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## Statute of Limitations on Accessibility Claims

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Design and construction is full of challenges and complexities, and unintended errors or minor defects are almost certain. When these problems are discovered, we may hear that complaints are not permitted because the state statute has expired. However, in some industries, it's critical to cover these liabilities after construction is complete – during this period called the statute of limitation, or statute of repose. Both statutes set limits on how long after construction completion a complaint can be filed. An entire industry has been created to offer exotic insurance products that address these issues.

A big departure from this is federal accessibility legislation like the Fair Housing Act – FHA or Americans with Disabilities Act – ADA. Standard statutes and many insurance policies that govern construction defects don't apply because damage can occur to an individual many years after project completion. Further, legislation like the ADA requires owners to retroactively address accessibility barriers at their projects on an ongoing basis. Finally, complaints can emerge from many sources that allege discrimination stemming from problems in the original design of the project, from construction that does not comply with accessibility requirements, or from renovations that introduce new accessibility barriers.

While designers may work diligently to avoid accessibility issues, it's common for otherwise code compliant designs to still have latent accessibility problems. Designers are tasked to understand and implement a variety of elaborate and conflicting requirements, only one of which is accessibility compliance. Unfortunately, many are not well versed on this topic. While a design may be otherwise code compliant, the intricacies of construction can introduce problems into a project due to a lack of tolerance, material or installation variability, or not following the myriad of accessibility requirements imposed on projects.

During operations, newly created barriers that reduce accessibility may trigger future complaints. These may be the result of renovations that impose new obstacles (increased slope of newly poured concrete, higher thresholds from new doors, cane hazards from new countertops or mailboxes, etc.). While the original installation may have been compliant, the renovated condition adds a barrier to accessibility.

Some laws like the FHA extend liability beyond the Owner to include the Contractor and the Architect. Claims against these groups can come years after the standard statute of limitations has expired leaving them exposed to liability.

Because accessibility is difficult terrain, managing the risks associated with potential accessibility issues should start very early in the design phase and continue into construction. Design reviews and construction audits can help identify issues before they become liabilities. Identifying accessibility issues as they arise during operations and addressing them quickly is critical to avoiding claims and expensive legal battles. Regular accessibility audits can determine if renovations, project changes, or new equipment may have introduced new accessibility issues that need to be remediated.

Building One has years of experience helping Owners, Investors, Designers, and Contractors identify and manage accessibility issues at all stages of property development, construction, and operations before they become expensive liabilities. Design reviews, construction audits, and as-built surveys are all important tools to assess accessibility risk and help define solutions to mitigate that risk.