

Statutes of Limitations: West Virginia

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A Q&A guide to the statutes of limitations in West Virginia for several commercial claims. Answers to questions can be compared across a number of jurisdictions (see Statutes of Limitations: State Q&A Tool).

ACCOUNT STATED

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

LIMITATIONS PERIOD

The statute of limitations is four years (W. Va. Code § 46-2-725; *Greer Limestone Co. v. Nestor*, 332 S.E.2d 589, 594 (W. Va. 1985)).

ACCRUAL DATE

The limitations period starts to run from the date the account was stated (*Greer Limestone Co.*, 332 S.E.2d at 593).

ANTITRUST

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

LIMITATIONS PERIOD

The statute of limitations is four years (W. Va. Code § 47-18-11).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- If the cause of action is based upon a conspiracy in violation of the West Virginia Antitrust Act, the plaintiff discovers, or by the exercise of reasonable diligence, should have discovered the facts relied upon for proof of the conspiracy.

(W. Va. Code § 47-18-11.)

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:
 - Ten years for a written contract (W. Va. Code § 55-2-6).
 - Five years for an oral contract (W. Va. Code § 55-2-6).

Four years for a sales contract under the Uniform Commercial Code (UCC) (W. Va. Code § 46-2-725).

ACCRUAL DATE

The limitations period starts to run when:

- The breach of contract occurs.
- The act breaching the contract is discovered.

(*Harris v. Cnty. Comm'n of Calhoun Cnty.*, 797 S.E.2d 62, 68 (W. Va. 2017); *Taylor v. Ford Motor Co.*, 408 S.E.2d 270, 273 (1991).)

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 two years (W. Va. Code § 55-2-12; *Evans v. United Bank, Inc.*, 775 S.E.2d 500, 508 (W. Va. 2015)).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and

- that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

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:

Four years for a breach of warranty action involving the sale of goods under the UCC (W. Va. Code § 46-2-725(1)).

Two years for a breach of warranty action involving personal injury damages (W. Va. Code § 55-2-12; *Taylor*, 408 S.E.2d at 274).

ACCRUAL DATE

The limitations period starts to run when:

- The goods are delivered, except:
 - where a warranty explicitly extends to future performance of the goods; and
 - discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(W. Va. Code § 46-2-725(2).)

The injury occurs or when the injury is discovered or reasonably should have been discovered where the injury is latent (*Taylor*, 408 S.E.2d at 274).

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 four years under the West Virginia Consumer Credit and Protection Act (W. Va. Code § 46A-5-101).

ACCRUAL DATE

The limitations period starts to run when the violation occurs (W. Va. Code § 46A-5-101).

CONVERSION

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

LIMITATIONS PERIOD

The statute of limitations is two years (W. Va. Code § 55-2-12; *Dunn v. Rockwell*, 689 S.E.2d 255, 268 (W. Va. 2009)).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

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 claims under the West Virginia Wage Payment and Collection Act (W. Va. Code § 55-2-6; *Goodwin v. Willard*, 406 S.E.2d 752, 755 (W. Va. 1991)).

Two years for employment claims under the West Virginia Human Rights Act (W. Va. Code § 55-2-12; *Metz v. E. Associated Coal, LLC*, 799 S.E.2d 707, 710 (W. Va. 2017)).

ACCRUAL DATE

The limitations period starts to run when:

All of the elements of a cause of action entitling a party to recover in fact exist under the West Virginia Wage Payment and Collection Act (*Lipscomb v. Tucker Cnty. Comm'n*, 475 S.E.2d 84, 90 (W. Va. 1996)).

The plaintiff first learns of the adverse employment decision under the West Virginia Human Rights Act (*Metz v. E. Associated Coal, LLC*, 799 S.E.2d 707, 710 (W. Va. 2017)).

ENFORCEMENT OF JUDGMENTS

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

LIMITATIONS PERIOD

The statute of limitations is ten years (W. Va. Code § 38-3-18; W. Va. Code § 55-2-13).

ACCRUAL DATE

The limitations period starts to run when the judgment is entered (W. Va. Code § 38-3-18; W. Va. Code § 55-2-13).

FRAUD

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

LIMITATIONS PERIOD

The statute of limitations is two years (W. Va. Code § 55-2-12; *Dunn*, 689 S.E.2d at 268).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

FRAUDULENT CONCEALMENT

11. What is the statute of limitations for a fraudulent concealment claim in your jurisdiction?

LIMITATIONS PERIOD

Fraudulent concealment is a tolling principle, which requires that the defendant commit some positive act tending to conceal the cause of action from the plaintiff, although any act or omission tending to suppress the truth is enough (*Merrill v. W. Va. Dep't of Health & Human Res.*, 632 S.E.2d 307 (W. Va. 2006)).

ACCRUAL DATE

Fraudulent concealment is a tolling principle. The limitations period starts to run from when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

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:
 - Ten years for a bad faith claim based on a contract theory (W. Va. Code § 55-2-6).

One year for a bad faith claim based on a common law theory or a statutory theory under the West Virginia Unfair Trade Practices Act

(W. Va. Code § 55-2-12; *Noland v. Va. Ins. Reciprocal*, 686 S.E.2d 23, 34-35 (W. Va. 2009)).

ACCRUAL DATE

The limitations period starts to run when the breach of contract occurs or when the act breaching the contract becomes known (*Harris*, 797 S.E.2d at 68).

In a bad faith claim based on an insurer's refusal to defend under West Virginia Unfair Trade Practices Act or as a common law bad faith claim, the statute of limitations starts to run on the claim when the insured knows or reasonably should have known that the insurer refused to defend him or her in an action (*Noland v. Va. Ins. Reciprocal*, 686 S.E.2d 23, 40 (W. Va. 2009)).

In a bad faith claim based upon an insurer's refusal to indemnify, the West Virginia Supreme Court has made no ruling as to when the statute of limitations begins to run (*Noland*, 686 S.E.2d at 40).

NEGLIGENCE

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

LIMITATIONS PERIOD

The statute of limitations is two years (W. Va. Code § 55-2-12; *Evans*, 775 S.E.2d at 508).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

PRODUCTS LIABILITY

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

LIMITATIONS PERIOD

The statute of limitations is two years (W. Va. Code § 55-2-12).

ACCRUAL DATE

The limitations period starts to run when the plaintiff knows, or by the exercise of reasonable diligence should know all of the following:

- That he has been injured.
- The identity of the maker of the product.
- That the product had a causal relation to his injury.

(*Goodwin v. Bayer Corp.*, 624 S.E.2d 562, 567 (W. Va. 2005).)

SHAREHOLDER DERIVATIVE SUITS

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

LIMITATIONS PERIOD

The statute of limitations depends on the nature of the underlying claim. For example, see:

- Breach of Fiduciary Duty (Question #4).
- Conversion (Question #7).
- Fraud (Question #10).
- Negligence (Question #13).

ACCRUAL DATE

The limitations period starts to run when shareholders who can redress the wrongs of their corporation discover the claims (*Clark v. Milam*, 452 S.E.2d 714, 720 (W. Va. 1994)).

THIRD-PARTY CONTRIBUTION

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

LIMITATIONS PERIOD

The statute of limitations is two years (W. Va. Code § 55-2-12).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

TORTIOUS INTERFERENCE WITH CONTRACT RIGHTS

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

LIMITATIONS PERIOD

The statute of limitations is two years (W. Va. Code § 55-2-12; *Garrison v. Herbert J. Thomas Memorial Hosp. Ass'n*, 438 S.E.2d 6, 14 (W. Va. 1993)).

ACCRUAL DATE

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:

- that the plaintiff has been injured;
- the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
- that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

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 (W. Va. Code §47-22-6).

ACCRUAL DATE

The limitations period starts to run when the misappropriation is discovered or, by the exercise of reasonable diligence, should have been discovered (W. Va. Code §47-22-6).

TRADEMARK INFRINGEMENT

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

LIMITATIONS PERIOD

Because there is no statute of limitations for trademark infringement claims under West Virginia law, West Virginia's catch-all statute of limitations, which is two years, may apply (W. Va. Code § 55-2-12).

ACCRUAL DATE

There is no accrual date that directly applies to trademark infringement claims under West Virginia law. However, West Virginia's limitations period generally starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

UNFAIR COMPETITION

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

LIMITATIONS PERIOD

The statute of limitations is four years (W. Va. Code § 46A-5-101; *Harper v. Jackson Hewitt, Inc.*, 706 S.E.2d 63, 74 (W. Va. 2010)).

ACCRUAL DATE

The limitations period starts to run when the violation occurs (W. Va. Code § 46A-5-101).

UNJUST ENRICHMENT

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

LIMITATIONS PERIOD

Unjust enrichment is an equitable cause of action and is not governed by any statute of limitations (*Dunn v. Rockwell*, 689 S.E.2d 255, 266-267 (W. Va. 2009)).

ACCRUAL DATE

Unjust enrichment is an equitable cause of action and is governed by the doctrine of laches (*Dunn*, 689 S.E.2d at 267 n.11).

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 two years (W. Va. Code § 55-7-6(d)).

ACCRUAL DATE

The limitations period starts to run when the decedent's representative knows or by the exercise of reasonable diligence should know all of the following:

- That the decedent has died.
- That the death was the result of a wrongful act, neglect, or default.
- The identity of the person or entity who owed the decedent a duty to act with due care and who may have engaged in conduct that breached that duty.
- That the wrongful act, neglect or default of that person or entity has a causal relation to the decedent's death.

(*Stuyvesant v. Preston Cty. Comm'n*, 678 S.E.2d 872, 876 (W. Va. 2009).)

OTHER COMMERCIAL CAUSES OF ACTION

23. Please describe any other statutes of limitations for commercial causes of action in your jurisdiction of which practitioners should be aware.

ASSAULT AND BATTERY, INFLICTION OF EMOTIONAL DISTRESS, NUISANCE**Limitations Period**

The statute of limitations is two years (W. Va. Code § 55-2-12).

Accrual Date

The limitations period starts to run when:

- The cause of action arises.

- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - that the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

INVASION OF PRIVACY, DEFAMATION**Limitations Period**

The statute of limitations is one year (W. Va. Code § 55-2-12(c); *Herbert J. Thomas Mem'l Hosp. Ass'n v. Nutter*, 795 S.E.2d 530, 546 (W. Va. 2016)).

Accrual Date

The limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:
 - the plaintiff has been injured;
 - the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
 - that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

MEDICAL MALPRACTICE**Limitations Period**

The statute of limitations is two years (W. Va. Code § 55-7B-4).

Accrual Date

The limitations period starts to run when the injury occurs, or when the plaintiff discovers, or by the exercise of reasonable diligence, should have discovered the injury (W. Va. Code § 55-7B-4).

LEGAL MALPRACTICE**Limitations Period**

The statute of limitations depends on the nature of the underlying claim. The statute of limitations is:

- Ten years for a written contract (W. Va. Code § 55-2-6).
- Five years for an oral contract (W. Va. Code § 55-2-6).
- Two years for a tort claim (W. Va. Code § 55-2-12).

Accrual Date

For a claim based on a contract, the limitations period starts to run when the breach of contract occurs or when the act breaching the contract becomes known (*Harris*, 797 S.E.2d at 68).

For a claim based in tort, the limitations period starts to run when:

- The cause of action arises.
- The plaintiff knows, or by the exercise of reasonable diligence, should know:

- the plaintiff has been injured;
- the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty; and
- that the conduct of that entity has a causal relation to the injury.

(*Evans*, 775 S.E.2d at 507.)

UNLAWFUL ENTRY OR DETAINER

Limitations Period

The statute of limitations is three years (W. Va. Code § 55-3-1).

Accrual Date

The limitations period starts to run after the unlawful entry or detainer (W. Va. Code § 55-3-1; Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.1(oo), at 43 (4th ed. 2012)).

SPECIAL RULES AND EXCEPTIONS

24. Please list any special rules and exceptions that may toll or otherwise affect any of the statutes of limitations in the previous questions.

DISCOVERY RULE

The discovery rule tolls the statute of limitations until the plaintiff knows, or by the exercise of reasonable diligence, should know all of the following:

- That the plaintiff has been injured.
- The identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty.
- That the conduct of that entity has a causal relation to the injury.

There is a five-step analysis to determine whether a cause of action is time-barred:

- First, the court should identify the applicable statute of limitations for each cause of action.
- Second, the court (or the jury if questions of material fact exist) should identify when the requisite elements of the cause of action occurred.
- Third, the discovery rule should be applied to determine when the statute of limitations began to run by determining when the plaintiff knew, or by the exercise of reasonable diligence should have known, of the elements of a possible cause of action.
- Fourth, if the plaintiff is not entitled to the benefit of the discovery rule, then determine whether the defendant fraudulently concealed facts that prevented the plaintiff from discovering or pursuing the cause of action. Whenever a plaintiff is able to show that the defendant fraudulently concealed facts which prevented the plaintiff from discovering or pursuing the potential cause of action, the statute of limitations is tolled.
- Fifth, the court or the jury should determine if the statute of limitations period was arrested by some other tolling doctrine.

The discovery rule generally applies to all torts, unless a specific statute states otherwise. (*Evans*, 775 S.E.2d at 507 (W. Va. 2015); Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(a)(1), at 44-45 (4th ed. 2012).)

EQUITABLE TOLLING DOCTRINE

The equitable tolling doctrine suspends the statute of limitations and focuses on the plaintiff's excusable ignorance of the limitations period and on the lack of prejudice to the defendant. (*Independent Fire Co. No. 1 v. West Va. Human Rights Comm'n*, 376 S.E.2d 612, 614-615 (W. Va. 1988); Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules Of Civil Procedure* § 3.2(b), at 49-50 (4th ed. 2012)).

ADVERSE DOMINATION DOCTRINE

The doctrine of adverse domination tolls the state of limitations for claims by corporations against its officers, directors, lawyers, and accountants for so long as the corporation is controlled by those acting against its interests (*Clark v. Milam*, 452 S.E.2d 714, 718 (1994)).

EQUITABLE ESTOPPEL DOCTRINE

The equitable estoppel doctrine tolls the statute of limitations where the plaintiff is thwarted from suing in time because of misrepresentations or other intentional actions by the defendant (*Independent Fire Co. No. 1*, 376 S.E.2d at 614-615); Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(d), at 50-51 (4th ed. 2012)).

CONTINUING TORT THEORY

Under the continuing tort theory, the limitations period starts to run when the last injury occurs, or when the tortious overt acts stop (*Dunn*, 689 S.E.2d at 272 n.15; Franklin D. Cleckley, Robin Jean Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(g), at 53-54 (4th ed. 2012)).

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