

## SUMMARY OF LIMITATION PERIODS IN THE BAHAMAS

Expiry of a limitation period provides a defendant with a complete defense to a claim. In The Bahamas most limitation periods are set forth in the Limitation Act 1995. Normally the only consequence of the expiry of a limitation period is that the defendant acquires a technical defense to the claim. The plaintiff still has a cause of action, but one that cannot be enforced. In cases of adverse possession of land and conversion, for example, expiration of the limitation period has the additional consequence of extinguishing the party's title to the land or goods.

Here is a summary of the limitation periods for these categories of legal actions, and we do hope that you all find this useful when planning your litigation affairs in The Bahamas:

### **Limitation of actions of contract and tort**

#### *Actions under Contract and Tort*

- **6 years** from the date on which the cause of action accrued:
  - actions founded on simple contract (including quasi contract) or on tort;
  - actions to enforce the award of an arbitrator where the submission is not by an instrument under seal;
  - actions to recover any sum recoverable by virtue of any written law;
  - actions to enforce a recognisance.
- **12 years** for an action upon an instrument under seal from the date on which the cause of action accrued
- **6 years** for the enforcement of judgments
- **6 years** for the recovery of arrears of interest in respect of any judgment debt from the date on which the interest became due.

#### *Limitation in Case of Successive Conversions and Extinction of Title of Owner of Chattels*

- **6 years** where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before that person recovers possession of the chattel,
- Note: An action may not be subject to time limits should the right of any person from whom a chattel is stolen, brings an action in respect of stealing.

#### *Contribution between Tortfeasors*

- **2 years** from the date on which that right accrued to the first tortfeasor becomes entitled to recover contribution in respect of any damage from another tortfeasor

### **Limitations on Actions for Damages in respect of Personal Injuries and Action under the Fatal Accidents Act**

#### *Personal Injury Actions*

- **3 years** for action for damages for negligence, nuisance, or breach of duty in respect of personal injuries from the date on which the cause of action accrued, or the date (if later) of the plaintiff's knowledge.
- Note: If the injured party dies before the expiry of the limitation period, the limitation period as regards the cause of action surviving for the benefit of the estate of the deceased shall be three years from the date of death; or the date of the personal representative's knowledge, whichever is the later.

### **Actions under the Fatal Accidents Act**

#### *Actions Resulting from Accidents Causing Death*

- **3 years** from the date of death of the deceased

#### *Actions Resulting from Persons Acting in Execution of Statutory and/or other Public Duties*

- **12 months** after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof.

### **Actions in respect of Latent Damage not involving Personal Injuries**

- **6 years** from the date on which the cause of action accrued for damages for negligence, (other than those actions under the Fatal Accidents Act or for actions conducted in the execution of statutory and other public duties), where the starting date for reckoning the period of limitation under subsection (4)(b) falls after the date on which the cause of action accrued., or
- **3 years** from the earliest date on which the plaintiff or any person in whom the cause of action had earlier vested, had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action if that period expires later than the period of 6 years.

### **Action Overriding the Time Limit for Negligence Action not involving Personal Injuries**

- **15 years** which is alleged to constitute negligence, and to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).
- Note: Section 14 of the Limitation Period Act bars the right of action in a case notwithstanding that the cause of action has not yet accrued; or where latent damages are claimed, the date which is for the purposes of that section the starting date for reckoning the period has not yet occurred before the end of the period of limitation.

### **Actions to Recover Land and Rent**

#### *Actions to Recover Land*

- **30 years** for actions brought by the Crown to recover land from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person
- **60 years** for actions to recover foreshore from the date of the accrual of the right of action, or
- **30 years** from the date when the land ceased to be foreshore, whichever period first expires.
- **12 years** from the date on which the right of action accrued to such person or, if it first accrued to some other person through whom such person claims, to that person, provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown, or of 12 years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.

#### *Accrual of Right of Action in Case of Present Interest in Land*

- **On the date of the dispossession or discontinuance**, where the person bringing an action to recover land, (or some person through whom such person claims), has been in possession thereof and has while entitled thereto been dispossessed or discontinued possession.
- **On the date of the death**, Where any person brings an action to recover any land of a deceased person, whether under a will or on an intestacy, and the deceased person was on the date of the death in possession of the land, or in the case of a rentcharge created by will or taking effect upon the death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof.

- **On the date when the assurance took effect**, Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to such person, or to some person through whom such person claims, and the person making the assurance was on the date when the assurance took effect in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged and no person has been in possession of the land by virtue of the assurance.

#### *Accrual of Right of Action in case of Future Interests in Land*

- **On the date on which the estate or interest fell into possession by determination of the preceding estate or interest** where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed.
- **12 years** if the person entitled to the preceding estate or interest, not being a leasehold term, was not in possession of the land on the date of the determination thereof, or
- **6 years** from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

#### *Right of Action in case of Forfeiture or Breach of Condition*

- **On the date on which the forfeiture was incurred or the condition broken** by virtue of a forfeiture or breach of condition
- **On the date when the estate or interest fell into possession as if the forfeiture or breach of condition had never occurred**, if a right of action to recover land by virtue of a forfeiture or breach of condition has accrued to a person entitled to an estate or interest in reversion or remainder, and the land has not been recovered by virtue of the forfeiture or breach of condition.

#### *Right of Action in case of Certain Tenancies*

- **At the expiry of the first year or other period at the date of such determination** where there lies a tenancy from year to year or other period, without a lease in writing, and for the person entitled to the land subject to the tenancy
- **On the date of the last receipt of rent**. where any rent has subsequently been received in respect of the tenancy,
- **Note:** Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than fifty dollars a year is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to

recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

- **At the expiry of a period of one year from the commencement thereof; unless it has previously been determined,** in case of a tenant at will.

#### *Actions to Recover Rent*

- **6 years from the date on which the arrears became due,** in the recovery of arrears of rent or dower or damages in respect thereof.

#### **Action to Recover Money Secured by a Mortgage or Charge or to Recover Proceeds of the Sale of Land**

##### *Actions to Recover Money Secured by a Mortgage or Charge or to Recover Proceeds of the Sale of Land*

- **12 years from the date when the right to receive the money accrued** for actions to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover the proceeds of the sale of land,
- **12 years from the date on which the right to foreclose accrued** for foreclosure actions in respect of mortgaged personal property,
- Note: The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.
- **6 years from the date on which the interest became due** for action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of the proceeds of the sale of land, or to recover damages in respect of such arrears.

#### **Actions in respect of Trust Property or the Personal Estate of Deceased**

##### *Actions in Relation to Property Held in Trust*

- **6 years from the date on which the right of action accrued** for an action by a beneficiary to recover trust property or in respect of any breach of trust; not being an action for which a period of limitation is prescribed by any other provision of the Limitation Act, 1995, the right of action of a beneficiary entitled to a future interest in trust property shall not be deemed to accrue until the interest falls into possession.

### *Actions Claiming Personal Estate of a Deceased Person*

- **12 years from the date when the right to receive the same accrued** for actions in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy
- **6 years from the date on which the interest became due** for action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears.

Just a reminder that in the case of fraud, mistake, and deliberate concealment the limitation period will be postponed and the limitation period will not begin to run until the plaintiff has discovered the fraud or the mistake (or could with reasonable diligence have discovered it). This will only apply to cases where the action is based upon the fraud of the defendant, or when the action is for relief from the consequences of a mistake.

In cases of deliberate concealment of the Plaintiff's right of action by the Defendant the period of limitation will not begin to run until the plaintiff has discovered the defendant's concealment of the fact in question or could (with reasonable diligence) have discovered it. This includes the deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time will amount to deliberate concealment of the facts involved in the breach of duty.



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