

Exceptions to the Statute of Repose in NC?

By [Melissa Dewey Brumback](#)

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Didn't I just say last week that the statute of repose was basically [an absolute bar](#) to any action after 6 years? Why, yes, yes I did.

BUT it too has exceptions. In a recent North Carolina Court of Appeals case, the application of the statute of repose was called into question.

In [Dawson v. N.C. Dept of Environment and Natural Resources](#) (June 15, 2010), a couple bought land only after inquiring of the Person County health department to determine that the lots perked. Based on a 1989 letter issued by the health department stating that the lots perked, the couple bought the land. In 2000 (that is, 11 years later!), the couple applied for building permits only to learn from DENR that the land was not suitable for building.

The couple sued DENR under a negligence theory, and DENR argued the time bar of the 6 year statute of repose. In its decision, the court held that because the 1989 letter was not based on an *improvement* to real property, the statute of repose was not applicable. The Court indicated that, had the county inspector been inspecting an existing septic system, their decision may have been different.

Moral of the story? Just because you think you have a good defense, don't forget that there is always an exception to the rule or, rather, there are many times when the shoe looks like it fits, but it really doesn't. Be careful-- blisters are painful!



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