

# Statutes of Limitation: Kentucky

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A Q&A guide to the statutes of limitation in Kentucky for several commercial claims. Answers to questions can be compared across a number of jurisdictions (see *Statutes of Limitation: State Q&A Tool* (<http://us.practicallaw.com/1-204-8071>)).

## ACCOUNT STATED

### 1. What is the statute of limitations for an account stated claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years (*Ky. Rev. Stat. Ann. § 413.120(10), (11)*).

#### ACCRUAL DATE

The limitation period starts to run:

- For an action on a merchant's account, from January 1 of the year following the respective delivery dates of the articles charged in the account (*Ky. Rev. Stat. Ann. § 413.130*).
- For an action to recover a balance due on a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, where there have been reciprocal demands between the parties, from the time of the last item proved in the account claimed (*Ky. Rev. Stat. Ann. § 413.130*).

## ANTITRUST

### 2. What is the statute of limitations for an antitrust claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years, for actions on a liability created by statute, when no other time is fixed by the statute creating the liability (*Ky. Rev. Stat. Ann. § 413.120(2)*).

Kentucky has an antitrust statute that falls under Kentucky's Consumer Protection Act, which has a specific statute of limitation for violations of another part of this law (*Ky. Rev. Stat. Ann. §§ 367.170, 367.175*). Because the specific limitation applies only to Section 367.170 of the Kentucky Revised Statutes, the general five-year statute for liability under Section 413.120 applies to the antitrust claims.

#### ACCRUAL DATE

The limitation period starts to run when the plaintiff is injured by the anti-competitive conduct.

There is no Kentucky case that specifies the accrual date. However, Kentucky's antitrust law is based on the federal Sherman Antitrust Act (*Mendell v. Golden-Farley, Inc., 573 S.W.2d 346, 348-349 (Ky. Ct. App. 1978)*). Because the accrual date under the Sherman Act is generally when the plaintiff is damaged by the anti-competitive conduct, Kentucky courts should follow the federal interpretation (*Zenith Radio Corp. v. Hazeltine Research, 401 U.S. 321, 339 (1971)*).

## BREACH OF CONTRACT

### 3. What is the statute of limitations for a breach of contract claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is:

- Five years for a contract not in writing (*Ky. Rev. Stat. Ann. § 413.120(1)*).
- Ten years for a written contract executed after July 15, 2014 (*Ky. Rev. Stat. Ann. § 413.160*). Written contracts executed before this date have a statute of limitations of 15 years (*Ky. Rev. Stat. Ann. § 413.090 (2)*).
- Four years for a sale of goods (*Ky. Rev. Stat. Ann. § 355.2-725 (UCC)*).

#### ACCRUAL DATE

The limitation period starts to run on the date the contract is breached, regardless of the aggrieved party's lack of knowledge of the breach (*Sandy V. & E. R. Co. v. Hughes, 205 S.W. 607, 608 (Ky. 1918)*; *Ky. Rev. Stat. Ann. § 355.2-725 (UCC)*).

## BREACH OF FIDUCIARY DUTY

### 4. What is the statute of limitations for a breach of fiduciary duty claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years (*Ky. Rev. Stat. Ann. § 413.120(7)*).

#### ACCRUAL DATE

Kentucky courts have not decided on when the limitation period starts to run for a breach of fiduciary duty claim (see *Ingram v. Cates*, 74 S.W.3d 783, 787 (Ky. Ct. App. 2002)). However, federal courts have been forced to decide this issue and have held that breach of fiduciary duty accrues when the breach occurs (see *Rich & Rich P'ship v. Poetman Records USA, Inc.*, 714 F. Supp. 2d 657, 668 (E.D. Ky. 2010)).

## BREACH OF WARRANTY

### 5. What is the statute of limitations for a breach of warranty claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is three years (*Ky. Rev. Stat. Ann. § 355.3-118(7)(b)*).

#### ACCRUAL DATE

The limitation period starts to run when:

- Tender of delivery is made, regardless of the aggrieved party's lack of knowledge of the breach (*Ky. Rev. Stat. Ann. § 355.2-725(2)*).
- If there is a warranty for future performance of the goods, the breach is or should have been discovered (*Ky. Rev. Stat. Ann. § 355.2-725(2)*).

## CONSUMER PROTECTION STATUTES

### 6. What is the statute of limitations for a consumer protection claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is two years after a violation of Section 367.170 of the Kentucky Revised Statutes or one year after any action by the Attorney General, whichever is later (*Ky. Rev. Stat. Ann. § 367.220(5)*).

#### ACCRUAL DATE

The limitation period starts to run when the violation of Section 367.170 of the Kentucky Revised Statutes occurs or if the Attorney General commences an action, when any action by the Attorney General terminates (see *Cook v. State Farm Mut. Auto. Ins. Co.*, No. 2002-CA-000801-MR, 2004 WL 2011375, at \*3-4 (Ky. Ct. App. Sept. 10, 2004)).

## CONVERSION

### 7. What is the statute of limitations for a conversion claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is:

- Three years for conversion of an instrument, for money had and

received, or similar action based on conversion (*Ky. Rev. Stat. Ann. § 355.3-118(7)(a)*).

- Two years for conversion of property by a personal representative of an estate (*Ky. Rev. Stat. Ann. § 396.205*).
- One year for an action for the recovery of stolen property, by the owner of it against any person having the same in his possession (*Ky. Rev. Stat. Ann. § 413.140(1)(i)*).
- One year for an action for the recovery of damages or the value of stolen property, against the thief or any accessory (*Ky. Rev. Stat. Ann. § 413.140(1)(j)*).

#### ACCRUAL DATE

The limitation period starts to run:

- For conversion of an instrument, on the date of conversion (*Tri-County Nat'l Bank v. Greenpoint Credit, LLC*, 190 S.W.3d 360, 363 (Ky. Ct. App. 2006)).
- For conversion by a personal representative, on the date of final settlement of the estate (*Mefford v. Swinney*, No. 2006-CA-001392-MR, 2007 WL 2285407, at \*4 (Ky. Ct. App. Aug. 10, 2007)).
- For recovery of stolen property, on the date the property is found by its owner (*Ky. Rev. Stat. Ann. § 413.140(5)*).
- For damage to stolen property, on the date of discovery of the liability (*Ky. Rev. Stat. Ann. § 413.140(6)*).

## EMPLOYMENT MATTERS

### 8. What is the statute of limitations for employment matters in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years for:

- Employment discrimination and any other claim under the Kentucky Civil Rights Act (*Ky. Rev. Stat. Ann. § 413.120(2)*), for actions on a liability created by statute, when no other time is fixed by the statute creating the liability; *Alcorn v. Gordon*, 762 S.W.2d 809, 813 (Ky. Ct. App. 1988)).
- Kentucky Wage and Hour Act violations (*Ky. Rev. Stat. Ann. § 413.120(2)*), for actions on a liability created by statute, when no other time is fixed by the statute creating the liability; *Commonwealth v. Hasken*, 265 S.W.3d 215, 227 (Ky. Ct. App. 2007), superseded on other grounds by statute).
- Wrongful discharge (*Ky. Rev. Stat. Ann. § 413.120(2)*), for actions on a liability created by statute, when no other time is fixed by the statute creating the liability; *Bednarek v. United Food & Commercial Workers Int'l Union*, 780 S.W.2d 630, 632 (Ky. Ct. App. 1989)).

#### ACCRUAL DATE

The limitation period starts to run when the employee receives notice of the adverse employment action (*Rossi v. Toyota Motor Mfg., Ky., Inc.*, No. 06-111-JMH, 2006 WL 3390426, at \*4 (E.D. Ky. Nov. 22, 2006)).

## ENFORCEMENT OF JUDGMENTS

### 9. What is the statute of limitations for enforcing a judgment in your jurisdiction?

**LIMITATIONS PERIOD**

The statute of limitations is 15 years (*Ky. Rev. Stat. Ann. § 413.090(1)*).

**ACCRUAL DATE**

The limitation period starts to run on the date of the last execution on the judgment (*Ky. Rev. Stat. Ann. § 413.090(1)*).

**FRAUD****10. What is the statute of limitations for a fraud claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is five years (*Ky. Rev. Stat. Ann. § 413.120(12)*).

**ACCRUAL DATE**

The limitation period starts to run on the date of the discovery of the fraud. However, the action must be commenced within ten years after:

- The contract is made.
- The perpetration of the fraud.

(*Ky. Rev. Stat. Ann. § 413.130(3)*)

**FRAUDULENT CONCEALMENT****11. What is the statute of limitations for a fraudulent concealment claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is five years (*Ky. Rev. Stat. Ann. § 413.120(12)*).

**ACCRUAL DATE**

The limitation period starts to run on the date of the discovery of the fraud. However, the action must be commenced within ten years after:

- The contract is made.
- The perpetration of the fraud.

(*Ky. Rev. Stat. Ann. § 413.130(3)*)

**INSURANCE BAD FAITH****12. What is the statute of limitations for an insurance bad faith claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is:

- Not addressed by Kentucky statute or case law, for common law claims (first-party claims only).
- Two years for a Consumer Protection Act claim (first-party claim only) (*Ky. Rev. Stat. Ann. § 367.220(5)*).
- Five years for an Unfair Claims Settlement Practices Act (UCSPA) claim (first- and third-party claims) (*Ky. Rev. Stat. Ann. § 413.120(2)*, for actions on a liability created by statute, when no other time is fixed by the statute creating the liability). The UCSPA does not define a limitation period, therefore the statutory default applies.

**ACCRUAL DATE**

There is no clear Kentucky law on when the statute of limitations starts to run. Other states allow a claim when there is a denial of coverage and Kentucky would likely follow this standard. *Simpson v. Travelers Ins. Co.* offers some guidance for when an insurance company fails to pay a judgment but its facts are so unique that its ruling is not generally applicable (*812 S.W.2d 510 (Ky. App. 1991)*).

**NEGLIGENCE****13. What is the statute of limitations for a negligence claim in your jurisdiction?**

There is no unified statute of limitations for negligence in Kentucky. The statute of limitations depends on the nature of the following injuries claimed.

**LIMITATIONS PERIOD**

The statute of limitations is:

- One year for personal injury (*Ky. Rev. Stat. Ann. § 413.140(1)(a)*).
- One year for medical malpractice injury from the time the injury is first discovered or in the exercise of reasonable care should have been discovered, provided that the action must be commenced within five years from the date on which the alleged negligent act or omission is said to have occurred (*Ky. Rev. Stat. Ann. § 413.140(1)(e)*).
- Two years after the date of injury or the last payment of basic reparation benefits, or not later than four years after the accident, whichever is earlier, for personal injury in an auto accident. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than two years after the last payment of benefits. (*Ky. Rev. Stat. Ann. § 304.39-230*.)
- Five years for an action for personal injuries suffered by any person against the builder of a home or other improvements (*Ky. Rev. Stat. Ann. § 413.120(14)*).
- One year for bodily injuries, injuries to property or death arising out of deficiency of an improvement to real property. However, no action may be brought after seven years following substantial completion of the improvement to real property. If bodily injury, injury to property or death occurs in the seventh year, the action may still be brought but in no event may an action be brought more than eight years after substantial completion of the improvement. (*Ky. Rev. Stat. Ann. § 413.135*.)
- Two years for injury to personal property (*Ky. Rev. Stat. Ann. § 413.125*).

**ACCRUAL DATE**

The limitation period starts to run for:

- Personal injury, generally, when the injury occurs. The discovery rule, where the statute of limitations does not accrue until the plaintiff discovers the injury, is available only in cases where the fact of injury or offending instrumentality is not immediately evident or discoverable with the exercise of reasonable diligence, such as in cases of medical malpractice or latent injuries or illnesses. (*Fluke Corp. v. LeMaster, 306 S.W.3d 55, 60 (Ky. 2010)*.)

- Medical malpractice injury, when the injury is first discovered or in the exercise of reasonable care should have been discovered (*Ky. Rev. Stat. Ann. § 413.140(2)*).
- Personal injury in an auto accident, when the injured person suffers the loss and either knows or in the exercise of reasonable diligence should know that the loss was caused by the accident (*Ky. Rev. Stat. Ann. § 304.39-230*).
- An action for personal injuries suffered by any person against the builder of a home or other improvements, at the time of original occupancy of the improvements which the builder made (*Ky. Rev. Stat. Ann. § 413.120(14)*).
- Bodily injuries, injuries to property or death arising out of deficiency of an improvement to real property, when the injury occurs (*Ky. Rev. Stat. Ann. § 413.135*).
- Personal property injury, when the injury to the personal property occurs (see *Am. Premier Ins. Co. v. McBride*, 159 S.W.3d 342, 346 (*Ky. Ct. App. 2004*)).

## PRODUCTS LIABILITY

### 14. What is the statute of limitations for a products liability claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is:

- One year for personal injury (*Ky. Rev. Stat. Ann. § 413.140(1)(a)*).
- Two years after the date of injury or the last payment of basic reparation benefits, or not later than four years after the accident, whichever is earlier, for personal injury in an auto accident. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivors benefits, by either the same or another claimant, may be commenced not later than two years after the last payment of benefits. (*Ky. Rev. Stat. Ann. § 304.39-230*).

#### ACCRUAL DATE

The limitation period starts to run for:

- Personal injury, generally, when the injury occurs. The discovery rule, where the statute of limitations does not accrue until the plaintiff discovers the injury, is available only in cases where the fact of injury or offending instrumentality is not immediately evident or discoverable with the exercise of reasonable diligence, such as in cases of medical malpractice or latent injuries or illnesses. (*Fluke Corp.*, 306 S.W.3d at 60.)
- Personal injury in auto accident, when the injured person suffers the loss and either knows or in the exercise of reasonable diligence should know that the loss was caused by the accident (*Ky. Rev. Stat. Ann. § 304.39-230*).

## SHAREHOLDER DERIVATIVE SUITS

### 15. What is the statute of limitations for a shareholder derivative suit in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years (*Ky. Rev. Stat. Ann. § 413.120(2)*),

for actions on a liability created by statute, when no other time is fixed by the statute creating the liability).

#### ACCRUAL DATE

The limitation period starts to run when the transaction complained of occurred (*Ky. Rev. Stat. Ann. § 271B.7-400*).

## THIRD-PARTY CONTRIBUTION

### 16. What is the statute of limitations for a third-party contribution claim in your jurisdiction?

#### LIMITATIONS PERIOD

Apportionment under Section 411.182 of the Kentucky Revised Statutes has abrogated common law contribution but not the right for indemnity (see *Degener v. Hall Contr. Corp.*, 27 S.W.3d 775, 780-781 (*Ky. 2000*); see also *Branch Banking & Trust Co. v. Bartley*, No. 2004-CA-002663-MR, 2006 WL 1113632 (*Ky. Ct. App. Apr. 28, 2006*) (the court preferred to use the word apportionment instead of contribution).)

The statute of limitations for indemnity is five years (*Ky. Rev. Stat. Ann. § 413.120(7)*).

#### ACCRUAL DATE

The limitation period starts to run for indemnity when there is a finding of liability to the injured party (*Clark v. Hauck Mfg. Co.*, 910 S.W.2d 247, 253 (*Ky. 1995*), overruled on other grounds by *Martin v. Ohio County Hosp. Corp.*, 295 S.W.3d 104 (*Ky. 2009*) ("Indemnity is not an issue until fault has been determined. . . There can be no indemnity without liability.")).

## TORTIOUS INTERFERENCE WITH CONTRACT RIGHTS

### 17. What is the statute of limitations for claim of tortious interference with contract rights or business relationship in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years (*Ky. Rev. Stat. Ann. § 413.120*; *Ritchie v. United Mine Workers*, 410 F.2d 827, 832 (6th Cir. 1969)).

#### ACCRUAL DATE

The limitation period starts to run on the date the interference occurs (see *Ritchie*, 410 F.2d at 832 (dispute over applicable statute of limitation was calculated from the date the defendants allegedly destroyed property owned by the plaintiff business)).

## TRADE SECRET MISAPPROPRIATION

### 18. What is the statute of limitations for a trade secret misappropriation claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is three years (*Ky. Rev. Stat. Ann. § 365.890*).

#### ACCRUAL DATE

The limitation period starts to run on the date the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered (*Ky. Rev. Stat. Ann. § 365.890*).

## TRADEMARK INFRINGEMENT

### 19. What is the statute of limitations for a trademark infringement claim in your jurisdiction?

#### LIMITATIONS PERIOD

There is no statute of limitation per se for trademark infringement. The equitable doctrine of laches applies and the standard is "unreasonable delay to the prejudice of others" (*Colston Inv. Co. v. Home Supply Co.*, 74 S.W.3d 759, 768-69 (Ky. Ct. App. 2001)).

#### ACCRUAL DATE

See *Limitations Period*.

## UNFAIR COMPETITION

### 20. What is the statute of limitations for an unfair competition claim in your jurisdiction?

#### LIMITATIONS PERIOD

There is no statute of limitation per se for unfair competition. The equitable doctrine of laches applies and the standard is "unreasonable delay to the prejudice of others" (*Colston Inv. Co.*, 74 S.W.3d at 768-69).

#### ACCRUAL DATE

See *Limitations Period*.

## UNJUST ENRICHMENT

### 21. What is the statute of limitations for an unjust enrichment claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is five years (*Neurodiagnostics, P.S.C. v. Modern Radiology, PLLC*, Nos. 2009-CA-002413-MR, 2010-CA-000068-MR, 2010 WL 5018565, at \*4-5 (Ky. Ct. App. Dec. 10, 2010)).

#### ACCRUAL DATE

The limitation period starts to run on the date of discovery of the offending conduct (*Neurodiagnostics, P.S.C.*, 2010 WL 5018565, at \*4-5).

## WRONGFUL DEATH & SURVIVAL

### 22. What is the statute of limitations for a wrongful death and survival claim in your jurisdiction?

#### LIMITATIONS PERIOD

The statute of limitations is:

- One year after appointment of the personal representative. Up to two years from the date of death if the decedent's personal representative is appointed after one year from the date of death. (Ky. Rev. Stat. Ann. § 413.140(1)(a); Ky. Rev. Stat. Ann. § 413.180(2); *Conner v. George W. Whitesides Co.*, 834 S.W.2d 652, 654-55 (Ky. 1992) (Section 413.180(2) of the Kentucky Revised Statutes "provides two years from the date of death to appoint a personal representative and commence a cause of action for wrongful death."))

- One year after death, for a death resulting from deficient improvement to real property. However, no action may be brought after seven years following substantial completion of the improvement to real property. If the death occurs in the seventh year, the action may still be brought but in no event may an action be brought more than eight years after substantial completion of the improvement. (Ky. Rev. Stat. Ann. § 413.135.)

#### ACCRUAL DATE

The limitation period starts to run when the personal representative is appointed (Ky. Rev. Stat. Ann. § 413.180; *Conner*, 834 S.W.2d at 654-55).

## OTHER COMMERCIAL CAUSES OF ACTION

### 23. What is the statute of limitations for an account stated claim in your jurisdiction?

#### CONSPIRACY

##### Limitations Period

The statute of limitations is one year (Ky. Rev. Stat. Ann. § 413.140(1)(c)).

##### Accrual Date

The limitation period starts to run on the date of the last overt act performed in compliance with the objective of the conspiracy (*District Union, Amalgamated Meat Cutters, etc. v. Fleischaker*, 384 S.W.2d 68, 72 (Ky. 1964)).

## SPECIAL RULES AND EXCEPTIONS

### 24. What is the statute of limitations for an account stated claim in your jurisdiction?

#### FRAUDULENT CONCEALMENT

Fraudulent concealment by the defendant may toll the statute of limitations (*Newberg v. Hudson*, 838 S.W.2d 384, 390 (Ky. 1992)).

#### PERSONAL REPRESENTATIVE OF AN ESTATE STANDING

A deceased plaintiff's personal representative may bring a claim for an action mentioned in Sections 413.090 to 413.160 of the Kentucky Revised Statutes within a year of appointment of the representative (Ky. Rev. Stat. Ann. § 413.180).

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