statute period will increase the odds of a defendant being able to produce documents and witnesses with first-hand knowledge of the construction. A shorter time frame will lessen the likelihood that the case is a "shakedown" of construction companies' insurance and instead be a true case on whether there is a true construction defect.

Solution: The Statute of Repose in Texas should be reduced from 10 years to a more reasonable time period for the construction team to be liable for their work on a project.