

# When should a Community Association take action on construction problems?

It depends on the type of problem (e.g. low water pressure vs. water intrusion) and the type of claim (e.g. breach of contract vs. breach of warranty). A general answer is that the Association should contact an attorney who practices in the area of Association construction defect litigation as soon as possible because there are different time periods in which an affected Association must bring litigation. When those time periods begin is not always easy to decipher and can be extended dependent on the actions of the developer or contractor, as well as the Association. An Association could risk foregoing substantial remedies for severe issues if it does not make sure to understand those time periods (known as "statutes of limitation" or "warranty periods") as they relate to particular issues. Some time periods to be mindful of, though their respective application to an issue may vary, are the following:

**½ Year** — The statutory warranties described below require written notification to the contractor or builder within six months from the time the Association discovered or should have discovered the loss or damage.

**1 Year** — There is a one-year statutory warranty\* against defects caused by faulty workmanship or defective materials. A claim for breach of this warranty is lost if the six-month notice above is not provided to the contractor. Once the Association has discovered a breach, a claim must be made within two years.

**2 Years** — Actions for negligence and breach of contract must be initiated within two years from the time when the injury (either the problem itself or symptoms from the problem) is discovered or would have been discovered had the Association been reasonably diligent.

**2 Years** — There is a statutory warranty\* against defects caused by faulty installation of systems (i.e. plumbing, electrical, heating and cooling). A claim for breach of this warranty is lost if the six-month notice above is not provided to the contractor. Once the Association has discovered a breach, a claim must be made within two years.

*(over)*

**6 Years** — There are statutory warranties\*, both express (i.e., created by promises, even drawings, of the developer or declarant) and implied (i.e., created by statute), for Associations covered by the Minnesota Common Interest Ownership Act. This period can be shortened to two years by a written agreement, but the application of such agreements is limited. A claim for breach of this warranty must be brought within the six-year warranty period.

**10 Years** — There is a 10-year statutory warranty\* against major construction defects. A claim for breach of this warranty is lost if the six-month notice above is not provided to the contractor. Once the Association has discovered a breach, a claim must be brought within two years.

\*Note that statutory warranty periods generally begin at the earlier of either the date of occupation of the original purchaser or the date the original purchaser takes title to the property. There is an exception for common elements (exteriors) in Associations. If the construction was renovation, the period generally begins on the date on which renovation was complete.

As is evident from the list above, there are a number of timelines that an Association must be attentive to when confronted with issues that may be the result of poor materials, installation or construction. An Association should also be mindful that even the slightest problem may be signs of a bigger problem and that slight problem might start the clock ticking on the timelines within which the Association must take action. It is best to start investigating as soon as the Association or its members know of and/or report a problem.



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