

## 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).

**Following the suspension or modification of many judicial functions in 2020 due to COVID-19, West Virginia state courts have resumed most operations, but local courts may impose special rules impacting some litigants (such as remote proceedings). Check the West Virginia Judiciary's Coronavirus Disease 2019 (COVID-19) [website](#) for the latest developments in this jurisdiction.**

### 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 for an account stated claim in West Virginia. (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 for an antitrust claim in West Virginia (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 on a conspiracy in violation of the West Virginia Antitrust Act, when the plaintiff discovers or by the exercise of reasonable diligence should have discovered the facts relied on 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 for a breach of contract claim in West Virginia 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(1)).



### Accrual Date

The limitations period starts to run on the later of when:

- The breach of contract occurs.
- The plaintiff discovers the act breaching the contract.

(*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).)

For sales contracts under the UCC, the cause of action accrues when the breach occurs regardless of the plaintiff's knowledge of the breach (W. Va. Code § 46-2-725(2)).

### 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 for a breach of fiduciary duty claim in West Virginia (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 for a breach of warranty claim in West Virginia 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 seller delivers the goods (W. Va. Code § 46-2-725(2)).
- The breach is or should have been discovered, where:
  - a warranty explicitly extends to future performance of the goods; and
  - discovery of the breach must await performance. (W. Va. Code § 46-2-725(2).)
- The injury occurs or when the plaintiff discovers the injury or reasonably should have discovered a latent injury (*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 generally four years for a consumer protection claim under the West Virginia Consumer Credit and Protection Act (W. Va. Code §§ 46A-5-101(1), (2)). Certain claims must be brought within a shorter time, including:

- Two years after the date of the violation or the due date of the last scheduled payment in actions against a telemarketer (W. Va. Code §§ 46A-6F-502(1), (4), and 46A-6F-701(a)).
- One year after a foreclosure sale is final in actions to set aside a foreclosure sale of real property securing a consumer loan (W. Va. Code § 46A-5-101(1)).

- One year after the express warranty expires for a new motor vehicle purchase (W. Va. Code § 46A-6A-4(d)).

### Accrual Date

The limitations period starts to run when the violation occurs (W. Va. Code § 46A-5-101(1), (2)).

## Conversion

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

#### Limitations Period

The statute of limitations is two years for a conversion claim in West Virginia (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 for employment matters in West Virginia 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 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)).
- when the plaintiff first learns of the adverse employment decision under the West Virginia Human Rights Act (*Metz*, 799 S.E.2d at 710).

## 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 for enforcing a judgment in West Virginia (W. Va. Code §§ 38-3-18 and 55-2-13).

#### Accrual Date

The limitations period starts to run when a court enters judgment (W. Va. Code §§ 38-3-18 and 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 for a fraud claim in West Virginia (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

In West Virginia, fraudulent concealment is a tolling principle, which requires that the defendant fraudulently concealed facts that prevented the plaintiff from discovering or pursuing the cause of action (*Dunn*, 689 S.E.3d at 265).

##### Accrual Date

Fraudulent concealment is a tolling principle. 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.)

### 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 for an insurance bad faith claim in West Virginia 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(c); *Wilt v. State Auto. Mut. Ins. Co.*, 506 S.E.2d 608, 614 (W. Va. 1998); *West Virginia ex rel. Erie Ins. Prop. & Cas. Co.*, 2016 WL 3392560, at \*3 (W. Va. 2016)).

##### 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 common law bad faith claim, the statute of limitations starts to run when the policyholder prevails in their damage suit against the insurer (*Erie*, 2016 WL 3392560, at \*4).

In a bad faith claim based on an insurer's refusal to defend under the West Virginia Unfair Trade Practices Act, 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 the insured in an action (*Noland v. Va. Ins. Reciprocal*, 686 S.E.2d 23, 40 (W.Va. 2009)).

In a bad faith claim based on an insurer's refusal to indemnify, the Supreme Court of Appeals of West Virginia has made no ruling about 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 for a negligence claim in West Virginia (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 for a products liability claim in West Virginia (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 the plaintiff 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 for a shareholder derivative suit in West Virginia 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 for a third-party contribution claim in West Virginia (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 for a claim of tortious interference with contract rights or a business relationship in West Virginia (W. Va. Code § 55-2-12; *Garrison v. Herbert J. Thomas Mem'l 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 for a trade secret misappropriation claim in West Virginia (W. Va. Code § 47-22-6).

#### Accrual Date

The limitations period starts to run when the plaintiff discovers the misappropriation or should have discovered it by the exercise of reasonable diligence (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 two-year catch-all statute of limitations may apply (W. Va. Code § 55-2-12).

### Accrual Date

No accrual date 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 generally four years for an unfair competition claim in West Virginia (W. Va. Code § 46A-5-101(1), (2); *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(1), (2)).

### 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 not governed by any statute of limitations in West Virginia (*Dunn*, 689 S.E.2d at 266-67).

### Accrual Date

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

## Wrongful Death and 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 for a wrongful death and survival claim in West Virginia (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:

- The decedent has died.
- 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.
- 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, and Nuisance

#### Limitations Period

The statute of limitations is two years for assault and battery, infliction of emotional distress, and nuisance claims in West Virginia (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 and Defamation

#### Limitations Period

The statute of limitations is one year for invasion of privacy and defamation claims (W. Va. Code § 55-2-12(c); *Slack v. Kanawha Cty. Hous. & Redev. Auth.*, 423 S.E.2d 547, 551 (W. Va. 1992); *Padon v. Sears*, 411 S.E.2d 245, 247 (W. Va. 1991)).

#### Accrual Date

The limitations period starts to run for an invasion of privacy claim when the plaintiff knows or should know by the exercise of reasonable diligence that the plaintiff has been injured and the identity of the person or persons responsible (*Slack*, 423 S.E.2d at 553).

The limitations period starts to run for a defamation claim when the fact of the defamation becomes known or reasonably should have become known to the plaintiff (*Padon*, 411 S.E.2d at 248).

## Medical Malpractice

#### Limitations Period

The statute of limitations is two years for medical malpractice claims against a health care provider (W. Va. Code § 55-7B-4(a)).

The statute of limitations is one year for medical malpractice claims against:

A nursing home and its related entities and employees.

An assisted living facility and its related entities and employees.

The portion of an acute care hospital providing intermediate or skilled nursing care and its employees.

(W. Va. Code § 55-7B-4(b).)

The statute of limitations for injury to a minor under ten years of age is the longer of:

Two years from the date of injury.

Before the minor's 12th birthday.

(W. Va. Code § 55-7B-4(c).)

A ten-year statute of repose that starts to run on the date of injury applies to most medical malpractice claims (W. Va. Code § 55-7B-4(a), (b)).

### Accrual Date

The limitations period starts to run either when:

- The injury occurs.
- The plaintiff discovers or should have discovered the injury by the exercise of reasonable diligence.

(W. Va. Code § 55-7B-4(a), (b)).

## Legal Malpractice

### Limitations Period

The statute of limitations for legal malpractice claims 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 for unlawful entry or detainer actions (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; Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.1(o), at 46 (5th ed. 2017)).

## 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

In West Virginia, 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:

- The court should identify the applicable statute of limitations for each cause of action.
- The court (or the jury if questions of material fact exist) should identify when the requisite elements of the cause of action occurred.
- The court should apply the discovery rule 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.



- If the discovery rule does not benefit the plaintiff, determine whether the defendant fraudulently concealed facts preventing the plaintiff from discovering or pursuing the cause of action. Whenever a plaintiff can show that the defendant fraudulently concealed facts that prevented the plaintiff from discovering or pursuing the potential cause of action, the statute of limitations is tolled.
- The court or the jury should determine if some other tolling doctrine arrested the statute of limitations period.

The discovery rule generally applies to all torts, unless a specific statute states otherwise. (*Evans*, 775 S.E.2d at 507; Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(a), at 48-50 (5th ed. 2017).)

### 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 the lack of prejudice to the defendant. (*Indep. Fire Co. No. 1 v. West Va. Human Rights Comm'n*, 376 S.E.2d 612, 614-15 (W. Va. 1988); Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(b), at 53-54 (5th ed. 2017)).

### Adverse Domination Doctrine

The doctrine of adverse domination tolls the statute of limitations for claims by corporations against its officers, directors, lawyers, and accountants for as long as the agents acting against a corporation control it (*Clark*, 452 S.E.2d at 718).

### Equitable Estoppel Doctrine

If the plaintiff cannot sue in time because of misrepresentations or other intentional actions by the defendant, the equitable estoppel doctrine tolls the statute of limitations (*Indep. Fire Co. No. 1*, 376 S.E.2d at 614-15; Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(d), at 54-55 (5th ed. 2017)).

### 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; Louis J. Palmer, Jr. & Robin Jean Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 3.2(g), at 57 (5th ed. 2017)).

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