

KEEPING AN EYE ON THE CLOCK: IMPORTANT LEGAL DEADLINES THAT CONSTRUCTION PROFESSIONALS SHOULD BE TRACKINGⁱ

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Introduction

Construction is an industry obsessed with deadlines, and seasoned professionals are used to tracking project-related deadlines. But, even the most seasoned professionals might not be as good at tracking legal deadlines as they are at tracking normal project-related deadlines. Perhaps this is because legal disputes are not very common and therefore not part of routine practice. It might be because it is more fun to track deadlines that have to do with getting paid versus those that might require a call to your lawyer. While legal deadlines are not fun to track and you hope they never become relevant, the failure to track them can have devastating consequences.

In the hope of making things easier on construction professionals, this article provides construction professionals with three important things that relate to legal deadlines:

1. A summary of two categories of legal deadlines, and how to find them.
2. A summary of best practices for tracking deadlines.
3. A table that can serve as a cheat sheet for some of the most common legal deadlines.

The Type of Legal Deadlines That Need to be Tracked

Generally, there are two categories of legal deadlines that construction professionals need to track:

1. Deadlines written in a contract – a/k/a “contractual deadlines,” and
2. Deadlines that are written into our laws – a/k/a “statutes of limitation.”

Often times these deadlines are binding and cannot be extended.ⁱⁱⁱ That means these are hard deadlines that are strictly enforced. Failing to take necessary action before a deadline passes could mean you forever waive your rights.

Contractual Deadlines:

The first category of legal deadlines are easy to find, because they are in your contract. If you are a general contractor, these legal deadlines are likely found in your contracts with the designer and/or owner, subcontractors, and material suppliers. A general contractor may also want to look at deadlines contained in insurance contracts, like deadlines to provide notice of claims.

Statute of Limitations:

The second category of deadlines are a bit harder to find, because they are based on state or federal statutes. It is not uncommon to simply google the applicable statute of limitations. But this can be a dangerous game because websites often misstate the limitations period. The only way to be sure you have the right statute of limitation is to go to the source: the statutes themselves. Many, but not all, of Minnesota's statutes of limitation can be found by looking at Minnesota Statutes Chapter 541, which can be found online at: <https://www.revisor.mn.gov/statutes/cite/541>. You can also look at the Minnesota State Bar Association's "Time's Up Manual"^{iv} that contains the state and federal statutes of limitation for Minnesota. If your project is outside of Minnesota or your contract(s) say you have to rely on another state's laws, you will need to look at that state's limitations periods. Limitations periods can greatly vary state to state.

Best Practices For Tracking Legal Deadlines

Identifying the correct deadline is only the first step. You also need to give yourself, and your attorney, enough time to meet the deadline once it becomes relevant. Like construction, legal work and a potential lawsuit takes time on the front end. It takes time to find a lawyer that can handle the situation, and then give the lawyer enough time to either resolve the situation or take the necessary steps to meet the deadline if things get that far.

To stay on top of these deadlines, it is best practice to put each deadline in your calendar. Then you also may want to add a series of reminders before the deadlines come up. For example, setting up a 90 days, 60 days, 30 days, and then a final reminder. A final reminder is most important and should be considered a "do or die" kind of reminder. Set this final reminder at least a week out to give you and your lawyers enough time to take the necessary steps to preserve your rights. You are busy and these deadlines are a long way out – making them easy to miss. In fact, your adversaries are banking on you missing them. So, it is critical that you stay on top of all legal deadlines.

Once you know how you want to stagger your deadlines, you should make sure the deadlines are calendared in a place where you will actually see them. It is best to put these legal deadlines on an internal main calendar that is shared throughout the organization so there is more than one set of eyes tracking the deadline. You may not want to put these legal deadlines on a public calendar (like a project calendar) so you do not tip off potential adversaries about deadlines that they may need to meet in order to protect rights against you. The bottom line is: don't lose sight of your legal deadlines, but don't draw external attention to them either.

Common Legal Deadlines in Minnesota

The chart below contains a **non-exhaustive** list of common legal deadlines that apply to the construction industry:

Index of Important Legal Deadlines		
Deadline	Reason For Deadline	Legal Citation
Varies	Deadlines set forth in contracts ^v	A contract.
120 Days after the last day of work on a project, or last item of skill, material, or machinery is furnished	To record a mechanic's lien	Minnesota Statute 514.08, Subd. 1
1 year from the date a lien is recorded	To foreclose a mechanic's lien	Minnesota Statute 514.12, Subd. 3
1 year from the date the warranty date ^{vi}	To make a residential breach of warranty claim based on faulty workmanship or defective building materials due to noncompliance with building standards	Minnesota Statute 327A.02, Subd. 1
2 years from the warranty date	To make a residential breach of warranty claim based on faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards	Minnesota Statute 327A.02, Subd. 1
2 years from the date of discovery of the injury, and not to begin running any earlier than the date of substantial completion	To make a claim for an injury caused by a defective condition with an improvement to real property	Minnesota Statute 541.051, Subd. 1
4 years from the date of breach	To make a claim for breach of contract that primarily concerns the sale of goods	Minnesota Statute 336.2-725
6 years from the date of breach	To make a claim for breach of contract that primarily concerns the rendering of services	Minnesota Statute 541.05, Subd. 1
6 years from the date of injury	To make a claim for negligence (that does not arise from an injury caused by a defective condition with property)	Minnesota Statute 541.05, Subd. 1
6 years from the date of discovery of the fraud	To make a claim for fraud	Minnesota Statute 541.05, Subd. 1
10 years from the warranty date	To make a residential breach of warranty claim based on major construction defects due to noncompliance with building standards	Minnesota Statute 327A.02, Subd. 1
10 years after the date of substantial completion	A "statute of repose" that completely bars all claims for injury arising out of a defective and unsafe condition on real property, regardless of when the defective or unsafe condition was discovered	Minnesota Statute 541.051, Subd. 1

Conclusion

While it is not fun to think about the law, it is a best business practice to know legal deadlines that apply to your project and have a system in place to calendar those deadlines. Failing to know and track these deadlines can have tragic consequences.

ⁱ DISCLAIMER: THIS ARTICLE IS NOT INTENDED TO BE RELIED UPON AS LEGAL ADVICE. THERE IS NO ATTORNEY-CLIENT RELATIONSHIP BETWEEN BASSFORD REMELE, P.A. AND ANY READER OF THIS ARTICLE.

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ⁱⁱⁱ Sometimes legal deadlines can be extended – which is called “estopping” or “tolling”. This article does not discuss estoppel or tolling, and any concerns about the extension of deadlines should be immediately raised with your lawyers.

^{iv} A MANUAL OF THE STATUTES OF LIMITATIONS IN MINNESOTA FOR CIVIL LITIGATORS, Minn. State. Bar Ass’n – Civ. Lit. Sect. (2023 Ed.).

^v Warning: Statutory Deadlines can be shortened if agreed to by the parties to a contract.

^{vi} “Warranty Date” means the date of the purchaser’s first occupancy of the dwelling or the date the purchaser took legal or equitable title of the dwelling – whichever is first. For home improvement, the Warranty Date is the date the home improvement was completed.