

Enrolled
House Bill 2434

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to actions involving improvements to real property; creating new provisions; and amending ORS 12.135 and 12.280.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 12.135 is amended to read:

12.135. (1) An action against a person **by a plaintiff who is not a public body**, whether in contract, tort or otherwise, arising from *[such]* **the** person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from *[such]* **the** person having furnished *[the]* design, planning, surveying, architectural or engineering services for *[such]* **the** improvement, *[shall]* **must** be commenced *[within]* **before the earliest of:**

(a) The applicable period of limitation otherwise established by law;

(b) *[but in any event such action shall be commenced within 10]* **Ten** years *[from]* **after** substantial completion or abandonment of *[such]* **the** construction, alteration or repair of *[the improvement to real property]* **a small commercial structure, as defined in ORS 701.005, a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS 701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that is owned or maintained by an association of unit owners, as defined in ORS 100.005; or**

(c) **Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure, as defined in ORS 701.005, other than a large commercial structure described in paragraph (b) of this subsection.**

(2) **An action against a person by a public body, whether in contract, tort or otherwise, arising from the person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from the person having furnished design, planning, surveying, architectural or engineering services for the improvement, must be commenced not more than 10 years after substantial completion or abandonment of such construction, alteration or repair of the improvement to real property.**

[(2)] (3) Notwithstanding *[subsection]* **subsections (1) and (2)** of this section, an action against a person for the practice of architecture, as defined in ORS 671.010, the practice of landscape architecture, as defined in ORS 671.310, or the practice of engineering, as defined in ORS 672.005, to recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising *[from]* **out of** the construction, alteration or repair of any improvement to real property shall be commenced within two years *[from]* **after** the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered; but in any event the action shall be commenced within 10 years *[from]* **after**

substantial completion or abandonment of the construction, alteration or repair. **This subsection applies to actions brought by any person or public body.**

[(3)] (4) For purposes of this section[.]:

(a) **“Public body” has the meaning given that term in ORS 174.109; and**

(b) “Substantial completion” means the date when the contractee accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

[(4)] (5) For [the] purposes of this section, an improvement to real property shall be considered abandoned on the same date that the improvement is considered abandoned under ORS 87.045.

[(5)] (6) This section[:]

[(a) Applies, in addition to other actions, to actions brought in the name of the state or any county or other public corporation therein, or for its benefit; and]

[(b)] does not apply to actions against any person in actual possession and control of the improvement, as owner, tenant or otherwise, at the time such cause of action accrues.

SECTION 2. ORS 12.280 is amended to read:

12.280. Notwithstanding ORS 12.135 [(1)] or any other statute of limitation, an action against a person for the practice of land surveying, as defined in ORS 672.005, to recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising out of the survey of real property must be commenced within two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered. In no event may an action arising out of a survey be commenced more than 10 years after the date on which any map prepared by the land surveyor is filed under the provisions of ORS 209.250, or, if no map is filed, more than 10 years after the completion of work on the survey.

SECTION 3. The amendments to ORS 12.135 and 12.280 by sections 1 and 2 of this 2009 Act apply only to causes of action arising on or after the effective date of this 2009 Act.

Passed by House May 4, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 22, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State