



Illinois Statute of Limitations Checklist

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A Checklist of the statutes of limitations in Illinois for several commercial claims.

ACCOUNT STATED

- **Limitations period.** The statute of limitations is five years (see *Portfolio Acquisitions, LLC v. Feltman*, 391 Ill. App. 3d 642, 652 (Ill. App. Ct. 2009)).
- **Accrual date.** The statute of limitations period accrues when one party sends the first statement of account to another who retains it without objection for an unreasonable amount of time (see *Toth v. Mansell*, 207 Ill. App. 3d 665, 672–73 (Ill. App. Ct. 1990)).

ANTITRUST

- **Limitations period.** The statute of limitations is four years (740 Ill. Comp. Stat. 10/7(2), (4) (2010)).
- **Accrual date.** The statute of limitations period accrues when the market conduct prohibited by chapter 740, act 10, section 3 of the Illinois Compiled Statutes is committed. Where multiple antitrust acts are alleged to have occurred as part of an ongoing antitrust conspiracy, courts have held that the claim accrues on the date of the last overt act committed to further the conspiracy (see *People ex rel. Hartigan v. Moore*, 143 Ill. App. 3d 410, 412–13 (Ill. App. Ct. 1986)).

BREACH OF CONTRACT

- **Limitations period.** The statute of limitations is:
 - five years for oral contracts (735 Ill. Comp. Stat. 5/13-205 (2010));
 - ten years for written contracts (735 Ill. Comp. Stat. 5/13-206 (2010)); and
 - four years for contracts for the sale of goods (810 Ill. Comp. Stat. 5/2-725(1) (2010)).
- **Accrual date.** Typically, the statute of limitations period for breach of contract actions (including those for the sale of goods) accrues at the time of the breach, not when a party sustains damages (810 Ill. Comp. Stat. 5/2-725(2) (2010); *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77 (Ill. 1995)). However, if a contract requires a demand for performance, accrual begins on the date the demand is rejected (see *Schreiber v. Hackett*, 173 Ill. App. 3d 129, 131 (Ill. App. Ct. 1988)).

BREACH OF FIDUCIARY DUTY

- **Limitations period.** The statute of limitations is five years (*Clark v. Robert W. Baird Co.*, 142 F. Supp. 2d 1065, 1074–75 (N.D. Ill. 2001) (citing 735 Ill. Comp. Stat. 5/13-205 (2010)).
- **Accrual date.** The statute of limitations period accrues when the plaintiff party suffers an injury caused by the breach (see *Clark v. Robert W. Baird Co.*, 142 F. Supp. 2d 1065, 1074–75 (N.D. Ill. 2001)).

BREACH OF WARRANTY

- **Limitations period.** The statute of limitations is four years (810 Ill. Comp. Stat. 5/2-725(1) (2010)).
- **Accrual date.** The statute of limitations period usually accrues when the goods are delivered. However, where a warranty expressly extends to future performance of the goods, and discovery of the breach must await the time of that future performance, the cause of action accrues when the breach is or should have been discovered with reasonable diligence (810 Ill. Comp. Stat. 5/2-725(2) (2010); *Cosman v. Ford Motor Co.*, 285 Ill. App. 3d 250, 257 (Ill. App. Ct. 1996)).

CONSUMER PROTECTION STATUTES

- **Limitations period.** The statute of limitations is three years under the Illinois Consumer Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. 505/10a(e) (2010); *McCready v. Illinois Sec’y of State*, 382 Ill. App. 3d 789, 798 (Ill. App. Ct. 2008)).
- **Accrual date.** The statute of limitations period accrues when an injury caused by the deceptive conduct occurs (see *Gredell v. Wyeth Labs., Inc.*, 346 Ill. App. 3d 51, 57 (Ill. App. Ct. 2004)).

CONVERSION

- **Limitations period.** The statute of limitations is five years for a claim involving personal property (735 Ill. Comp. Stat. 5/13-205 (2010)). For a claim involving a negotiable instrument (such as checks, bearer bonds and promissory notes), it is the earlier of either:
 - three years after it was due for payment and went unpaid; or
 - ten years after the date it was drafted.
 (810 Ill. Comp. Stat. 5/3-118(c), (g) (2010).)
- **Accrual date.** For a claim involving personal property, the statute of limitations accrues on the date of the conversion. For a claim involving a negotiable instrument, it begins on either:
 - the date it was due for payment and went unpaid; or
 - the date it was drafted.
 (810 Ill. Comp. Stat. 5/3-118(c), (g) (2010).)

EMPLOYMENT MATTERS

- **Limitations period.** The statute of limitations is:
 - 180 days for claims filed under the Illinois Human Rights Act, including discrimination and civil rights violations, which must be filed with the Illinois Human Rights Commission (775 Ill. Comp. Stat. 5/7a-102(A)(1) (2010));
 - six months for claims filed under the Equal Wage Act (820 Ill. Comp. Stat. 110/2 (2010)); and
 - one year for claims filed under the Equal Pay Act, which must be filed with the Illinois Department of Labor (820 Ill. Comp. Stat. 112/15(b) (2010)).

- **Accrual date.** For a claim filed under the:
 - Illinois Human Rights Act, the statute of limitations accrues when the discrimination or civil rights violation occurred (775 Ill. Comp. Stat. 5/7a-102(A)(1) (2010));
 - Equal Wage Act, the statute of limitations accrues when the alleged violation occurred (820 Ill. Comp. Stat. 110/2 (2010)); and
 - Equal Pay Act, the statute of limitations accrues when the underpayment occurred (820 Ill. Comp. Stat. 112/15(b) (2010)).

ENFORCEMENT OF JUDGMENTS

- **Limitations period.** The statute of limitations is seven years (735 Ill. Comp. Stat. 5/12-108(a) (2010)). However, Illinois law allows a judgment-creditor to “revive an enforcement action within 20 years of the date the judgment was entered” (735 Ill. Comp. Stat. 5/2-1602 (2010); 735 Ill. Comp. Stat. 5/13-218 (2010)).
- **Accrual date.** The statute of limitations period accrues on the date the judgment is rendered (735 Ill. Comp. Stat. 5/12-108(a) (2010)). However, the limitations period to revive a judgment begins to run on the date the judgment was entered (735 Ill. Comp. Stat. 5/13-218 (2010)).

FRAUD

- **Limitations period.** The statute of limitations is five years (735 Ill. Comp. Stat. 5/13-205 (2010); *McCarter v. State Farm Mut. Auto. Ins. Co.*, 130 Ill. App. 3d 97, 100 (Ill. App. Ct. 1985)). For fraud claims brought under the Consumer Fraud and Deceptive Business Practices Act, see *Consumer Protection Statutes*.
- **Accrual date.** The statute of limitations period accrues on the date the plaintiff becomes aware or should be aware of its injury (see *Joyce v. Morgan Stanley & Co.*, 538 F.3d 797, 803 (7th Cir. 2008); see also *In re Gaslight Club, Inc.*, 167 B.R. 507, 518 (Bankr. N.D. Ill. 1994)).

FRAUDULENT CONCEALMENT

- **Limitations period.** The statute of limitations is five years (735 Ill. Comp. Stat. 5/13-215 (2010)).
- **Accrual date.** The statute of limitations period accrues on the date the fraudulent concealment was or should have been discovered through ordinary diligence (735 Ill. Comp. Stat. 5/13-215 (2010)).

INSURANCE BAD FAITH

- **Limitations period.** The statute of limitations is two years (735 Ill. Comp. Stat. 5/13-215 (2010)).
- **Accrual date.** The statute of limitations period accrues either:
 - on the date the insurer’s breach occurred; or
 - when the plaintiff learns that coverage was denied.



(*State Farm Fire & Cas. Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 566 (Ill. App. Ct. 2009); *Indiana Ins. Co. v. Machon & Machon, Inc.*, 324 Ill. App. 3d 300, 304 (Ill. App. Ct. 2001)).

For more information on insurance bad faith claims, see *Practice Note, Insurance Bad Faith Law*.

NEGLIGENCE

- **Limitations period.** The statute of limitations is:
 - two years for personal injury claims (735 Ill. Comp. Stat. 5/13-202 (2010)); and
 - five years for property claims (735 Ill. Comp. Stat. 5/13-205 (2010)).
- **Accrual date.** The statute of limitations period accrues on the date the injury occurs (*Del Bianco v. American Motorists Ins. Co.*, 73 Ill. App. 3d 743, 747 (Ill. App. Ct. 1979)).

PRODUCTS LIABILITY

- **Limitations period.** The statute of limitations is:
 - five years for claims related to property damage (735 Ill. Comp. Stat. 5/13-205 (2010)); and
 - two years for personal injury claims (735 Ill. Comp. Stat. 5/13-202 (2010)).

Where the discovery rule is invoked, the plaintiff must commence her action within two years after the date she first knew, or should have known, of the existence of the personal injury, death or property damage alleged but not more than eight years after the personal injury, death or property damage occurred (735 Ill. Comp. Stat. 5/13-213(d) (2010)). Typically, the discovery rule applies in cases where the plaintiff is exposed to a harmful substance, but does not experience any ill effects until many years later. However, even if a products liability claim is started within the applicable two- or five-year limitations period, it may still be untimely if it is not started within the outermost time limit allowed under Illinois's statute of repose (see *Box, Special Rules and Exceptions: Products Liability Statute of Repose*).

- **Accrual date.** The statute of limitations period accrues on the date the property damage or personal injury occurs (*Golla v. Gen. Motors Corp.*, 167 Ill. 2d 353, 360 (Ill. 1995)). However, Illinois's discovery rule provides that the limitations period for certain product-related claims does not accrue until the date the plaintiff first knew, or should have known, of the injury (735 Ill. Comp. Stat. 5/13-213(d) (2010)).

SHAREHOLDER DERIVATIVES SUITS

- **Limitations period.** Shareholder derivative suits are equitable in nature (see *Mann v. Kemper Fin. Cos.*, 247 Ill. App. 3d 966, 974 (Ill. App. Ct. 1992)). Therefore, there is no statute of limitations that applies to them (see *Conway v. Connors*, 101 Ill. App. 3d 121, 126 (Ill. App. Ct. 1981)). However, a defendant

may invoke the affirmative defense of laches to prevent a claimant from pursuing a claim she unreasonably neglected or delayed to pursue to the disadvantage of the defendant.

- **Accrual date.** There is no statute of limitations that applies to shareholder derivative suits.

THIRD-PARTY CONTRIBUTION

- **Limitations period.** The statute of limitations is two years (735 Ill. Comp. Stat. 5/13-204(a), (b) and (e) (2010); *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349 (Ill. App. Ct. 1998)).
- **Accrual date.** The statute of limitations period accrues:
 - on the date of payment on the claim where the underlying action is not for an injury or death to a person or property (735 Ill. Comp. Stat. 5/13-204(a) (2010));
 - whichever occurs later between the service of process in the underlying lawsuit and when the party knew or should reasonably have known of the claim (735 Ill. Comp. Stat. 5/13-204(b) (2010); see also *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 450 (Ill. 2005)); or
 - for medical malpractice lawsuits, when the claimant knew or should have known of the malpractice (735 Ill. Comp. Stat. 5/13-212 (2010)).

TORTIOUS INTERFERENCE WITH CONTRACT RIGHTS

- **Limitations period.** The statute of limitations is five years (735 Ill. Comp. Stat. 5/13-205 (2010); *Federal Signal Corp. v. Thorn Automated Sys., Inc.*, 295 Ill. App. 3d 762, 765–66 (Ill. App. Ct. 1998)).
- **Accrual date.** The statute of limitations period accrues on the date the contract was breached (*Federal Signal Corp. v. Thorn Automated Sys., Inc.*, 295 Ill. App. 3d 762, 766 (Ill. App. Ct. 1998)).

TRADE SECRET MISAPPROPRIATION

- **Limitations period.** The statute of limitations is five years (765 Ill. Comp. Stat. 1065/7 (2010)).
- **Accrual date.** The statute of limitations period accrues when the misappropriation is discovered or should have been discovered through reasonable diligence (765 Ill. Comp. Stat. 1065/7 (2010)). Under Illinois law a continuing misappropriation constitutes a single claim (765 Ill. Comp. Stat. 1065/7 (2010)).

TRADEMARK INFRINGEMENT

- **Limitations period.** No statute of limitations directly applies to claims brought under Illinois's Trademark Registration and Protection Act (Trademark Act) (see *Superior Paintless Dent Removal, Inc. v. Superior Dent Removal, Inc.*, 454 F. Supp. 2d

769, 772 (N.D. Ill. 2006)). However, Illinois courts look to the Lanham Trademark Act to determine whether Trademark Act claims are timely (765 Ill. Comp. Stat. 1036/90 (2010); *Superior Paintless Dent Removal, Inc.*, 454 F. Supp. 2d at 772). The timeliness of Lanham Act claims is governed by the doctrine of laches (see *Flentye v. Kathrein*, 485 F. Supp. 2d 903, 916 (N.D. Ill. 2007)). To determine whether Lanham Act claims are barred by laches, Illinois courts generally consider the three-year statute of limitations applicable to claims brought under the Illinois Consumer Fraud and Deceptive Business Practices Act (see *Chattanooga Mfg., Inc. v. Nike, Inc.*, 301 F.3d 789, 793–95 (7th Cir. 2002); *Flentye*, 485 F. Supp. 2d at 916; *Superior Paintless Dent Removal, Inc.*, 454 F. Supp. 2d at 772; *Nissan Motor Co., Ltd. v. BMW (US) Holding Corp.*, No. 02-C-1245, 2002 WL 31426654, at *2 (N.D. Ill. Oct. 28, 2002)).

- **Accrual date.** No statute of limitations directly applies to claims brought under the Trademark Act (but see *Consumer Protection Statutes*).

UNFAIR COMPETITION

- **Limitations period.** Under Illinois's Consumer Fraud and Deceptive Business Practices Act, which has largely replaced common law unfair competition claims, the limitations period is three years (815 Ill. Comp. Stat. 505/10a(e) (2010)).
- **Accrual date.** Claims under the Consumer Fraud and Deceptive Business Practices Act accrues when the plaintiff suffers an injury (*Gredell v. Wyeth Labs., Inc.*, 346 Ill. App. 3d 51, 57 (Ill. App. Ct. 2004)).

UNJUST ENRICHMENT

- **Limitations period.** The statute of limitations is five years (735 Ill. Comp. Stat. 5/13-205 (2010); *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742 (Ill. App. Ct. 1995)).
- **Accrual date.** Generally, the statute of limitations period accrues on the date when the injury could have been discovered through appropriate diligence (see *Burns Philp Food, Inc. v. Cavalea Continental Freight, Inc.*, 135 F.3d 526, 528 (7th Cir. 1998)).

WRONGFUL DEATH AND SURVIVAL

- **Limitations period.** The statute of limitations is two years for wrongful death claims (740 Ill. Comp. Stat. 180/2 (2010)). For survival actions brought on behalf of a decedent, the limitations period is the later of:
 - the expiration of the limitations period for the underlying claim; or
 - one year from the date of the decedent's death.
- **Accrual date.** The limitations period for a wrongful death claim generally accrues on the date of the decedent's death (740 Ill. Comp. Stat. 180/2 (2010)). The one-year time period for the decedent's personal representative to start a survival claim accrues on the date of the decedent's death (735 Ill. Comp. Stat. 5/13-209(a)(1) (2010); *Wolfe v. Westlake Cmty. Hosp.*, 173 Ill. App. 3d 608, 611 (Ill. App. Ct. 1988)).

SPECIAL RULES AND EXCEPTIONS

Illinois has special rules and exceptions that may toll or otherwise affect any of the statutes of limitations described previously. Depending on the cause of action and facts of the case, one or more of the following rules may affect the running of the statute of limitations.

DISCOVERY RULE

Certain limitations periods may be extended by a common law or statutory discovery rule, under which a plaintiff's cause of action does not accrue until she knows or through reasonable diligence should have known of an injury and that the injury was wrongfully caused (see *Clay v. Kuhl*, 727 N.E.2d 217, 223 (Ill. 2000); see also *Joseph A. Ruth v. The Paul Revere Life Ins. Co.*, No. 08 C 50102, 2010 WL 3527561, at *2 (N.D. Ill. Sept. 2, 2010)).

FRAUDULENT CONCEALMENT RULE

If the defendant fraudulently conceals a cause of action from the plaintiff, the plaintiff may begin her action at any time within five years after she discovers that she has a cause of action (735 Ill. Comp. Stat. 5/13-215 (2010)).

EQUITABLE TOLLING

Equitable tolling stops a statute of limitations from running under certain unfair circumstances, such as when the:

- Defendant has actively misled the plaintiff.
- Plaintiff has been prevented from asserting her rights in some extraordinary way.
- Plaintiff has mistakenly asserted her rights in the wrong forum.

(*Clay v. Kuhl*, 727 N.E.2d 217, 223 (Ill. 2000).)

CLASS ACTION TOLLING

The start of a class action in Illinois state court may toll the applicable statute of limitations during the pendency of the class action for all asserted members of the class who would have been parties had the suit continued as a class action (see *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 342 (Ill. 1977)). However, Illinois courts do not toll the limitations period where the previous class action began in a federal court (see *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102, 1104–05 (Ill. 1998)).



SPECIAL RULES AND EXCEPTIONS (CONT.)

PENDING OR RECENTLY TERMINATED GOVERNMENT LAWSUIT

Whenever the attorney general brings a lawsuit under the Illinois Antitrust Act or the Consumer Fraud and Deceptive Business Practices Act, the running of the statute of limitations for private lawsuits based on any matter complained of in the Attorney General's suit must be suspended while the attorney general's lawsuit is ongoing and for one year after that lawsuit is terminated (740 Ill. Comp. Stat. 10/7(2) (2010); 815 Ill. Comp. Stat. 505/10a(e); see also 815 Ill. Comp. Stat. 510/1 (2010)).

WARRANTY

If an action for breach of warranty is commenced within four years after the breach, but is terminated in a way that leaves available a remedy by another action for the same breach, a second action may start after the expiration of the initial limitations period. But, this second action must start within six months after the first action was terminated, unless the termination resulted from voluntary discontinuance or dismissal for failure to prosecute (810 Ill. Comp. Stat. 5/2-725(3) (2010)).

DEFENDANT'S ABSENCE FROM THE STATE

The running of the statute of limitations may be tolled for the time after the cause of action accrues that the defendant:

- Resides outside of Illinois.
- Is not subject to jurisdiction in Illinois.

(735 Ill. Comp. Stat. 5/13-208 (2010).)

PRODUCTS LIABILITY STATUTE OF REPOSE

Even if a products liability claim is brought within the applicable two- or five-year limitations period (see *Products Liability*), it still may be time-barred under Illinois's statute of repose. Under the statute of repose, a products liability action may not be brought after the earliest of:

- 12 years from the date the defective product was first sold, leased or delivered by a seller.
- Ten years from the date the defective product was first sold, leased or delivered to its initial user, consumer or other non-seller.
- Ten years from the date the product was altered (if the plaintiff's injury was caused by a product alteration).

(735 Ill. Comp. Stat. 5/13-213(b), (c)(2) (2010).) However, a products liability claim may be brought after this time if the seller expressly warranted the product for a longer period and the action is brought within that period (735 Ill. Comp. Stat. 5/13-213(b), (c)(2) (2010)).

For example, if a plaintiff purchased a new car in 1995, was injured in a car accident in 2010 when her car accelerated unexpectedly, and sued the car manufacturer in 2011 to recover damages for her personal injuries, her claim would be timely under Illinois's two-year statute of limitations. However, the plaintiff's claim would be barred by Illinois's statute of repose (assuming the manufacturer did not offer a 16-year warranty) because she purchased her car more than ten to 12 years before filing suit.

The statute of repose applies differently where the limitations period is governed by the discovery rule (735 Ill. Comp. Stat. 5/13-213(d) (2010); see also *Products Liability* (discussing the discovery rule)). In these situations, the plaintiff may file suit within two years of discovering her injury if both the:

- Injury occurred sometime within the ten to 12 years set out by chapter 735, act 5, sections 13-213(b) and (c)(2) of the Illinois Compiled Statutes.
- Suit is filed no later than eight years after the date on which the injury occurred.

For example, consider a situation where the plaintiff purchases an over-the-counter (OTC) drug in 2002 and takes the drug as directed for several years. In 2010, the plaintiff begins feeling ill, and is diagnosed later that year with a disease that has just been linked to usage of the OTC drug. The plaintiff sues the drug manufacturer in Illinois in 2011. The plaintiff's claim may be timely under the discovery rule because it was brought within two years of the date she discovered her injury. In addition, the suit was brought within ten to 12 years of the drug's first sale or purchase, or both. However, depending on when her injury occurred, her suit may nevertheless be barred by the statute of repose. If the manufacturer proves that the plaintiff contracted the disease in 2002 even though she did not experience any symptoms until 2010, her suit would be untimely because it was started more than eight years after the injury occurred.

EXTENSION OWING TO DISMISSAL OF PREVIOUS SUIT

Where a plaintiff starts an action, but her claims are dismissed ultimately, the plaintiff may begin a new action within the greater of:

- One year of dismissal.
- The remaining period of limitation.

(735 Ill. Comp. Stat. 5/13-217 (2010).)

This rule applies whether or not the time limitation for bringing a later action has expired during the pendency of the first action (735 Ill. Comp. Stat. 5/13-217 (2010)).

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