

4394

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. CANESTRARI, ORTIZ -- Multi-Sponsored by -- M. of
A. COOK, JOHN, LATIMER, McENENY -- read once and referred to the
Committee on Higher Education

AN ACT to amend the civil practice law and rules, in relation to provid-
ing a statute of limitations for certain actions against professional
engineers, architects, landscape architects, land surveyors and
construction contractors and to repeal section 214-d, subdivision (h)
of rule 3211 and subdivision (i) of rule 3212 of the civil practice
law and rules relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Statement of findings and purpose. The legislature finds
2 that (a) the open-ended and continuing liability imposed upon members of
3 the design professions and construction contractors, due to alleged
4 deficiencies relating to improvements to real property, has resulted in
5 an unfair burden on such professionals and a general increase in the
6 cost of both public and private improvements to real property, (b) the
7 cost of maintaining adequate insurance coverage is so expensive that a
8 significant number of design professionals and construction contractors
9 are forced to forego insurance coverage altogether to the detriment of
10 the public's safety and welfare. The legislature further finds that the
11 best designed and constructed improvement is dependent upon proper main-
12 tenance to preserve its integrity and safety and it is thus of impor-
13 tance to the public safety and welfare to ensure than an owner maintains
14 and repairs that which is the property of the owner. The legislature
15 therefore finds that it is necessary and desirable to establish a time
16 limit after which tort claims for personal injury or wrongful death may
17 not be asserted against such professionals and contractors. That statute
18 of repose set forth herein, with a claim accruing on the date that the
19 improvement was completed, will preserve the liability of the profes-
20 sional and contractor during a period in which the defects, if any, will

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 be revealed, and therefore will establish an appropriate limit on
2 liability, while affording adequate protection to the public.

3 S 2. Section 214-d of the civil practice law and rules is REPEALED and
4 a new section 214-d is added to read as follows:

5 S 214-D. LIMITATIONS ON CERTAIN ACTIONS AGAINST PROFESSIONAL ENGI-
6 NEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, LAND SURVEYORS OR CONSTRUCTION
7 CONTRACTORS. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS
8 SECTION, NO ACTION TO RECOVER DAMAGES FOR INJURY TO THE PERSON OR FOR
9 WRONGFUL DEATH OR FOR DAMAGE TO PROPERTY NOR ANY ACTION FOR CONTRIBUTION
10 OR INDEMNITY FOR DAMAGES SUSTAINED ON ACCOUNT OF SUCH INJURY OR WRONGFUL
11 DEATH OR DAMAGE TO PROPERTY ARISING FROM ANY DEFECT IN THE STRUCTURE OR
12 IMPROVEMENT RESULTING FROM THE DESIGN, PLANNING, OR SUPERVISION OF
13 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY SHALL BE BROUGHT AGAINST
14 A PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR
15 OR CONSTRUCTION CONTRACTOR MORE THAN TEN YEARS AFTER THE COMPLETION OF
16 SUCH IMPROVEMENT.

17 2. IF, BY REASON OF SUCH DEFECT, AN INJURY TO THE PERSON OR AN INJURY
18 CAUSING WRONGFUL DEATH OR DAMAGES TO PROPERTY OCCURS DURING THE TENTH
19 YEAR AFTER COMPLETION, AN ACTION TO RECOVER DAMAGES FOR SUCH INJURY OR
20 WRONGFUL DEATH OR DAMAGE TO PROPERTY MAY BE BROUGHT WITHIN ONE YEAR
21 AFTER THE DATE ON WHICH SUCH INJURY OCCURRED, BUT IN NO EVENT MAY SUCH
22 ACTION BE BROUGHT MORE THAN ELEVEN YEARS AFTER THE COMPLETION OF THE
23 IMPROVEMENT.

24 3. THE LIMITATIONS PRESCRIBED BY THIS SECTION SHALL NOT APPLY TO
25 ACTIONS BROUGHT BY ONE IN CONTRACTUAL OR PROFESSIONAL PRIVITY WITH THE
26 ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR OR CONSTRUCTION
27 CONTRACTOR AND SHALL NOT BE ASSERTED BY WAY OF DEFENSE BY ANY PERSON IN
28 ACTUAL POSSESSION OR CONTROL AS OWNER, TENANT, OR OTHERWISE, OF SUCH AN
29 IMPROVEMENT AT THE TIME ANY DEFECT IN SUCH IMPROVEMENT CONSTITUTES THE
30 PROXIMATE CAUSE OF THE INJURY OR DEATH FOR WHICH IT IS PROPOSED TO BRING
31 AN ACTION.

32 4. FOR PURPOSES OF THIS SECTION AN IMPROVEMENT SHALL BE DEEMED TO BE
33 "COMPLETED" (A) WHEN, AFTER THE IMPROVEMENT HAS BEEN STARTED, A PERMA-
34 NENT CERTIFICATE OF OCCUPANCY IS ISSUED BY THE MUNICIPALITY IN WHICH THE
35 IMPROVEMENT IS SITUATED, IF SUCH IS REQUIRED OR IS ACTUALLY ISSUED
36 PURSUANT TO LAW OR REGULATION; OR (B) IF A PUBLIC IMPROVEMENT, UPON THE
37 ACCEPTANCE OF THE IMPROVEMENT BY THE OWNER, IF A CERTIFICATE OF OCCUPAN-
38 CY IS NOT REQUIRED AND HAS NOT BEEN ISSUED OR (C) ON THE EARLIER OF THE
39 FOLLOWING DATES, IF THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS
40 SUBDIVISION DO NOT APPLY (I) FOUR MONTHS PRIOR TO THE LAST DAY ON WHICH
41 MECHANIC'S LIEN, RESULTING FROM WORK PERFORMED OR MATERIALS FURNISHED
42 WITH RESPECT TO SUCH IMPROVEMENT, CAN BE FILED; OR (II) UPON THE OWNER'S
43 FINAL PAYMENT FOR SERVICES RENDERED OR MATERIALS SUPPLIED WITH RESPECT
44 TO SUCH IMPROVEMENT.

45 5. AN ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL
46 MEAN A PERSON LICENSED OR REGISTERED AS AN ARCHITECT, ENGINEER, LAND-
47 SCAPE ARCHITECT OR LAND SURVEYOR, PURSUANT TO THE PROVISIONS OF THE
48 EDUCATION LAW OR ANY PARTNERSHIP OR CORPORATION LAWFULLY PERFORMING
49 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL OR SURVEYING
50 SERVICES.

51 S 3. Subdivisions 4 and 5 of section 214 of the civil practice law and
52 rules, as separately amended by chapters 485 and 682 of the laws of
53 1986, are amended to read as follows:

54 4. an action to recover damages for an injury to property except as
55 provided in [section] SECTIONS 214-c AND 214-D;

1 5. an action to recover damages for a personal injury except as
2 provided in sections 214-b, 214-c, 214-D and 215;
3 S 4. Subdivision (h) of rule 3211 and subdivision (i) of rule 3212 of
4 the civil practice law and rules are REPEALED.
5 S 5. Nothing contained in this act shall be construed as affecting
6 rights, obligations or duties arising under any contract entered into or
7 any cause of action resulting from an injury which occurred prior to the
8 effective date of this act.
9 S 6. This act shall take effect on the first of January next succeed-
10 ing the date on which it shall have become a law and shall apply to all
11 actions commenced on or after its effective date.