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Calculating the Statute of Limitations

Make sure you understand the rules about time limits on lawsuits

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Each state's legislature sets up time limits within which lawsuits must be filed. These are called statutes of limitations. Time limits are different for different types of cases. If you wait too long, your right to sue will be barred by these statutes.

Why have a statute of limitations? Because unlike wine, lawsuits don't improve with age. Memories fade, witnesses die or move away, and once-clear details become blurred. In other words, disputes are best settled relatively soon after they develop.

Statutes of limitations are almost always at least one year, so if you file promptly, you should have little to worry about.

Act fast for claims against a government agency. To sue a city, county, state, or governmental agency (for example, a school district), you first must promptly file a claim with the people in charge (for example, the school board, county board of supervisors, city council). Once your claim is rejected—and it usually will be—you can file in small claims court. Often, your administrative claim must be filed within three to six months after your loss occurred, or you'll be out of luck.

When the Clock Starts to Run

Once you know what the applicable statute of limitations period is for your claim, you still need to know when the clock starts ticking on filing your claim. Here's the general rule: Start with the day the injury to your person or property occurred, or, if a contract is involved, start with the day the contract was broken. When a contract to pay in installments is involved, start with the day each payment was missed. There are certain exceptions to this general rule.

The Discovery Rule

With some types of cases, such as medical malpractice, the limitations period starts from the date the harm was discovered or reasonably should have been discovered. This rule protects people who don't know they have a problem until well after it has occurred.

EXAMPLE: During an operation, a doctor leaves a small clamp in your abdomen. It isn't until a year later that you experience extreme pain and see a different doctor, who orders an X-ray that shows the clamp. In most states, the statute of limitations for suits based on medical malpractice (often three years) begins from the date you learn of the problem, not the date of the original operation. However, if you walked around in pain for several years before seeing a second doctor and getting an X-ray, chances are a court would rule that the limitations period would start before actual discovery, based on the theory that you could and should have discovered the problem sooner.

Rules for Installment Contracts

When an installment contract is involved, the statute of limitations normally applies separately to each installment. For example, assume you loan Larry \$5,000 and he agrees in writing to pay back the loan in five installments of \$1,000 each beginning on January 1, 2012, and continuing on January 1 of each following year through 2016. If Larry fails to make his first payment, then you can't sue him in small claims court until January 1, 2016. (Note that you can sue him for only the \$1,000 payment he missed, not for the entire \$5,000.)

From Larry's point of view, if you don't sue by January 1, 2016, then you cannot sue him for the first missed \$1,000 payment because the lawsuit is barred by the statute of limitations.

Because Larry's second installment payment isn't due until January 1, 2013, you have until January 1, 2017 to sue him if he misses that payment, and so on.

There is, however, one important exception to this rule: If the written contract contains an "acceleration clause" stating that if one installment payment is missed, all immediately become due, the statute of limitations expires for a lawsuit to collect all installments on January 2, 2013.

Voluntary Payment After Limitations Periods

What if the following occurs: After the statute of limitations runs out (say two years on an oral contract to pay for having a fence painted), the debtor voluntarily starts to make payments. Does the voluntary payment have the effect of creating a new two-year statute of limitations period, allowing the person who is owed the money to sue if the debtor again stops paying? In most states, the answer is no. Simply starting to pay on an obligation after the time to sue has passed doesn't create a new period for suit. All the creditor can do is to keep his toes crossed and hope that the debtor's belated streak of honesty continues. However, if the debtor signs a written agreement promising to make the payments, this does reinstate the contract and create a new statute of limitations period. In legal slang, this is called "reaffirming the debt."

EXAMPLE: Doolittle borrows \$1,000 from Crabapple in 2010 under the terms of a written promissory note. The next month he loses his job and never pays back a penny. Crabapple doesn't file a lawsuit within the four-year statute of limitations. In 2015, Doolittle experiences a burst of energy, gets a job, and resolves to pay off all of his old debts. He sends Crabapple \$50. A week later, suffering terrible strain from getting up before noon, Doolittle quits his job and reverts to his old ways of waking up a few minutes before race time. Is the four-year statute of limitations allowing Crabapple to sue reinstated by Doolittle's payment? No. As we learned above, once the four-year limitation period for written contracts runs out, it can't be revived by simply making a payment. However, if after Doolittle sent Crabapple the \$50, Crabapple coaxed him into sending a letter saying that he would pay the remainder of the debt, Crabapple would again be able to sue and get a judgment if Doolittle failed to pay. Why? Because a written promise to pay a debt that would otherwise be barred by the statute of limitations has the legal effect of reestablishing the debt.

Debtors—beware of waiving statutes of limitations. If a creditor and debtor discuss an unpaid bill and the debtor asks for more time to pay, to lower payments, or to make some other accommodation, the creditor, assuming he or she is willing to agree, will almost always require that the debtor waive the statute of limitations in writing. This means that if the debtor fails to pay, the creditor will have more time to sue.

Suspending the Statute of Limitations

In a few situations, the statute of limitations is suspended for a period of time (lawyers say tolled instead of suspended). This can occur if the person sued is in prison, living out of the state, insane, or a minor, or occasionally for other reasons. If one of these events suspends the statute of limitations, then the time period that the event lasts doesn't count towards the statute of limitations, and the counting begins again when the event (prison term, absence from state, and so on) ends.

Example 1: Jack borrows money from Tim under a written contract. Jack fails to pay the money back on the day required. Six months later, Jack is sentenced to a year in jail. The four-year statute of limitations would be suspended during this period and Tim would still have three-and-a-half years after Jack gets out of jail to file suit.

Example 2: Ed, age 12, stars in a TV series. Just before he turns 18, an accountant for the show tells Ed's family that Ed wasn't paid all the money due under his contract. Ed wonders if he can still sue the TV production company. The answer is yes. Ed's time to sue is measured from his 18th birthday (that is, the statute of limitations period would be suspended or tolled while he was a minor). If he lives in a state with a four-year statute of limitation for disputes based on written contracts, this means that Ed could file suit at least until his 22nd birthday.

What if the Statute Has Run?

What should a defendant do if he or she believes that the statute of limitations period on the plaintiff's lawsuit has run out? Tell the judge. Do this in court as part of stating your defense. Or, if your state is one of the few that requires a defendant to make a written response to the plaintiff's claim before the hearing date, then include in your response a statement that the statute of limitations bars the plaintiff's claim. Sometimes, a judge will figure this out without a reminder, but often he or she won't. Don't ever assume that because the clerk has filed the papers and you have been properly served, this means that the suit was started on time. Clerks rarely get involved in statute of limitations questions.

by: **Ralph Warner**

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