

# LexisNexis Practice Guide on Florida Civil Procedure

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Overview

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## I. OVERVIEW

**3.01 Scope.** This chapter covers:

- Pleading the statute of limitations [*see* 3.03].
- Distinction between statutes of limitations, statutes of repose, and laches [*see* 3.03].
- Statutes of limitations for various causes of action [*see* 3.05–3.13].
- The statute of repose [*see* 3.12].

★ **Core Statutes:** Fla. Stat § 55.204; § 61.021; § 65.071; §§ 68.081 and 68.089; § 85.051; § 95.011, *et seq.*; §§ 760.11 and 760.35; § 772.17; 46 U.S.C.S. App. §§ 688 and 763a.

☞ **Judicial Note:** Generally, the practitioner will see a statute of limitations defense with greater frequency than statutes of repose or laches. Taking a case without carefully verifying that the case falls within the statute of limitations is hazardous. It is hazardous because the practitioner is exposed to an almost certain legal malpractice claim. Therefore, focus should always be on framing the complaint to fall within the statute of limitations.

### 3.02 Master Checklist.

- Determine the true date of the injury or damage causing event.
  - From complaint.
  - From the client.
  - If there are discrepancies between complaint's allegation and client's information, investigate and resolve the issue.
- Determine the cause of action alleged in the complaint.
- Determine the applicable statute of limitation or repose.

**Discussion:** 3.04–3.13 and 3.15.
- If representing the defendant**, then compare the filing date of the complaint against the statute of limitation date.
  - If the complaint was:

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- Timely filed, then file an answer presenting all available defenses.
- If the complaint appears to have not been timely filed, then file an answer and also file:
  - A motion to dismiss or a motion for judgment on the pleadings (if the bar of the statute of limitation affirmatively appears on the face of the complaint); or
  - A motion for summary judgment (if matters outside of the complaint will be required to establish the limitation date).  
**Discussion:** 3.03.
- If the complaint appears to have not been timely filed, then determine by investigation or discovery, if the statute was tolled for any reason.  
**Discussion:** 3.11
- If the statute of limitations is a viable defense be sure to plead it in the answer, as it may be waived if not so pled.  
**Discussion:** 3.03
- If representing the plaintiff:**
  - If the statute of limitations, including any periods when it may have been tolled, has not expired, file the action before the expiration of the statute of limitations.
  - If the statute of limitations has expired, politely decline the case and send the client a letter explaining why you are declining the case.

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## II. UNDERSTANDING THE STATUTES OF LIMITATIONS AND REPOSE

### 3.03 Pleading the Statute of Limitations as a Defense..

#### 3.03[1] Checklist.

- Determine the true date of the injury or damage causing event.
  - From complaint.
  - From the client.
  - If there are discrepancies between complaint's allegation and client's information, investigate and resolve the issue.
- Determine the cause of action alleged in the complaint.
- Determine the applicable statute of limitation or repose.  
**Discussion:** 3.04–3.15.
- Compare the filing date of the complaint against the statute of limitation date.
- If the complaint was:
  - Timely filed, then file an answer presenting all available defenses.
  - Not timely filed, then file an answer and also file:
    - A motion to dismiss or a motion for judgment on the pleadings (if the bar of the statute of limitation affirmatively appears on the face of the complaint); or
    - A motion for summary judgment (if matters outside of the complaint will be required to establish the limitation date).  
**Discussion:** 3.03.
- If the statute of limitations is a viable defense be sure to plead it in the answer, as it may be waived if not so pled.  
**Discussion:** 3.03

**3.03[2] Necessity of Pleading the Defense.** Statute of limitations, statute of repose, and laches are affirmative defenses which

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must be specifically pled (Rule 1.140(h), Fla. R. Civ. P.; and Rule 8(c), Fed. R. Civ. P.).

▶ **Cross Reference:** For further discussion on this issue, *see* Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

**3.03[3] Waiver of Defense.** If statute of limitations, statute of repose or laches, is not pled in the answer it can be deemed to have been waived. *See* Proctor v. Schomberg, 63 So. 2d 68 (Fla. 1953); SAC Constr. Co. v. Eagle Nat'l Bank, 449 So. 2d 301 (Fla. 1st DCA 1984); Arizona v. California, 530 U.S. 392, 120 S. Ct. 2304 (2000); and Trinity Carton Co. v. Falstaff Brewing Corp., 767 F. 2d 184 (5th Cir. 1985) (the principle of waiver of a defense not pled must be applied in the context of the liberal pleading and amendment policies of the Fed. R. Civ. P.).

**Strategic Point:** The argument of waiver can be negated if the issue is tried by express or implied consent. In such a situation, the defense will be treated in all respects as if it had been raised by the pleadings. *See* Rule 1.190, Fla. R. Civ. P.; Rule 15(b), Fed. R. Civ. P.; Thompson v. Gross, 353 So. 2d 191 (Fla. 3d DCA 1977); and Consolidated Data Terminals v. Applied Digital Data Systems, 708 F. 2d 385 (9th Cir. 1982). Amendment should be allowed, even where the evidence is objected to at trial, if the objecting party is not prejudiced in maintaining its action or defense. *See* C.A. Oakes Constr. Co. v. Ajax Paving Indus., 652 So. 2d 914 (Fla. 2d DCA 1995).

**3.04 Distinguishing Between Statutes of Limitations, Statutes of Repose, and the Equitable Doctrine of Laches—Generally.** Statutes of limitation are distinguishable from statutes of repose. *See* Universal Engineering Corp. v. Perez, 451 So. 2d 463 (Fla. 1984). Although similar in language and purpose in that it imposes a time limit within which a civil action must be commenced, a statute of repose is not a statute of limitations.

Laches on the other hand, would serve as a bar to a lawsuit if there was an unfair delay in asserting a right. This could be true even if it is filed within the statute of limitations. The factors in a laches defense are: 1) the defendant's conduct gives rise to the complaint; 2) the plaintiff's failure to file suit after notice of the defendant's

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conduct; 3) the defendant's lack of knowledge that the plaintiff will assert a right by filing suit, and 4) injury or prejudice to the defendant if the plaintiff gets relief. *Greene v. Bursley*, 733 So. 2d 1111 (Fla. 4th DCA 1999).

● **Warning:** Unlike a statute of limitations, a statute of repose abolishes the cause of action, not just the remedy available to the plaintiff, upon expiration of the limitation period specified in the statute of repose. *See Carr v. Broward County*, 541 So. 2d 92 (Fla. 1989).

**Strategic Point:** The statute of repose begins to run not from the accrual of a cause of action, but rather from a fixed event (e.g., the date of the installation of a product), which is unrelated to the accrual of the cause of action. *See Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

☞ **Judicial Note:** Unlike a statute of limitations, a statute of repose starts running from a fixed event. For example, from the time a product is delivered into the stream of commerce, or, when a project is completed. Therefore, services of an architect or contractor would become immune from suit after the deadline of the statute of repose.

### ★ Core Cases:

**Lead:** *Corinthian Invest., Inc. v. Reeder*, 563 So. 2d 631 (Fla. 1990) (laches is statutory, but can still be applied under equitable principles to bar an action which commenced within the applicable statute of limitations).

**Related:** *Carr v. Broward County*, 541 So. 2d 92 (Fla. 1989) (statutes of limitations are distinguished from so-called short, special, nonclaim, or administrative statutes of limitations under which claims of deceased persons must be presented).

▶ **Cross Reference:** For further discussion on this issue, *see* *Juan Ramirez, Jr.*, 1 *Florida Civil Procedure* § 2-5(b).

## 3.05 Applying Statutes of Limitations of Actions—General Principles.

### 3.05[1] Checklist.

- Determine the date that the cause of action accrued and apply the appropriate statute of limitations; or determine the date of the triggering event and apply the appropriate statute of repose.

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- If necessary, plead the defense of statute of limitations or repose, as the case may be, or amend the answer to raise this defense.
- Prepare a motion for summary judgment raising this defense and any others that are applicable and as to which there is no genuine dispute as to any material fact.

**3.05[2] Computation of Time.** Computation of time with regard to statutes of limitations as to causes of action arising under Florida law are governed by Fla. Stat. § 95.031. A “cause of action accrues when the last element constituting the cause of action occurs” when computing whether the statute of limitations has expired or not (Fla. Stat. § 95.031(1)). There are, however, as in most statutory schemes exceptions.

Actions founded upon fraud under Fla. Stat. § 95.11(3), including constructive fraud, must be begun within the prescribed time “with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence.”

However, a statute of repose for fraud claims also exists. Thus, an action for fraud under § 95.11(3) “must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered” (Fla. Stat. § 95.031(2)(a)).

Products liability actions have a set of special rules which apply to them as well. The time period in the statute of limitations begins “running from the date that the facts giving rise to the cause of action were discovered, or should have been discovered with the exercise of due diligence” (Fla. Stat. § 95.031(2)(b)).

There is, however, a statute of repose included in that statute, which applies to products liability action. “Under no circumstances may . . . an action [be commenced] for products liability, . . ., to recover for harm allegedly caused by a product with an expected useful life of 10 years or less, if the harm was caused by exposure to or use of the product more than 12 years after delivery of the product to its first purchaser or lessee who

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was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. All products, except [certain listed products which have their own statutes of repose], are conclusively presumed to have an expected useful life of 10 years or less” (Fla. Stat. § 95.031(2)(b)).

▶ **Cross Reference:** For further discussion on this issue, see Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

**3.05[3] Contractual Provisions Shortening a Statute of Limitations.** “Any provision in a contract fixing the period of time within which an action arising out of the contract may be begun at a time less than that provided by the applicable statute of limitations is void” (Fla. Stat. § 95.03).

➡ **Judicial Note:** The statutes of limitations serve as a constraint on Florida’s constitutional guarantee of access to courts. While judges generally have no discretion to deny a dismissal of an action that was filed too late, they are not unsympathetic to the potential hardship this may create and, where they have the option, they will try to exercise it in favor of affording the right of access to courts contained within Article I, Section 21, of the Florida Constitution. See *Watkins v. Gilbride Heller & Brown, P.A.*, 754 So. 2d 759, 763 (Fla. 3d DCA 2000) (Sorondo, J., *concurring*). From a judge’s point of view, a case filed at the last minute does not inspire much confidence in the merits of the cause. Thus, a litigant ought to file the case as soon as it becomes clear that a presuit settlement is unlikely.

**3.06 Applying Statutes of Limitations Generally to Actions *ex contractu* or in *assumpsit*.** In general contract actions are governed by two statutes of limitation, these are contained in Fla. Stat. § 95.11(2)(b) and Fla. Stat. 95.11(3)(p). Section 95.11(2)(b) provides that any “legal or equitable action on a contract, obligation, or liability founded on a written instrument” has a five year statute of limitations, except for payment bonds, which are separately covered. See 3.07[7].

Section 95.11(3)(p) provides a four year statute of limitations on all actions “not specifically provided for in these statutes.” This governs such actions *quantum meruit*. See *Moneyhun v. Vital Indus.*, 611 So. 2d 1316 (Fla. 1st DCA 1993).

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**☞ Judicial Note:** Because of the differing statutes of limitation for contracts and *quantum meruit*, a litigant should always attempt to state a cause of action under both theories of recovery. This strategy also increases the likelihood of recovery. Conversely, a defendant should not hesitate to attempt to dismiss an untimely cause of action simply because another theory was timely filed. A dismissal of even one count in the complaint reduces the probability of a recovery for the plaintiff.

★ **Core Case:** *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So. 2d 818 (Fla. 1996) (period begins to run from the date of breach of the contract, not date of the contract).

**Strategic Point:** Section 95.11(3)(k) provides a four year statute of limitations for all actions founded upon a “contract, obligation, or liability not founded on a written instrument, including an action for the sale and delivery of goods, wares, and merchandise, and on store accounts.” Thus, an action on an “open account” is governed by this section, *see Hawkins v. Barnes*, 661 So. 2d 1271 (Fla. 5th DCA 1995), as is an action for money lent. *See also Wassil v. Gilmour*, 465 So. 2d 566 (Fla. 3d DCA 1985).

♦ **Cross Reference:** For further discussion on this issue, *see* Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

### 3.07 Finding Statutes of Limitations for Specific Actions *ex contractu* or *in assumpsit*.

#### 3.07[1] Checklist.

- Determine the type of contractual claim with which you are dealing—e.g., oral or written or implied (as in quantum counts).
- Then determine and then specifically whether it falls within any of the specific statute of limitations categories in this section.
- Determine the beginning date of the applicable statute of limitations.
  - **If representing the defendant**, file an appropriate motion and pleading. *See* 3.02, Master Checklist.
  - **If representing the plaintiff**, accept the case and get a complaint filed in a timely manner, or politely decline the case.

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**3.07[2] Equitable Lien, Enforcement of.** An action to “enforce an equitable lien arising from the furnishing of labor, services, or material for the improvement of real property” is governed by the one year statute of limitations in Fla. Stat. § 95.11(5)(b). An action to enforce an equitable lien is a *quasi in rem* action and the statute of limitations is tolled when an action to enforce the lien is filed against the property.

● **Warning:** Subsequent transfers of the property did not cause the statute of limitations to begin running anew even if the party was not joined in the pending litigation. *Westburne Supply, Inc. v. Community Villas Partners, Ltd.*, 508 So. 2d 431 (Fla. 1st DCA 1987).

### 3.07[3] Judgment, Enforcement of.

**3.07[3][a] Domestic.** Actions founded upon a judgment rendered by a “court of record” in the State of Florida are governed by a twenty year statute of limitations (Fla. Stat. § 95.11(1)).

Note that actions founded upon a judgment rendered by a “court, not of record” in the State of Florida are governed by a five year statute of limitations (Fla. Stat. § 95.11(2)(a)).

★ **Core Case:** *Nadd v. Le Credit Lyonnais*, 804 So. 2d 1226 (Fla. 2001) (once a foreign judgment is registered, 20 year statute of limitations applicable to Florida judgments applies).

**Strategic Point:** The life of the judgment can be extended by bringing a new action on the judgment under Florida law. If the statute of limitations period has not yet run on the original judgment, the judgment creditor can start the limitation period anew by bringing an action upon the judgment and obtaining a new judgment. *Marsh v. Patchett*, 788 So. 2d 353 (Fla. 3d DCA 2001).

▶ **Cross Reference:** For further discussion on this issue, see *Juan Ramirez, Jr.*, 1 *Florida Civil Procedure* § 2-5(a).

➡ **Judicial Note:** The 20 year limitation period set forth in Fla. Stat. § 95.11(1) can also apply to actions seeking to enforce a foreign judgment if that judgment has been

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domesticated in Florida pursuant to the applicable statutes. *See* New York State Dept. of Taxation v. Patafio, 829 So. 2d 314, 317 (Fla. 5th DCA 2002).

● **Warning:** A judgment of the U.S. District Court for the District of Florida, which was not recorded as a lien, was treated as a foreign judgment subject to the five year, instead of 20 year, statute of limitations. *Kiesel v. Graham*, 388 So. 2d 594 (Fla. 1st DCA 1980).

**3.07[3][b] Foreign.** Actions founded upon a judgment rendered by any court of another state or territory, or foreign country are governed by a five year statute of limitations (Fla. Stat. § 95.11(2)(a)).

☰ **Judicial Note:** The statute of limitations of a foreign judgment may be increased to twenty years by domesticating that judgment, i.e., recording it in the office of the clerk of the circuit court of any county. *See* Fla. Stat. § 55.503.

★ **Core Case:** *Nadd v. Le Credit Lyonnais*, 804 So. 2d 1226 (Fla. 2001) (once a foreign judgment is registered, 20 year statute of limitations applicable to Florida judgments applies).

● **Warning:** Partial payments on a foreign judgment do not toll the statute of limitations for filing an action to enforce it. *Quaintance v. Fogg*, 392 So. 2d 360 (Fla. 2d DCA 1981).

◆ **To search Florida judgment and lien filings:**

[Florida](#)> [Filings](#)> **FL Judgment and Lien Filings**

- Click on the New Search above and enter a search for the name of the individual, e.g., *name(john /3 doe)*.

◆ **To search judgment and lien filings from across the nation:**

[Public Records](#)> [Public Records](#)> [Judgments & Liens](#)> [Combined Judgments & Liens](#)> **Combined Judgment and Lien Filings**

**3.07[4] Letter of Credit, Enforcement of.** An action to enforce rights under Uniform Commercial Code as to a letter of credit

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is governed by the one year statute of limitations in Fla. Stat. § 95.11(5)(c).

**3.07[5] Lien, Enforcement of.** “When there has been no record of a notice of lien, action to enforce a lien (if it exists without such record) must be brought within 12 months from the accrual of the unpaid rent, the performance of the work, or the furnishing of the materials, and if there has been such record, the action must be brought within 12 months from the time of such record” (Fla. Stat. § 85.051).

 **Judicial Note:** A practitioner who is not very familiar with mechanic’s lien law should be very reticent to file or defend such an action. It has been my experience that this area of the law can be a minefield for the uninitiated.

**3.07[6] Money Paid by Mistake to Government.** A four year statute of limitations controls actions “for money paid to any governmental authority by mistake or inadvertence” (Fla. Stat. § 95.11(3)(m)).

★ **Core Case:** *Sartori v. Department of Revenue*, 714 So. 2d 1136 (Fla. 5th DCA 1998) (statute applied to declaratory judgment action for refund of taxes where taxpayer challenged county’s classification of property for valuation purposes).

**3.07[7] Mortgage Foreclosure.** An action to judicially foreclose a mortgage must be brought within five years (Fla. Stat. § 95.11(2)(c)). However, where the mortgage and the note which it secures do not contain an acceleration clause, the mortgage does not mature for statute of limitations purposes until there is a default in the final payment by the mortgagor. *See Conner v. Coggins*, 349 So. 2d 780 (Fla. 1st DCA 1977).

★ **Core Case:** *Locke v. State Farm Fire & Casualty Co.*, 509 So. 2d 1375 (Fla. 1st DCA 1987) (time does not begin until last unpaid payment was due, if mortgagee did not accelerate the remaining payments until filing suit).

**Strategic Point:** Where the mortgage and the note which it secures do not contain an acceleration clause, the mortgage does not mature for statute of limitations purposes until

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there is a default in the final payment by the mortgagor. *Conner v. Coggins*, 349 So. 2d 780 (Fla. 1st DCA 1977).

● **Warning:** This statute does not apply to the assignee of a mortgage originally given to an agency of the United States. It is pre-empted by 28 U.S.C.S. § 2415. *LLP Mortg., Ltd. v. Cravero*, 851 So. 2d 897 (Fla. 4th DCA 2003).

➡ **Judicial Note:** Mortgage foreclosures are equitable proceedings and the parties are required to come into court with clean hands. *See Carroll & Associates, P.A. v. Galindo*, 864 So. 2d 24, 30 (Fla. 3d DCA 2003). Judges feel a special obligation to “do equity” in these actions.

**3.07[8] Negligence.** While negligence, or trespass on the case, is technically a cause of action *ex delicto*, it frequently comes into play in contracts for service, especially building contracts. For various, valid, tactical and/or strategic reasons, the practitioner may want to include a claim of negligent performance of contractually assumed or imposed duties, in addition to or instead of just a claim for breach of contract. For negligence actions, there is a four year limitations period which is prescribed by Fla. Stat. § 95.11(3)(a).

➡ **Judicial Note:** A negligently performed contractual obligation may run afoul of the economic loss rule. *See Juan Ramirez, Jr.*, 1 *Florida Civil Procedure* § 7-6(a). Many cases become bogged down at the motion stage when a plaintiff has filed a multi-count complaint that includes “the kitchen sink.” This strategy may frighten a defendant into settling, but it will not move the case expeditiously to trial.

**3.07[9] Payment Bond, Action on.** An action on a payment bond issued to a contractor, subcontractor, or sub-subcontractor is subject to a one year statute of limitations. The time begins to run from the date of “the last furnishing of labor, services, or materials or from the last furnishing of labor, services, or materials by the contractor, if the contractor is the principal on a bond on the same construction project, whichever is later” (Fla. Stat. § 95.11(5)(e)).

**3.07[10] Rescission, Action for.** An action for the rescission of a contract must be brought within four years (Fla. Stat. § 95.11(3)(l)).

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**3.07[11] Specific Performance, Action for.** An action for the specific performance of a contract must be brought within one year [Fla. Stat. § 95.11(5)(a)].

★ **Core Case:** *Orlando v. Williams*, 493 So. 2d 15 (Fla. 5th DCA 1986) (time begins to run from breach of the contract).

**Strategic Point:** The statute of limitations for injunction proceedings is extended to five years if the contractual provision sought to be enforced is negative in nature and injunction relief is the proper remedy. *See Fla. Stat. § 95.11(2)(b). Pond Apple Place III Condo. Ass'n v. Russo*, 841 So. 2d 526 (Fla. 4th DCA 2003).

● **Warning:** This applies to a time barred claim for specific performance which is brought as a compulsory counterclaim in a pending action. *See Rybovich Boat Works, Inc. v. Atkins*, 585 So. 2d 270 (Fla. 1991).

**3.07[12] Wages, and Penalties Related to Non-Payment of Wages.** Actions “to recover wages or overtime or damages or penalties concerning payment of wages and overtime” are governed by a two year statute of limitations (Fla. Stat. § 95.11(4)(c)).

**Note:** The court distinguishes salary from wages. Hence, a claim for an unpaid bonus was not subject to this limitation because an unpaid bonus is considered to be unpaid “salary” instead of unpaid “wages.” *Nealon v. Right Human Resource Consultants*, 669 So. 2d 1120 (Fla. 3d DCA 1996).

Similarly, a claim for unpaid commissions was subject to the four year statute of limitations in Fla. Stat. § 95.11(3)(k), instead of the one year limitation of Fla. Stat. § 95.11(4)(c). The court ruled that commissions did not fit the definition of wages under Florida law. *See Iamaio v. Kite*, 531 So. 2d 400 (Fla. 2d DCA 1988).

### 3.08 Applying Statutes of Limitations Generally to Actions *ex delicto*.

In general, tort actions are governed by three statutes of limitations. The four year limitations period is prescribed by Fla. Stat. § 95.11(3)(a) for negligence actions, Fla. Stat. § 95.11(3)(o) governs for “any other intentional tort,” and Fla. Stat. § 95.11(3)(p) governs for “any action not specifically provided for in these statutes.”

Some exceptions are:

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### Invasion of Privacy

Fla. Stat. § 95.11(3)(p) governs actions for invasion of privacy. *Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001).

### Inverse Condemnation

Actions for inverse condemnation are also subject to Fla. Stat. 95.11(3)(p). *Sarasota Welfare Home v. City of Sarasota*, 666 So. 2d 171 (Fla. 2d DCA 1995).

### City Resolution/Ordinance

As to a **city's resolution or ordinance**, the four year statute begins to run from the date of passage for an action challenging such resolution or ordinance. *Keenan v. City of Edgewater*, 684 So. 2d 226 (Fla. 5th DCA 1996).

### Implied Warranty of Habitability

An action for breach of the implied warranty of habitability is governed by the limitation period in Fla. Stat. § 95.11(3)(p). *Elizabeth N. v. Riverside Group, Inc.*, 585 So. 2d 376 (Fla. 1st DCA 1991).

▶ **Cross Reference:** For further discussion on this issue, *see* Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

## 3.09 Finding Statutes of Limitations for Specific Actions *ex delicto*.

### 3.09[1] Checklist.

- If representing the plaintiff,
  - Determine if the cause of action falls within any of the specified actions listed herein below, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, then the catch-all statute of limitations of four years in Fla. Stat. 95.11(3)(p) should be utilized.
  - If the statute has expired, determine if the limitations period has been tolled for any reason (*See* 3.13). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case.
  - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely action on behalf of the client.

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- **If representing the defendant,**
    - Determine if the cause of action falls within any of the specified actions listed herein below, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, then the catch-all statute of limitations of four years in Fla. Stat. 95.11(3)(p) should be reviewed for applicability.
    - If the statute has expired, determine if the limitations period has been tolled for any reason (*See* 3.15). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case. Then file an appropriate motion and pleading. *See* 3.02, Master Checklist.
    - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely answer and any applicable motions on behalf of the client.
- ⚖️ Judicial Note:** It is also important for the litigants not to neglect pre-filing considerations and conditions precedent. The statute of limitations must be examined in conjunction with pre-filing considerations, such as the notice of claim required by Fla. Stat. § 768.28(6) (requiring a notice of action on any claim against the state or one of its agencies or subdivisions). *See* Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 1-2(c).
- If a plaintiff has filed an action that has failed to comply with this notice requirement, or any other pre-filing requirement, the defendant should raise the issue at the first opportunity rather than risk the argument that the issue has been waived. [The defense must be raised with sufficient specificity to alert the plaintiffs to the existence of a possible Fla. Stat. § 768.28 problem. *See* *Casanova v. Department of Children & Family Services*, 840 So. 2d 1123, 1125 (Fla. 3d DCA 2003).
  - If the plaintiff still has time remaining before the expiration of the statute of limitations, it may seek to correct the deficiency and re-file the action. If the

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limitations period has expired, however, the failure to comply with the pre-filing requirement will be fatal to the cause of action. The waiver comes into play when the defendant fails to raise the defect until it is too late for the plaintiff to cure it.

**3.09[2] Abuse, or Incest.** “An action founded on alleged abuse, as defined in [Fla. Stat.] § 39.01, § 415.102, or § 984.03, or incest, as defined in [Fla. Stat.] § 826.04, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later” (Fla. Stat. § 95.11(7)).

➡ **Judicial Note:** The law gives great flexibility in meeting the sexual abuse statute of limitations requirements. The law carved out a “discovery” or “blameless ignorance” doctrine. Therefore, if a party “discovers” the abuse many years later through psychotherapy, a complaint can withstand a statute of limitations or laches defense.

The practitioner can, through careful screening and investigation, proceed with a sexual abuse claim if the plaintiff files an action within four years from the discovery of the abuse.

★ **Core Case:** *Hearndon v. Graham*, 767 So. 2d 1179 (Fla. 2000) (delayed discovery doctrine postponed the accrual of sexual abuse cause of action).

▶ **Cross Reference:** For further discussion on this issue, see *Juan Ramirez, Jr.*, 1 *Florida Civil Procedure* § 2-5(a).

● **Warning:** Section 95.11(7) was held to not operate so as to revive a dead or time-barred action under the previously applicable statute of limitations. See *Boyce v. Cluett*, 672 So. 2d 858 (Fla. 4th DCA 1996).

Neither § 95.11(7), which extended the limitations period for certain abuse-related torts, nor the continuing tort doctrine applied because the victim knew that she had been the victim of abuse and incest and that she had suffered damages, even

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though she may not have been aware of the full extent of her injuries until after undergoing psychotherapy. *See* Tobin v. Damian, 772 So. 2d 13 (Fla. 4th DCA 2000).

➡ **Judicial Note:** Efforts to expand the delayed discovery doctrine to other causes of action have been unsuccessful. *See* Davis v. Monahan, 832 So. 2d 708 (Fla. 2002).

**3.09[3] Assault.** Assault actions must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

**3.09[4] Battery.** Battery actions must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

**3.09[5] Conversion.** The tort commonly known as conversion, which was called trover at common law, has a four year statute of limitations. Fla. Stat. § 95.11(3)(h) provides for that period for actions “for taking, detaining, or injuring personal property.”

★ **Core Case:** Neff v. General Development Corp., 354 So. 2d 1275 (Fla. 2d DCA 1978) (statute of limitations starts when the personalty has been damaged).

● **Warning:** An oral promise to return the property does not extend the statute of limitations for an action “for taking, detaining, or injuring personal property.” Renault v. Greer, 448 So. 2d 536 (Fla. 2d DCA 1984).

**3.09[6] Design, Planning or Construction of Improvements to Real Property.** Claims against contractors, engineers, architects, etc. in “action founded on the design, planning, or construction of an improvement to real property,” is governed by a four year statute of limitations (Fla. Stat. § 95.11(3)(c)).

**Note:** Under § 95.11(3)(c), “the time run[s] from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence.

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In any event, the action must be commenced within 15 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest." Thus, the statute also contains a 15 year statute of repose.

### ★ Core Cases:

**Lead:** *Almand Constr. Co. v. Evans*, 547 So. 2d 626 (Fla. 1989) (knowledge of structural defect, but not cause of it, started the statute of limitations).

**Related:** *Wambles v. Amrep Southeast, Inc.*, 568 So. 2d 125 (Fla. 5th DCA 1990) (even where the certificate of occupancy is issued, but not filed, other factors can exist which trigger the beginning of the statute of repose in § 95.11(3)(c)).

**Related:** *Alexander v. Suncoast Builders*, 837 So. 2d 1056 (Fla. 3d DCA 2002) (where the contractor promised to correct the roof leaks the statute did not begin to run until the contractor abandoned the project. Abandonment occurred when the last promise to return and correct the leaks was not fulfilled).

➡ **Judicial Note:** In *Snyder v. Wernecke*, 813 So. 2d 213 (Fla. 4th DCA 2002), the court draws a distinction between actions covered by Fla. Stat. § 95.11(3)(c), which governs actions founded on the "design, planning, or construction" of an improvement to real property, and actions covered by Fla. Stat. § 95.11(3)(j), which are founded on fraud. The court states that the latter statute contains no repose period. Some judges disagree.

This is because the court cites no authority for this conclusion and does not quote the language of the statute of repose, which is Fla. Stat. § 95.031(2)(a). That statute provides that "in any event an action for fraud under § 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered." Thus, the justification

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for treating actions filed under subsection (c) any different than those filed under subsection (j). They are all based on Fla. Stat. § 95.11(3).

### ◆ To search Florida real property records:

Legal> States Legal—U.S.> Florida> Public Records> Real Property Locator> **FL Deed Transfers, Tax Assessor Records and Mortgage Records—Selected Counties**

- Enter a search for the name of the individual, e.g., *name(john /3 doe)* OR for the property address, e.g., *address(123 main and smithtown)*.

**3.09[7] Detinue.** The common law torts known as detinue and replevin, which are for the recovery of chattels in specie have a four year statute of limitations. Fla. Stat. § 95.11(3)(h) provides for that period for actions “for taking, detaining, or injuring personal property.”

★ **Core Case:** *Neff v. General Development Corp.*, 354 So. 2d 1275 (Fla. 2d DCA 1978) (statute of limitations starts when the personalty has been damaged).

● **Warning:** An oral promise to return the property does not extend the statute of limitations for an action “for taking, detaining, or injuring personal property *See Renault v. Greer*, 448 So. 2d 536 (Fla. 2d DCA 1984).

**3.09[8] False Arrest.** Actions for false arrest must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

★ **Core Case:** *Diaz v. Metro-Dade Police Dep’t*, 557 So. 2d 608 (Fla. 3d DCA 1990) (cause of action for false arrest accrues when false arrest occurs).

**3.09[9] False Imprisonment.** Actions for false imprisonment must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

★ **Core Case:** *Diaz v. Metro-Dade Police Dep’t*, 557 So. 2d 608 (Fla. 3d DCA 1990) (cause of action for false imprisonment accrues when false arrest occurs).

**3.09[10] Fraud.** Actions for fraud must be commenced within four years (Fla. Stat. § 95.11(3)(j)).

☞ **Judicial Note:** Fraud carries a four year statute of limitations from the time the cause of action is discovered. Yet,

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even if the statute of limitations has not expired, laches may be a viable defense. Therefore, once fraud is discovered, suit should be filed as soon as practicable. *Donovan v. Armour & Co.*, 33 So. 2d 601 (Fla. 1948).

★ **Core Case:** *Puchner v. Bache Halsey Stuart, Inc.*, 553 So. 2d 216 (Fla. 3d DCA 1989) (whether the plaintiff should have known that he had a cause of action for fraud is ordinarily a jury question).

**Strategic Points:** This statute does not have a period of repose for fraud actions. *See Snyder v. Wernecke*, 813 So. 2d 213 (Fla. 4th DCA 2002).

For example, the statute of limitations on fraud was renewed each time a policyholder paid a premium on life insurance policies that the insurer had represented as retirement plans. Actions brought within two years after last premium was paid were within limitations period. *See Lopez-Infante v. Union Cent. Life Ins. Co.*, 809 So. 2d 13 (Fla. 3d DCA 2002).

● **Warnings:** The statute of limitations for fraud cases related to real estate issues can vary. For example, a commercial tenant sued the property owner for fraud in connection with the making of the lease of over five years after the Department of Transportation (DOT) informed the owner that the property was to be condemned. The court ruled that the cause of action did not accrue until all elements were present, and a determination as to when the tenant incurred legally cognizable damages was dispositive of the statute of limitations issue. The time began when the tenant received actual notice of the pending condemnation, which was much earlier than the actual taking of his leased property. It was immaterial that not all the damages resulting from property owner's alleged fraud had then been sustained. *See Hynd v. Ireland*, 582 So. 2d 772 (Fla. 4th DCA 1991).

In another instance, a mortgagee brought an action for deficiency and to foreclose. The mortgagor's counterclaim for fraud was barred by the statute of limitations. However, the mortgagor was entitled as an affirmative defense to

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reduce the aggregate unpaid balance of the mortgages after the fraud was rectified by reduction of the unpaid balance. *See* *Hilsenroth v. Kessler*, 446 So. 2d 147 (Fla. 3d DCA 1983).

**3.09[11] Intentional Torts—Other.** Actions for “any other intentional tort” must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

**Strategic Point: Abuse of Process** is covered by this catchall limitations period. *See* *Blue v. Weinstein*, 381 So. 2d 308 (Fla. 3d DCA 1980).

● **Warning: Retaliatory Discharge** actions brought pursuant to Fla. Stat. § 440.205 are not subject to the four year limitations period in Fla. Stat. § 95.11(3)(o), but the two year statute of limitations for “wages” in Fla. Stat. § 95.11(4)(c). *See* *Otis Elevator Co. v. Scott*, 524 So. 2d 642 (Fla. 1988).

**3.09[12] Libel.** Actions for libel must be brought within two years (Fla. Stat. § 95.11(4)(g)).

**Strategic Point:** An action for false light invasion of privacy is not subject to the defamation two year statute of limitations in Fla. Stat. § 95.11(4)(g). Instead, it was subject to the four year statute of limitations for torts not otherwise specified applied in Fla. Stat. § 95.11(3)(p). *See* *Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001).

**3.09[13] Malicious Interference.** Actions for malicious interference must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

★ **Core Case:** *Zimmerman v. D.C.A. at Welleby, Inc.*, 505 So. 2d 1371 (Fla. 4th DCA 1987) (action is also called intentional or tortious interference with business or contractual relations).

➡ **Judicial Note:** With this cause of action, the practitioner may be able to circumvent the strict four year statute of limitations. To do so, an ongoing tortious interference during the course of a contract must be pleaded, provided the last interference occurred within four years.

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**3.09[14] Malicious Prosecution.** Actions for malicious prosecution must be commenced within four years (Fla. Stat. § 95.11(3)(o)).

**3.09[15] Malpractice—Generally.** Fla. Stat. § 95.11(4)(a) provides a two year statute of limitations for: “An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.”

**⚖️ Judicial Note:** Unlike medical malpractice, which has a statute of repose of seven years, no other professional enjoys the benefit of a statute of repose. Thus, all professionals benefit from a two-year limitations period, but with professionals, other than medical doctors, the limitations period is open-ended, as it runs “from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.”

In the context of a lawyer malpractice action, the two year statute of limitations does not start until the case has been resolved by the Florida Supreme Court (if timely review is sought). Therefore, a statute of limitations defense will be defeated even if the malpractice occurred more than two years from the occurrence. *Gilbride, Heller & Brown, P.A. v. Watkins*, 783 So. 2d 224 (Fla. 2001). Thus, final is not final until the Florida Supreme Court, upon a timely filed review, says that it is final. The underlying rationale is to provide certainty and reduce litigation concerning when the statute of limitations starts to run.

**3.09[15][a] Accountants.** The statute of limitations for a claim of malpractice against an accountant is triggered on the date the tax court enters judgment against a taxpayer. *See Peat, Marwick, Mitchell & Co. v. Lane*, 565 So. 2d 1323 (Fla. 1990).

**3.09[15][b] Appraisers.** Appraisers are not “professionals” for the purpose of the two year statute of limitations in Fla.

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Code § 95.11(a)(4). Actions against appraisers are governed by the four year general negligence statute of limitations in Fla. Stat. § 95.11(3)(a).

**3.09[15][c] Architects.** The question of architect malpractice in terms of when the statute of limitations tolls is a question for the jury.

★ **Core Case:** School Board Of Seminole County v. GAF Corp., 413 So. 2d 1208 (Fla. 5th DCA 1982) (when the property owner discovered the defect because the owner relied on the architect to oversee and remedy the defect was a jury question).

**3.09[15][d] Attorneys.** The statute of limitations for attorney malpractice does begin to toll until all underlying issues are resolved.

★ **Core Cases:**

**Lead:** Gilbride, Heller, & Brown, P.A. v. Watkins, 783 So. 2d 224 (Fla. 2001) (statute of limitations does not begin to run until underlying issue has been finally concluded, which includes all post-judgment matters up to and including a timely filed petition for review).

**Related:** Brooke v. Shumaker, Loop & Kendrick, LLP, 828 So. 2d 1078 (Fla. 2d DCA 2002) (client's malpractice action based on a law firm's bad advice was not barred by the two-year statute of limitations of Fla. Stat. § 95.11(4)(a), as the statute began to run on a later date of when the injury was discovered and not the earlier date of the law firm's advice).

**Related:** Beach Higher Power Corp. v. Rekant, 832 So. 2d 831 (Fla. 3d DCA 2002) (where an attorney maintained that he had not been acting as a corporation's counsel at the time of a loan consolidation and was only representing his family's interests, the attorney could not be considered the corporation's attorney, and the two year limitations period for professional malpractice in Fla. Stat. § 95.11(4)(a) did not control).

**3.09[15][e] Engineers.** Action by an engineer not in privity is not governed by two year statute of limitations, but four

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year general negligence statute of limitations. *Baskerville-Donovan Engineers, Inc. v. Pensacola Executive House Condominium Association*, 581 So. 2d 1301 (Fla. 1991). *See also Stuyvesant Ins. Co. v. Square D. Co.*, 399 So. 2d 1102 (Fla. 3d DCA 1981).

**3.09[15][f] Insurance Agents.** Because no degree in any field is required to sell insurance, an insurance agent is not a professional for purposes of the professional malpractice statute of limitations. The four-year statute of limitations as provided in § 95.11(3)(a) and (k), applies to this action. (*Hardy Equipment Co. v. Travis Cosby & Associates, Inc.*, 530 So. 2d 521 (Fla. 1st DCA 1988)).

**3.09[15][g] Land Surveyors.** Land surveyors are not “professionals”; thus, § 95.11(4)(a) does not apply to actions against surveyors for errors in surveys (*Garden v. Frier*, 602 So. 2d 1273 (Fla. 1992)).

**3.09[15][h] Pharmacists.** Two year statute of limitations controls actions against pharmacists for malpractice, also products liability action against pharmacy for mislabeling a prescription (*Sheils v. Jack Eckerd Corp.*, 560 So. 2d 361 (Fla. 2d DCA 1990)).

**3.09[16] Medical and Dental Malpractice.** Medical and dental malpractice actions are governed by a two year statute of limitations and a seven year statute of repose. An “action for medical malpractice” is defined as a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care (Fla. Stat. § 95.11(4)(b)).

“An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued, except that this 4-year period shall not bar an action brought on behalf of

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a minor on or before the child's eighth birthday" (Fla. Stat. § 95.11(4)(b)).

"The limitation of actions within this subsection shall be limited to the health care provider and persons in privity with the provider of health care. In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury the period of limitations is extended forward 2 years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed 7 years from the date the incident giving rise to the injury occurred, except that this 7-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. This paragraph shall not apply to actions for which [Fla. Stat.] ss. 766.301–766.316 provide the exclusive remedy" [Fla. Stat. § 95.11(4)(b)].

 **Judicial Note:** Under the Medical Malpractice Act, Fla. Stat., §§ 766 *et seq.*, there are several requirements that must be met before filing suit. Failure to follow the statute will be fatal if the statute of limitations has run. For example, failure to provide statutory expert corroboration until after the statute of limitations has run will result in dismissal. *Central Florida Regional Hosp. v. Hill*, 721 So. 2d 404 (Fla. 5th DCA 1998).

### ★ Core Cases:

**Lead:** *Cates v. Graham*, 451 So. 2d 475 (Fla. 1984). (Fla. Stat. § 95.11(4)(b) was constitutional).

**Related:** *Hillsborough Community Mental Health Ctr. v. Harr*, 618 So. 2d 187 (Fla. 1993) (statute of limitations commenced either when plaintiff had notice of negligent act or when plaintiff had knowledge of the injury and of reasonable possibility that injury was caused by medical malpractice).

**Related:** *Mangoni v. Temkin*, 679 So. 2d 1286 (Fla. 4th DCA 1996)(the two year statute of limitations for medical malpractice in Fla. Stat. § 95.11(4)(b) was tolled in medical malpractice action by the physicians' failure to disclose a patient's condition. The fact that the failure to disclose

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also formed the basis of the action did not prevent the tolling).

● **Warnings:** The term “concealment” as used in Fla. Stat. § 95.11(4)(b) (which extends the four-year statute of repose for medical malpractice actions to seven years when fraud or concealment prevented discovery of the injury) does not encompass negligent diagnosis by a medical provider, because the doctor and medical laboratories had no knowledge of the fact of the wrong done to the plaintiff’s decedent, they could not conceal what they did not know. *See* *Nehme v. Smithkline Beecham Clinical Labs., Inc.*, 863 So. 2d 201 (Fla. 2003).

The statute of repose for initiation of a medical malpractice action is tolled by the application of other statutory requirements of Fla. Stat. § 766.106(4), and Fla. Stat. § 766.104(2) which mandate reasonable investigation and notice of intent to initiate litigation. *See* *Musculoskeletal Inst., Chtd. v. Parham*, 745 So. 2d 946 (Fla. 1999).

☞ **Judicial Note:** The procedural traps in medical malpractice cases are numerous. *See* *Juan Ramirez, Jr.*, 1 *Florida Civil Procedure* Chapter 27. In medical malpractice cases, not only do you have to deal with a short limitations period of two years, but also an elaborate pre-suit investigation procedure which has defeated many otherwise meritorious lawsuits. The pre-suit procedure also contains tolling provisions on the statute of limitations. The statute of repose is generally four years, except where the plaintiff can show that the medical professional actively concealed the negligence, in which case the limitations period is extended to seven years.

It would be highly inadvisable for an inexperienced lawyer to undertake the representation of someone injured by medical malpractice. The procedural pitfalls are only part of the problem. The court costs associated with bringing such an action make it extremely expensive to pursue through the various stages, such as filing, discovery, trial, and finally appeal. By the same token, an inexperienced lawyer should not undertake the defense of a medical malpractice case because the financial exposure of the client is generally enormous.

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◆ **Cross Reference:** Juan Ramirez, *Florida Civil Procedure*, Chapter 27.

**3.09[17] Negligence.** Actions based on negligence, or trespass on the case, have a four year limitations period which is prescribed by Fla. Stat. § 95.11(3)(a).

★ **Core Case:** *Sandford v. Manatee County*, 769 So. 2d 1084 (Fla. 2d DCA 2000) (when property owners knew that there was a problem with erosion and that damages had occurred, their claim against the county accrued).

◆ **Cross Reference:** For further discussion on this issue, see Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

**3.09[18] Products Liability.** Products liability actions have a four year statute of limitations. Fla. Stat. § 95.11(3)(e) applies to all actions for an “injury to a person founded on the design, manufacture, distribution, or sale of personal property that is not permanently incorporated in an improvement to real property, including fixtures.” There is also a statute of repose for products liability actions, which is either 12 years for products with a useful life of 10 years or less, or 20 years otherwise (Fla. Stat. § 95.031(b)).

★ **Core Cases:**

**Lead:** *Pullum v. Cincinnati, Inc.*, 458 So. 2d 1136 (Fla. 1st DCA 1984) (the statute of repose is constitutional).

**Related:** *Celotex Corp. v. Copeland*, 471 So. 2d 533 (Fla. 1985) (in an asbestos case the cause accrued when plaintiff’s symptoms manifested themselves so as to supply the causal link).

*Nissan Motor Co. v. Phlieger*, 508 So. 2d 713 (Fla. 1987) (the fact that the products liability action was facially barred under the 12 year statute of repose under Fla. Stat. § 95.031(2)(b) did not entitle the manufacturer to dismissal on statute of repose grounds because the statute of repose had not expired when the cause of action, for wrongful death, accrued).

● **Warning:** Fla. Stat. § 95.031(b) does not apply to wrongful death actions where liability is premised upon a products liability claim. Rather, the wrongful death statute of

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limitations of two years in Fla. Stat. § 95.11(4)(d) applies. *See Nissan Motor Co. v. Phlieger*, 508 So. 2d 713 (Fla. 1987).

**3.09[19] Replevin.** The common law torts known as detinue and replevin, which are for the recovery of chattels in specie have a four year statute of limitations. Fla. Stat. § 95.11(3)(h) provides for that period for actions “for taking, detaining, or injuring personal property.”

★ **Core Case:** *Neff v. General Development Corp.*, 354 So. 2d 1275 (Fla. 2d DCA 1978) (statute of limitations starts running when the personalty has been damaged).

● **Warning:** An oral promise to return the property does not extend the statute of limitations for an action “for taking, detaining, or injuring personal property.” *See Renault v. Greer*, 448 So. 2d 536 (Fla. 2d DCA 1984).

**3.09[20] Slander.** Actions for slander must be brought within two years (Fla. Stat. § 95.11(4)(g)).

★ **Core Cases:**

**Lead:** *Musto v. Bell South Telecomms. Corp.*, 748 So. 2d 296 (Fla. 4th DCA 1999) (tort of “**credit slander**,” the two year limitations period commences when credit report is issued).

**Related:** *Callaway Land & Cattle Co. v. Banyon Lakes C. Corp.*, 831 So. 2d 204 (Fla. 4th DCA 2002) (permissive counterclaim for **slander of title** is subject to the limitations period in Fla. Stat. § 95.11(4)(g)).

● **Warning:** An action for false light invasion of privacy is not subject to the defamation two year statute of limitations in Fla. Stat. § 95.11(4)(g). Instead, it is subject to the four year statute of limitations for torts not otherwise specified applied in Fla. Stat. § 95.11(3)(p). *See Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001).

**3.09[21] Trespass.** Trespass to real property actions are subject to a four year statute of limitations (Fla. Stat. § 95.11(3)(g)).

Trespass to chattel has a four year statute of limitations pursuant to Fla. Stat. § 95.11(3)(h) which provides for that

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period for actions “for taking, detaining, or injuring personal property.”

The date of accrual of the plaintiff’s trespass and nuisance causes of action depends upon whether the condition causing the injury is permanent or temporary. If it is permanent, the statute of limitations begins to run on the date that the culvert is damaged. If it is temporary, the plaintiff has a new cause of action each time his or her property is flooded. *See* Carlton v. Germany Hammock Groves, 803 So. 2d 852 (Fla. 4th DCA 2002).

● **Warning:** If the property owner retracts permission to use the property, the statute of limitations period does not begin until after the retraction of permission. *See* Garden St. Iron & Metal, Inc. v. Tanner, 789 So. 2d 1148 (Fla. 2d DCA 2001).

**3.09[22] Wrongful Death.** Wrongful death actions are governed by a two year statute of limitations (Fla. Stat. § 95.11(4)(d)).

A wrongful death action against the state or any of its agencies is governed by the four year statute of limitations in Fla. Stat. § 768.28(14), instead of the wrongful death two year statute of limitations in Fla. Stat. § 95.11(4)(d). *See* Dubose v. Auto-Owners Ins. Co., 387 So. 2d 461 (Fla. 1st DCA 1980).

● **Warnings:** Where the personal injury claim for the condition which led to the decedent’s death has expired before his or her death, the personal representative can not use a wrongful death action to revive the expired personal injury claim. *See* Hudson v. Keene Corp., 472 So. 2d 1142 (Fla. 1985).

Fla. Stat. § 95.031(b) does not apply to wrongful death actions where liability is premised upon a products liability claim. Rather, the wrongful death statute of limitations of two years in Fla. Stat. § 95.11(4)(d) applies. *See* Nissan Motor Co. v. Phlieger, 508 So. 2d 713 (Fla. 1987).

### ★ Core Cases:

**Lead:** Bruce v. Byer, 423 So. 2d 413 (Fla. 5th DCA 1982) (wrongful death instead of medical malpractice statute of limitations applied in action predicated upon medical malpractice).

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**Related:** Pratt v. Durkop, 356 So. 2d 1278 (Fla. 2d DCA 1978) (filing of wrongful death complaint on last day of the statute of limitations period was sufficient to toll statute, even though summons was not immediately issued by clerk).

### 3.10 Locating Statutes of Limitations for Statutory Actions.

#### 3.10[1] Checklist.

- If representing the plaintiff,**
  - Determine if the cause of action falls within any of the specified actions listed herein below, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, then the catch-all statute of limitations of four years in Fla. Stat. § 95.11(3)(p) should be considered.
  - If the statute has expired, determine if the limitations period has been tolled for any reason (*see* 3.13). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case.
  - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely action on behalf of the client.
- If representing the defendant,**
  - Determine if the cause of action falls within any of the specified actions listed herein below, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, then the catch-all statute of limitations of four years in Fla. Stat. § 95.11(3)(p) should be reviewed for applicability.
  - If the statute has expired, determine if the limitations period has been tolled for any reason (*see* 3.13). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case. Then file an appropriate motion and pleading. *See* 3.02, Master Checklist.

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- If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely answer and any applicable motions on behalf of the client.

▶ **Cross Reference:** For further discussion on this issue, see Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

**3.10[2] Civil Remedies for Criminal Practices Act.** The Civil Remedies for Criminal Practices Act, Fla. Stat. § 772.101, *et seq.* has a five year statute of limitations, which can be “suspended” during the pendency of a related criminal or civil proceeding by the state or the United States, and for up to two years after the conclusion of the related proceeding [Fla. Stat. § 772.17].

★ **Core Case:** *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 2d DCA 1990) (Civil Remedies for Criminal Practices Act could be applied retroactively, but claims were properly dismissed because they were not filed within five year statute of limitations).

**3.10[3] Fair Labor Standards Act.** Minimum wage and overtime claims under the Fair Labor Standards Act, 29 U.S.C.S. § 201, *et seq.* State general jurisdiction courts have concurrent jurisdiction with the U.S. District Courts (29 U.S.C.S. § 216(b)). The statute of limitations for such actions is two years (29 U.S.C.S. § 216(b) and § 255(a)).

★ **Core Cases:**

**Lead:** *Redman v. U.S. West Bus. Resources*, 153 F.3d 691 (8th Cir. 1998) (whether F.L.S.A. violation is continuing, depends upon whether a present violation exists).

**Related:** *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324 (E.D. Pa. 1984) (the doctrine of equitable tolling is read into 29 U.S.C.S. § 255, and employer’s failure to post statutorily required FLSA notice about minimum wages and overtime pay rights equitably tolled running of statute of limitations).

**Strategic Point:** In order to justify the tolling of the statute of limitations in an F.L.S.A. action, the plaintiff must either show that employer had concealed its acts with result that plaintiff was unaware of their existence, or that the injury

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was inherently unknowable at accrual date. *See* Udvari v. United States, 28 Fed. Cl. 137, 1993 U.S. Claims LEXIS 11, 125 Lab. Cas. (CCH) P35,798, 1 Wage & Hour Cas. 2d (BNA) 591 (U.S. Ct Fed. Claims 1993).

● **Warning:** The F.L.S.A. statute of limitations is not tolled during the period of an investigation by the Labor Department's Wage and Hour Division, since investigation does not prevent filing of the complaint. *See* Shandelman v. Schuman, 92 F. Supp. 334 (D.C. Pa. 1950).

**3.10[4] Federal Civil Rights Actions Under 42 U.S.C.S. § 1983 and § 1985.** Actions under the Civil Rights Act of 1871, 42 U.S.C.S. § 1983, *et seq.* can be maintained in a state court of general jurisdiction or in the U.S. District Court, as they have concurrent jurisdiction. *See* Howlett v. Rose, 496 U.S. 356 (1990).

### ★ Core Cases:

**Lead:** City of Hialeah v. Rojas, 311 F.3d 1096 (11th Cir. 2002) (actions under § 1981, § 1983 and § 1985 are governed by four year tort statute of limitations).

**Related:** Jones v. R. R. Donnelley & Sons Co., 124 S. Ct. 594 (U.S., 2003) (four year "catch-all" statute in 28 U.S.C.S. § 1658(a) for causes arising after December 1, 1990 held to govern action under 42 U.S.C.S. § 1981 rather than shorter state statute).

Young v. Ball, 835 So. 2d 385 (Fla. 2d DCA 2003) (§ 95.11(3)(p) governs actions for a civil conspiracy).

● **Warning:** When challenging a municipal ordinance or resolution, the date of enactment or adoption is the date that triggers the statute of limitations. Heckman v. City of Oakland Park, 644 So. 2d 525 (Fla. 4th DCA 1994).

**3.10[5] Florida Civil Rights Act.** Civil actions brought pursuant to the Florida Fair Housing Act, Fla. Stat. § 760.01, *et seq.*, must be commenced within one year from the date of determination of reasonable cause by the Florida Commission on Human Relations [Fla. Stat. § 760.11(5)].

★ **Core Case:** McDowell v. School Bd., 765 So. 2d 804 (Fla. 1st DCA 2000) (where Commission took a year to issue its

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reasonable cause determination, action was timely filed when filed within one year from date of Commission's determination).

### Strategic Points:

The one-year statute of limitations period in Fla. Stat. § 760.11(5) does not apply in situations where the Florida Commission on Human Relations does not make a reasonable cause determination on a discrimination claim within the 180 day period provided by law. Instead, the four-year statute of limitations of Fla. Stat. § 95.11(3)(f) applies. *See* Ellsworth v. Polk County Bd. of County Comm'rs, 780 So. 2d 903 (Fla. 2001); Seale v. EMSA Correctional Care, Inc., 767 So. 2d 1188 (Fla. 2000); and Joshua v. City of Gainesville, 768 So. 2d 432 (Fla. 2000) (claimant not to be penalized for the agency's delay in making its decision).

The one-year statute of limitations period in Fla. Stat. § 760.11(5) does not apply in situations where the U.S. Equal Employment Opportunity Commission does not make a reasonable cause determination on a discrimination claim within the 180 day period provided by law. Instead, the four-year statute of limitations of Fla. Stat. § 95.11(3)(f) applies. *See* White v. City of Pompano Beach, 813 So. 2d 1003 (Fla. 4th DCA 2002).

When the four-year statute of limitations of Fla. Stat. § 95.11(3)(p) applies due to the inaction of the Florida Commission on Human Relations, it runs from the accrual of the cause of action and is not tolled by the administrative process. *See* Ross v. Jim Adams Ford, Inc., 871 So. 2d 312 (Fla. 2d DCA 2004).

● **Warning:** An action filed before the expiration of the 180 days allowed for action by the Commission is a nullity and is due to be dismissed. *See* Sweeney v. Florida Power & Light Co., 725 So. 2d 380 (Fla. 3d DCA 1998).

**3.10[6] Florida Fair Housing Act.** Civil actions brought pursuant to the Florida Civil Rights Act, Fla. Stat. § 760.20, *et seq.*, must be commenced within two years from the date of the "alleged discriminatory housing practice has occurred" (Fla. Stat. § 760.35(1)).

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**3.10[7] Florida False Claims Act.** Civil actions brought pursuant to the Florida False Claims Act, Fla. Stat. § 68.081, *et seq.*, must be commenced within five years after the date of making a false claim in violation of Fla. Stat. § 68.082; within two years “after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 7 years after the date on which the violation is committed, whichever occurs last” (Fla. Stat. § 68.089).

**3.10[8] State and Its Agencies, Actions Against.** When the state or its agencies are sued for negligent acts or omissions under Fla. Stat. § 768.28, there is a four year statute of limitations [Fla. Stat. § 768.28(14)]. Presumably, case law interpreting the other four year tort statutes of limitation in Fla. Stat. § 95.11(3) would be persuasive authority for questions about this act’s limitations period. *See* 3.08 and 3.09 *above*.

**3.10[9] Statutory Liability or Penalty.** Actions to collect or enforce statutory liabilities or penalties are subject to a four year statute of limitations (Fla. Stat. § 95.11(3)(n)).

★ **Core Case:** *Mosley v. State*, 363 So. 2d 172 (Fla. 4th DCA 1978) (forfeiture action brought under Florida Uniform Contraband Transportation Act, is subject to four year limitations period of Fla. Stat. § 95.11(3)(n)). Questioned by *Sawyer v. Gable*, 400 So. 2d 992 (Fla. 3d DCA 1981).

**3.10[10] Taxes, Collection of.** Proceedings to collect taxes must be brought within five years, except that actions to collect taxes enumerated in and due under Fla. Stat. § 72.011 have a twenty year limitations period (Fla. Stat. § 95.091).

## 3.11 Applying Statutes of Limitations for the Recovery of or Relating to Real Property.

### 3.11[1] Checklist.

- If representing the plaintiff,
  - Determine if the cause of action falls within any of the specified actions listed herein below, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed

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actions, then the catch-all statute of limitations of seven years in Fla. Stat. § 95.12 and § 95.014 should be considered.

- If the statute has expired, determine if the limitations period has been tolled for any reason (*see* 3.13). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case.
- If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely action on behalf of the client.
- **If representing the defendant,**
  - Determine if the cause of action falls within any of the specified actions listed herein below, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, then the catch-all statute of limitations of seven years in Fla. Stat. § 95.12 and § 95.014 should be reviewed for applicability.
  - If the statute has expired, determine if the limitations period has been tolled for any reason (*see* 3.13). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case. Then file an appropriate motion and pleading. *See* 3.02, Master Checklist.
  - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely answer and any applicable motions on behalf of the client.

**3.11[2] Adverse Possession.** Actions claiming adverse possession of real estate are subject to several seven year limitations periods. These are summarized as follows:

- [a] The person with legal title is presumed to be the owner. The occupation of the property by any other person is subordinate to the holder of legal title unless the property was “possessed adversely to the legal title for seven years

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before the commencement of the action” (Fla. Stat. § 95.13).

[b] An occupant, who entered into possession under a claim of title founded upon a written instrument recorded in the circuit clerk’s office, who continues in possession for seven years holds the property adversely (Fla. Stat. § 95.16(1)).

[c] An occupant, who entered into possession under a claim of title not founded upon a written instrument, who continues in possession for seven years and who lists the property for ad valorem taxes within one year of entering into possession holds the property adversely (Fla. Stat. § 95.18]).

Acts deemed to be possessing the property include those set out in Fla. Stat. § 95.13(2). The case law deals with what does and does not constitute sufficient evidence to prove these things.

**3.11[3] Deed, or Will, Where Either Is Recorded.** There is a 20 year statute, which operates as a statute of repose for asserting a claim to property against the persons named in a deed or will, which was properly recorded (Fla. Stat. § 95.231(2)).

★ **Core Case:** *Rigby v. Liles*, 505 So. 2d 598, 601 (Fla. 1st DCA 1987) (“Section 95.231 is not a traditional statute of limitation but rather a curative act with a limitation period”).

● **Warnings:** An action challenging a deed as being a forged deed is not subject to the 20 year statute of repose of Fla. Stat. § 95.231(2) because a forged deed is void. *See Holland v. Hattaway*, 438 So. 2d 456 (Fla. 5th DCA 1983). *See also Moore v. Smith-Snagg*, 793 So. 2d 1000 (Fla. 5th DCA 2001).

An action filed more than five years after the recording of a deed or will is time barred under Fla. Stat. § 95.231(1), unless there is clear proof of fraud. *See Glanville v. Glanville*, 856 So. 2d 1045 (Fla. 5th DCA 2003).

An action to reform a deed filed more than 20 years after the recording of the deed is time barred under Fla. Stat. § 95.231(2). *See Inglis v. First Union Nat’l Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001).

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**3.11[4] Deeds by Heirs.** Where the heirs of a deceased property owner execute a deed to the property, which deed has been properly recorded, any claim to the property is barred after seven years from the date that the deed was recorded (Fla. Stat. § 95.22(1)). However, “this section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings to determine their identity in the office of the judge administering the estate of decedent” (Fla. Stat. § 95.22(2)). *See Egger v. Egger*, 506 So. 2d 1168 (Fla. 3d DCA 1987).

★ **Core Case:** *Morgan v. Amerada Hess Corp.*, 357 So. 2d 1040 (Fla. 1st DCA 1978) (Fla. Stat. § 95.22 did not bar quiet title action brought within seven years of death of incompetent as to property sold by guardian without court approval).

**3.11[5] Deed, Tax.** When a person holds title pursuant to a tax deed, and is in actual possession of the property, actions by former owners or others adverse to the grantee in the tax deed after the holder of the deed has been in possession for four years. An action for adverse possession cannot be brought against the holder of the tax deed after four years. If a tax deed grantee has taxes assessed and pays taxes on and is in possession for four years, then any person claiming under a land patent from the United States or a conveyance from the State of Florida, which patent was issued or which conveyance occurred subsequent to the date that the tax deed grantee went into possession, such other patentee or grantee shall be presumed to have abandoned the property (Fla. Stat. § 95.191 and § 95.192).

**3.11[6] Executor’s Sales Deeds.** The title of one who has purchased real or personal property at a sale by an executor, administrator, or guardian, and who has been in possession for three years, is not subject to question because of “any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation or under a will or codicil. The title shall not be questioned at any

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time by anyone who has received the money to which he or she was entitled from the sale. This section shall not bar an action for fraud or an action against the executor, administrator, or guardian for personal liability to any heir, distributee, or ward” (Fla. Stat. § 95.21).

**3.11[7] Generally.** Actions to recover real property or its possession are barred unless commenced unless the claimant, or those claiming under him, was “seized or possessed of the property within seven years before the commencement of the action” (Fla. Stat. § 95.12). No action or defense to an action founded upon the title to real property, or to rents or service from it, shall be maintained unless the claimant, or his ancestor, predecessor, or grantor was seized or possessed of the property within seven years before the commencement of the action (Fla. Stat. § 95.14(1)), or title to the property was derived from the United States or the State of Florida within seven years before the commencement of the action (Fla. Stat. § 95.14(2)).

**3.11[8] Land Dedicated as a Park.** Where dedications of land to municipalities or counties for park purposes have been recorded for 30 years, they shall not be challenged by the person making the dedication or any other person when the land has been put to some other municipal or county use during the period of dedication or has been conveyed by the municipality or county by a deed recorded for seven years. All rights of the dedicator and all other persons in the land are terminated (Fla. Stat. § 95.36(1)).

★ **Core Case:** *Kelley v. Cocoa*, 188 So. 2d 862 (Fla. 4th DCA 1966) (after seven years with no action by ancestors to terminate estate or assert possession, title to property passed to school board by adverse possession, and that the descendants’ claim was barred).

▶ **Cross Reference:** For further discussion on this issue, see *Juan Ramirez, Jr.*, 1 *Florida Civil Procedure* § 2-5(a).

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## 3.12 Distinguishing Statutes of Limitations for Admiralty & Maritime Actions.

### 3.12[1] Checklist.

- If representing the plaintiff,**
  - Determine if the client's cause of action falls within any of the specified admiralty and maritime actions listed herein below. If it does, determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, consider a non-admiralty action under Florida state law and determine the appropriate statute of limitations. *See* 3.09.
  - If the statute has expired, determine if the limitations period has been tolled for any reason (*see* 3.13). If the statute has expired and was not tolled for any reason, then politely decline the case and send a letter to the client confirming why you declined the case.
  - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely action on behalf of the client.
- If representing the defendant,**
  - Determine if the client's cause of action falls within any of the specified admiralty and maritime actions listed, and if it does then determine what the statute of limitations is for that cause of action. If it does not fall within one of the listed actions, then consider a non-admiralty action under Florida state law, and determine the appropriate statute of limitations. *See* 3.09.
  - If the statute has expired, determine if the limitations period has been tolled for any reason (*see* 3.13). If the statute has expired then politely decline the case and send a letter to the client confirming why you declined the case. Then file an appropriate motion and pleading. *See* 3.02, Master Checklist.
  - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely answer and any applicable motions on behalf of the client.

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▶ **Cross Reference:** For further discussion on this issue, see Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

**3.12[2] Death on the High Seas Act Actions.** The Death on the High Seas Act (DOHSA), 46 U.S.C.S. App. § 761, *et seq.*, governs actions for wrongful death occurring on the high seas. Such actions are subject to a three year statute of limitations (46 U.S.C.S. App. § 763a).

★ **Core Case:** *Lambert v. Babcock & Wilcox, Co.*, 70 F. Supp. 2d 877 (S.D. Ind. 1999) (wrongful death action based seaman's exposure to asbestos while aboard naval ship was governed by 46 U.S.C.S. App. § 763a, rather than an Indiana statute of repose).

● **Warning:** A cause of action against a pilot's estate by a passenger's personal representative under DOHSA accrues at time of the probable death of the decedent, rather than at the declaration of death or the appointment of conservator. See *Phillips v. Heine*, 984 F. 2d 489, 24 Fed. R. Serv. 3d 956 (App. D.C. 1993).

**3.12[3] General Admiralty Actions.** All suits for the "recovery of damages for personal injury or death, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued" (46 U.S.C.S. App. § 763a).

★ **Core Cases:**

**Lead:** *Beckman v. Rick's Watercraft Rentals*, 719 So. 2d 1025 (Fla. 3d DCA 1998) (three year maritime statute of limitations, instead of the four year state negligence statute of limitations applied to wrongful death claim based upon operation of personal watercraft).

**Related:** *Armstrong v. Trico Marine, Inc.*, 923 F. 2d 55 (5th Cir. 1991) (claim accrues under 46 U.S.C.S. App. § 763a when plaintiff discovers or should have discovered both the injury and its cause).

**Related:** *Taurel v. Central Gulf Lines, Inc.*, 947 F. 2d 769 (5th Cir. 1991) (a statement by the plaintiff's shipmates that his problem "might" be asbestos related did not begin

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the running of the statute of limitations where no physician diagnosed plaintiff's condition and where his chest X-rays were normal until several years later).

**Related:** *Coleman v. Guy F. Atkinson Co.*, 887 F. Supp. 49 (D.C. R.I. 1995) (crane operator's personal injury action was not time-barred, because the Rhode Island Supreme Court had the authority to toll the statute of limitations upon a proper request of the plaintiff's counsel, which was based on a fire in the office of plaintiff's counsel which destroyed files. The U.S. District Court exercising removal jurisdiction accorded that tolling deference).

**3.12[4] Jones Act.** The Jones Act, 46 U.S.C.S. App. § 688, which governs actions by seamen for personal injuries in the course of their employment shares the three year general maritime statute of limitations in 46 U.S.C.S. App. § 763a. Please see the notes at 3.12[3] *above*.

★ **Core Case:** *Armstrong v. Trico Marine, Inc.*, 923 F. 2d 55 (5th Cir. 1991) (claim accrues under 46 U.S.C.S. App. § 763a when plaintiff discovers or should have discovered both the injury and its cause).

● **Warnings:** A cause of action under the Jones Act and general maritime law accrues when the plaintiff has had a reasonable opportunity to discover his injury and its cause. *See Crisman v. Odeco, Inc.*, 932 F. 2d 413 (5th Cir. 1991).

The bankruptcy of the defendant shipowner does not toll the statute of limitations in an action against the shipowner under the Jones Act and Limitations for Maritime Torts Act where the plaintiff applies for waiver of automatic stay and thereby sets clock running him or herself. *See Aslandis v. United States Lines*, 7 F. 3d 1067 (2nd Cir. 1993).

☞ **Judicial Note:** Bear in mind that Jones Act cases are relatively specialized and are generally seen in coastal areas where cruise ships operate. The statute of limitation is shorter and federal maritime law applies.

**3.13 Applying the Statute of Limitations for the Recovery of Personal Property.** Actions for the recovery of personal property must be commenced within four years (Fla. Stat. § 95.11(3)(i)).

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★ **Core Case:** *Crutchley v. Brevard County Sheriff's Office*, 688 So. 2d 371 (Fla. 5th DCA 1997) (replevin action to recover possession of property seized during execution of search warrant was barred where it was brought six years after title vested in Sheriff).

● **Warning:** The statute of limitations for the recovery of specific personal property is four years. However, the statute does not begin to run until the last element constituting a cause of action occurs pursuant to Fla. Stat. § 95.031(1). *See Auto Electric, Inc. v. Helton*, 451 So. 2d 538 (Fla. 2d DCA 1984).

### 3.14 Understanding the Tolling of the Statute of Limitations.

#### 3.14[1] Checklist.

- If representing the plaintiff,
  - After determining the client's cause of action and its applicable statute of limitations, and after determining that the statute of limitations has facially expired, inquire of the client as to any events which could have tolled that statute of limitations.
  - If the statute has expired, and it has not been tolled for any reason, then politely decline the case and send a letter to the client confirming why you declined the case.
  - If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely action on behalf of the client.
  - Make sure to plead the act(s) which tolled the statute of limitations to avoid a motion to dismiss for failure to state a claim or a motion for judgment on the pleadings. *See Fla. Dep't of Health & Rehabilitative Servs. v. S.A.P.*, 835 So. 2d 1091 (Fla. 2002).
- If representing the defendant,
  - If the statute of limitations has facially expired, and no act of tolling is alleged or apparent from the face of the complaint, file a motion to dismiss for failure to state a cause or a motion for judgment on the pleadings.

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- If the statute has facially expired, and acts which would toll the statute are pled, investigate the facts alleged to have tolled the action.
  - If the acts alleged to have tolled the statute of limitations can be easily rebutted, then file an answer and a motion for summary judgment with appropriate supporting affidavits and documents.
  - If the acts alleged to have tolled the statute of limitations cannot be easily rebutted, then file an answer and begin discovery with a goal of undermining the acts which are alleged to have tolled the statute of limitations. Once sufficient investigation and discovery have been completed, if the statute appears to have not been tolled, file a motion for summary judgment with appropriate supporting affidavits, depositions, and documents.
- If the statute, including any periods for which it may have been tolled, has not expired, then intake the case and file a timely answer and any applicable motions on behalf of the client.

‣ **Cross Reference:** For further discussion on this issue, see Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).

**3.14[2] Absence from State by Defendant.** The statute of limitations is tolled by the “absence from the state of the person to be sued” (Fla. Stat. § 95.051(1)(a)).

★ **Core Case:**

**Lead:** *Landers v. Milton*, 370 So. 2d 368 (Fla. 1979) (party seeking to escape the bar of the statute of limitations “must bear the burden of proving circumstances that would toll the statute”).

**Related:** *Abbott v. Kiser*, 654 So. 2d 640 (Fla. 4th DCA 1995)(he former husband’s absence from the United States tolled the statute of limitations as to the former wife’s action to enforce a foreign divorce judgment).

**3.14[3] Arbitration, Pendency of Proceeding.** The statute of limitations is tolled by the “pendency of any arbitral

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## Limitation of Actions

proceeding pertaining to a dispute that is the subject of the action” (Fla. Stat. § 95.051(1)(g)).

★ **Core Case:** *Glantzis v. State Auto. Mut. Ins. Co.*, 573 So. 2d 1049 (Fla. 4th DCA 1991) (where insurer suggested and insured agreed to arbitration of claim, this triggered tolling of statute of limitations pursuant to Fla. Stat. § 95.051(1)(g), and insurer was equitably estopped to assert the statute of limitations).

**3.14[4] Bankruptcy.** If a statute of limitations has not expired on a claim belong to a bankruptcy debtor or the debtor’s bankruptcy estate at the time of the filing of the debtor’s petition under the Bankruptcy Code, the statute of limitations is tolled in favor of the bankruptcy trustee until the later of “the end of such period, including any suspension of such period occurring on or after the commencement of the case;” or “two years after the order for relief” (11 U.S.C.S. § 108(a)). If a statute of limitations has not expired on a claim belonging to a bankruptcy debtor or the debtor’s bankruptcy estate at the time of the filing of the debtor’s petition under the Bankruptcy Code, the statute of limitations is tolled in favor of the bankruptcy trustee until the later of “the end of such period, including any suspension of such period occurring on or after the commencement of the case;” or “60 days after the order for relief” (11 U.S.C.S. § 108(b)). If a statute of limitations has not expired on a claim against a bankruptcy debtor at the time of the filing of the debtor’s petition under the Bankruptcy Code, the statute of limitations is tolled in favor of the person holding such claim until the later of “the end of such period, including any suspension of such period occurring on or after the commencement of the case;” or “30 days after notice of the termination or expiration of the stay under [11 U.S.C.S. §§ ] 362, 922, 1201, or 1301 . . . , as the case may be, with respect to such claim” (11 U.S.C.S. § 108(c)).

★ **Core Cases:**

**Lead:** *In re Econo-Therm Energy Systems Corp.*, 80 BR 137 (B.C. D.C. Minn. 1987) (extension of time under 11 U.S.C.S. § 108(b) is self-effectuating and does not depend on whether trustee ultimately acts to cure default).

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**Related:** MHI Shipbuilding, L.L.C. v. National Fire Ins. Co. 286 BR 16 (D.C. Mass. 2002) (provisions of 11 U.S.C.S. § 108(a)'s time extension applied to a shipbuilder as a Chapter 11 debtor in possession as well as to bankruptcy trustees).

**Related:** *In re Gaskinds*, 98 BR 328 (B.C. E.D. Tenn. 1989) (provisions of 11 U.S.C.S. § 108(a) tolled the running of statute for Chapter 13 debtor to bring an action against creditor seeking to avoid a home-improvement contract and mortgage for fraud).

**Related:** *Brown v. MRS Mfg. Co.*, 617 So. 2d 758 (Fla. 4th DCA 1993) (Fla. Stat. § 95.051(1)(h) effected tolling or suspension of unexpired portion of the statute of limitations period allowing claimant to commence action against debtor within 30 days after termination of automatic stay in bankruptcy).

**Related:** *In re Raymond Constr. Co.*, 6 BR 793 (B.C. M.D. Fla. 1980). (dismissal of an action by a state court which was commenced by debtor prior to filing of bankruptcy petition, even if proper, is not a dismissal with prejudice and the trustee may refile the lawsuit unless action is barred by the statute of limitations).

**Related:** *Wussler v. Silva (In re Silva)*, 215 BR 73 (B.C. D.C. Idaho 1997) (the provisions of 11 U.S.C.S. § 108(c) had no tolling effect on a state court default judgment against debtor, where the debtor filed a bankruptcy petition approximately nine years after the judgment was entered, and the judgment expired 10 years after it was entered, and the discharge in bankruptcy was granted more than 30 days prior to expiration of the judgment).

**3.14[5] Concealment by the Defendant.** The statute of limitations is tolled by the "concealment in the state of the person to be sued so that process cannot be served on him or her" (Fla. Stat. § 95.051(1)(c)).

**➡ Judicial Note:** The practitioner can keep the statute of limitations alive and viable if the defendant has been avoiding process. This, however, will require enough

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## Limitation of Actions

proof for the trial court to make such a finding. That finding, in turn, will rarely be disturbed on appeal.

**3.14[6] False Name, Use of by Defendant.** The statute of limitations is tolled when the person to be sued uses “a false name that is unknown to the person entitled to sue so that process cannot be served on the person to be sued” (Fla. Stat. § 95.051(1)(b)).

**3.14[7] Filing and Service of Suit.** A plaintiff filing an original complaint need only file the complaint prior to the running of the period of limitations, in order to toll the statute. Service can be obtained after the expiration of the limitations period.

★ **Core Case:** *Frew v. Poole & Kent Co.*, 654 So. 2d 272 (Fla. Dist. Ct. App. 4th Dist. 1995) (timely filed amended complaint subject to dismissal when plaintiff fails to serve new defendants for more than 120 days after filing motion for leave to amend).

● **Warning:** The filing of a motion for leave to amend a complaint to add new parties before the expiration of the statute of limitations commences the action as to those defendants. However, if the new defendants are not served within 120 days of the filing of the motion for leave to amend and the amended complaint as provided by Rule 1.070(j), Fla. R. Civ. P. and the statute of limitations expires before they are served, then the action is barred as to those new defendants by the statute of limitations. *See Totura & Co. v. Williams*, 754 So. 2d 671 (Fla. 2000).

**3.14[8] Incapacity of Plaintiff.** The statute of limitations is tolled during the “adjudicated incapacity, before the cause of action accrued, of the person entitled to sue. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action” (Fla. Stat. § 95.051(1)(d)).

**3.14[9] Minority of Plaintiff.** The statute of limitations is tolled during the “minority or previously adjudicated incapacity of the person entitled to sue during any period of time in which a parent, guardian, or guardian ad litem does not exist, has an interest adverse to the minor or incapacitated person, or is adjudicated to be incapacitated to sue; except with respect to

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## Understanding the Statutes of Limitations and Repose 3.14[11]

the statute of limitations for a claim for medical malpractice as provided in § 95.11. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action” (Fla. Stat. § 95.051(1)(h)).

### ★ Core Case:

**Lead:** Doe v. Dorsey, 683 So. 2d 614 (Fla. 5th DCA 1996) (four year statute of limitation, which was tolled until minor reached majority, applied in action against church based on improper selection or retention policies of church in relation to its priests).

**Related:** N.G. by & Through M.G. v. Arvida Corp., 630 So. 2d 1164 (Fla. 3d DCA 1993)(a minor’s action against his abuser was time barred by the four year limitation period in Fla. Stat. § 95.11(3)(a). The statute of limitations was not tolled because the minor plaintiff had access to the courts to prosecute his claim for damages during the statutory period. Pursuant to Fla. R. Civ. P. 1.210, anyone who was aware of plaintiff’s predicament had authority to assert plaintiff’s legal rights, but no one did).

**3.14[10] Fraud.** The statute of limitations tolls when fraud has been perpetrated on an injured party sufficient to place the plaintiff in ignorance of his or her right to cause of action or to prevent him or her from discovering the injury. *See* Hearndon v. Graham, 710 So. 2d 87 (Fla. 1st DCA 1998).

● **Warning:** Fla. Stat. § 95.051 sets forth an exclusive list of conditions that can “toll” the running of the statute of limitations. Section 95.051(2) states that no other condition can toll the statute of limitations. The list does not mention equitable estoppel. Thus, equitable estoppel is not subject to that preclusion. *See* Fla. Dep’t of Health & Rehabilitative Servs. v. S.A.P., 835 So. 2d 1091 (Fla. 2002).

**3.14[11] Partial Payment of Obligation.** The statute of limitations is tolled by the “payment of any part of the principal or interest of any obligation or liability founded on a written instrument” (Fla. Stat. § 95.051(1)(f)).

★ **Core Case:** Benfield v. Everest Venture Group, Inc., 801 So. 2d 1021 (Fla. 2d DCA 2001) (action to collect promissory

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## Limitation of Actions

note seven years after the initial default was not barred as debtors had made partial payments subsequent to the initial default).

● **Warning:** Partial payments on a foreign judgment do not toll the statute of limitations for filing an action to enforce it. *See Quaintance v. Fogg*, 392 So. 2d 360 (Fla. 2d DCA 1981).

**3.14[12] Pendency of Related Criminal Proceeding.** The Civil Remedies for Criminal Practices Act, Fla. Stat. § 772.101, *et seq.* has a five year statute of limitations, which can be “suspended” during the pendency of a related criminal or civil proceeding by the state or the United States, and for up to two years after the conclusion of the related proceeding (Fla. Stat. § 772.17).

**3.14[13] Voluntary Payments of Support by Putative Father.** The statute of limitations as to a paternity action is tolled by “voluntary payments by the alleged father of the child in paternity actions during the time of the payments” (Fla. Stat. § 95.051(1)(e)).

## 3.15 Applying Statutes of Repose.

**3.15[1] Claims Against Contractors, Engineers, Architects, etc.** Claims against contractors, engineers, architects, etc. in “action founded on the design, planning, or construction of an improvement to real property,” are governed by a four year statute of limitations (Fla. Stat. § 95.11(3)(c)). Under § 95.11(3)(c), “the time run[s] from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 15 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer,

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registered architect, or licensed contractor and his or her employer, whichever date is latest.” Thus, the statute also contains a 15 year statute of repose.

**3.15[2] Deed, or Will, Where Either Is Recorded.** There is a 20 year statute, which operates as a statute of repose for asserting a claim to property against the persons named in a deed or will, which was properly recorded (Fla. Stat. § 95.231(2)).

★ **Core Case:** *Rigby v. Liles*, 505 So. 2d 598, 601 (Fla. 1st DCA 1987) (“Section 95.231 is not a traditional statute of limitation but rather a curative act with a limitation period”).

**3.15[3] Florida False Claims Act.** Civil actions brought pursuant to the Florida False Claims Act, Fla. Stat. § 68.081, *et seq.*, must be commenced within five years after the date of making a false claim in violation of Fla. Stat. § 68.082; within two years “after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 7 years after the date on which the violation is committed, whichever occurs last” (Fla. Stat. § 68.089).

**3.15[4] Land Dedicated as a Park.** Where dedications of land to municipalities or counties for park purposes have been recorded for 30 years, they shall not be challenged by the person making the dedication or any other person when the land has been put to some other municipal or county use during the period of dedication or has been conveyed by the municipality or county by a deed recorded for seven years. All rights of the dedicator and all other persons in the land are terminated (Fla. Stat. § 95.36(1)).

**3.15[5] Medical and Dental Malpractice Actions.** Medical and dental malpractice actions are governed by a statute or period of repose. “In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury the period of limitations is extended forward two years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event

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to exceed seven years from the date the incident giving rise to the injury occurred, except that this seven-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. This paragraph shall not apply to actions for which [Fla. Stat.] §§ 766.301–766.316 provide the exclusive remedy" (Fla. Stat. § 95.11(4)(b)).

★ **Core Case:** *Cates v. Graham*, 451 So. 2d 475 (Fla. 1984) (statute of repose for medical malpractice was constitutional).

**3.15[6] Products Liability Actions.** There is also a statute of repose for products liability actions, which is either 12 years for products with a useful life of 10 years or less, or 20 years otherwise (Fla. Stat. § 95.031(b)). Interestingly, the repose period can be tolled when the "claimant was exposed to or used the product within the repose period, but an injury caused by such exposure or use did not manifest itself until after expiration of the repose period." Ordinarily, statutes of repose operate independent of the discovery of damage or accrual of the cause of action principle. *See* 35 Fla. Jur. 2d LIMITATIONS AND LACHES, § 4.

### 3.16 Estoppel to Assert the Defense of Statute of Limitations.

Equitable estoppel is not included in the exclusive list of conditions in Fla. Stat. § 95.051 that toll the statute of limitations. However, the concepts of tolling and estoppel are distinct and separate. Thus, estoppel could be raised even though tolling could not. *See Morsani v. Major League Baseball*, 739 So. 2d 610 (Fla. 2d DCA 1999).

★ **Core Case:** *Fla. Dep't of Health & Rehabilitative Servs. v. S.A.P.*, 835 So. 2d 1091 (Fla. 2002) (equitable estoppel being not mentioned in statute is not subject to statutory preclusion).

◆ **Cross Reference:** For further discussion on this issue, *see* Juan Ramirez, Jr., 1 *Florida Civil Procedure* § 2-5(a).



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Wherefore, \_\_\_\_\_ [*specify moving party, e.g., Defendant, \_\_\_\_\_ (name)*] prays this Honorable Court to dismiss the Plaintiff's complaint [or Count \_\_\_\_\_ of the Plaintiff's Complaint which alleges a time barred cause of action for \_\_\_\_\_ [*identify the cause of action*].

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_ [*firm name*]

\_\_\_\_\_ [*signature*]

\_\_\_\_\_ [*typed name*]

\_\_\_\_\_ [*address*]

\_\_\_\_\_ [*area code, phone number*]

\_\_\_\_\_ [*Florida Bar Number*]

Attorney for \_\_\_\_\_ [*party designation*]

## CERTIFICATE OF SERVICE

I, \_\_\_\_\_ [name of attorney], certify that a copy of the foregoing has been furnished to \_\_\_\_\_ [name of attorney or party being served] by \_\_\_\_\_ [delivery or mail] on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ [*signature*]

\_\_\_\_\_ [*typed name*]

\_\_\_\_\_ [*address*]

\_\_\_\_\_ [*area code, phone number*]

\_\_\_\_\_ [*Florida Bar Number*]

Attorney for \_\_\_\_\_ [*party designation*]

**Practice Pointer:** With minor wording change, the foregoing sample motion may be adapted to seek dismissal of a counterclaim, cross-claim, or third-party complaint.

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## 3.17[2] Notice of Motion to Dismiss.

IN THE \_\_\_\_\_ [COUNTY COURT *or*  
CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT]  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

_____ [name],	Plaintiff	} No. _____
v.		
_____ [name],	Defendant	

### NOTICE OF HEARING ON MOTION

To each party and to each attorney of record for each party in this action:

NOTICE IS GIVEN that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_m., or as soon after that time as the matter can be heard, the Motion to Dismiss of \_\_\_\_\_ [*specify moving party, e.g., Defendant \_\_\_\_\_ (name)*], will be heard by the Court.

A copy of the said motion is attached.

### NOTICE TO PERSONS WITH DISABILITIES

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact \_\_\_\_\_ [*identify applicable court personnel by name, address, and telephone number*]; if you are hearing impaired, call 1-800-955-8771; if you are voice impaired, call 1-800-955-8770.

Respectfully submitted,

\_\_\_\_\_ [firm name]  
\_\_\_\_\_ [signature]  
\_\_\_\_\_ [typed name]  
\_\_\_\_\_ [address]  
\_\_\_\_\_ [area code, phone number]

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## Limitation of Actions

\_\_\_\_\_ [Florida Bar Number]  
Attorney for \_\_\_\_\_ [party designation]

### CERTIFICATE OF SERVICE

I, \_\_\_\_\_ [name of attorney], certify that a copy of the foregoing has been furnished to \_\_\_\_\_ [name of attorney or party being served] by \_\_\_\_\_ [delivery or mail] on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ [signature]  
\_\_\_\_\_ [typed name]  
\_\_\_\_\_ [address]  
\_\_\_\_\_ [area code, phone number]  
\_\_\_\_\_ [Florida Bar Number]  
Attorney for \_\_\_\_\_ [party designation]

### 3.17[3] Answer Raising Defense of Statute of Limitations or Repose.

IN THE \_\_\_\_\_ [COUNTY COURT or  
CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT]  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

\_\_\_\_\_ [name],  
Plaintiff  
v.  
\_\_\_\_\_ [name],  
Defendant  
} No. \_\_\_\_\_

ANSWER OF DEFENDANT \_\_\_\_\_ [name]

COMES NOW, \_\_\_\_\_ [name of defendant], Defendant in this action, and for answer to the Complaint of the Plaintiff says as follows:

### FIRST DEFENSE

1. The Defendant admits paragraph[s] \_\_\_\_\_ [specify the paragraph numbers] of the Complaint.

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2. The Defendant denies paragraph[s]] \_\_\_\_\_ [*specify the paragraph numbers*] of the Complaint.

3. The Defendant does not have sufficient information to admit or deny paragraph[s]] \_\_\_\_\_ [*specify the paragraph numbers*] of the Complaint, and therefore denies them.

## SECOND DEFENSE

4. The claims averred by the Plaintiff in the Complaint are barred by the \_\_\_\_\_ year Statute of Limitations [*or Repose*] set forth in *Fla. Stat.* § \_\_\_\_\_, since the Complaint was filed more than \_\_\_\_\_ years after the alleged acts giving rise to the Complaint occurred.

Respectfully submitted,

\_\_\_\_\_ [*firm name*]

\_\_\_\_\_ [*signature*]

\_\_\_\_\_ [*typed name*]

\_\_\_\_\_ [*address*]

\_\_\_\_\_ [*area code, phone number*]

\_\_\_\_\_ [*Florida Bar Number*]

Attorney for \_\_\_\_\_ [*party designation*]

## CERTIFICATE OF SERVICE

I, \_\_\_\_\_ [*name of attorney*], certify that a copy of the foregoing has been furnished to \_\_\_\_\_ [*name of attorney or party being served*] by \_\_\_\_\_ [*delivery or mail*] on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ [*signature*]

\_\_\_\_\_ [*typed name*]

\_\_\_\_\_ [*address*]

\_\_\_\_\_ [*area code, phone number*]

\_\_\_\_\_ [*Florida Bar Number*]

Attorney for \_\_\_\_\_ [*party designation*]

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## Limitation of Actions

### 3.17[4] Order of Dismissal.

IN THE \_\_\_\_\_ [COUNTY COURT *or*  
CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT]  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

_____ [name],	Plaintiff	} No. _____
v.		
_____ [name],	Defendant	}

### ORDER OF DISMISSAL

The motion of \_\_\_\_\_ [*specify moving party, e.g., Defendant, \_\_\_\_\_ (name)*] for dismissal of the above-captioned action pursuant to Rule 1.420(b) of the *Florida Rules of Civil Procedure* on the ground that the cause of action alleged in the Plaintiff's Complaint is barred by the Statute of Limitations [*or Repose*] as found in *Fla. Stat.* § \_\_\_\_\_.

Plaintiff appeared by counsel, \_\_\_\_\_ [name of counsel]; Defendant appeared by counsel, \_\_\_\_\_ [name of counsel].

Good cause for such dismissal having been shown in that the cause of action for \_\_\_\_\_ [*specify cause of action*] alleged in the Complaint accrued on \_\_\_\_\_ [*date cause accrued*], and the Complaint was filed on \_\_\_\_\_ [date of filing], and thus the Complaint was filed more than \_\_\_\_\_ years after the accrual of the cause of action. Thus, the cause of action is barred by *Fla. Stat.* § \_\_\_\_\_.

IT IS ADJUDGED, ORDERED AND DECREED that this cause be dismissed and that \_\_\_\_\_ [*specify name of party moved against, e.g., Plaintiff, \_\_\_\_\_ (name)*] have and recover costs [*add if appropriate: including attorney's fees*] in the sum of \$\_\_\_\_\_.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ [signature]  
\_\_\_\_\_ [typed name of Judge]

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Circuit Judge for the \_\_\_\_\_ Judicial Circuit [*or*  
Judge of the County Court of \_\_\_\_\_ County]

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(Rel.1-3/05 Pub.1366)