

3 STATUTES OF LIMITATIONS FOR PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, UTPA, AND CONTRACT

The 1997 Tort Reform Act became effective August 7, 1997 and applies to all causes of action accruing on or after that date. As a result, all litigation filed before August 7, 1997 and even those claims filed after that date but involving causes of action that accrued previously will be subject to the former statutes of limitation.

Accrual of a Cause of Action

A cause of action "accrues" when all essential elements forming the basis for the claim have occurred.¹

Alaska has also adopted what is known as the "discovery rule." Under the discovery rule, the applicable statute of limitations may not begin to run until the claimant discovers, or reasonably should have discovered, the existence of a cause of action.² There are three possible accrual dates under the discovery rule: (1) when the claimant reasonably should have discovered the existence of all essential elements of the cause of action; (2) when the claimant has information sufficient to alert a reasonable person to begin an inquiry to protect his or her rights; and (3) in the event a person makes a reasonable inquiry within the limitations period and it does not reveal the elements of the cause of action, then the accrual date is when a reasonable person discovers actual knowledge of the cause of action or would be prompted to make additional inquiry into the cause of action.³

The court merged when a cause of action accrues with the discovery rule stating: "a cause of action accrues when a person discovers, or reasonably should have discovered, the existence of all elements essential to the cause of action."⁴

This summary does not attempt to differentiate between causes of action accruing before, on, or after August 7, 1997, as such questions tend to be fact-specific and not well suited to a general analysis.

¹ *Wright v. Wright*, 904 P.2d 403, 408-09 (Alaska 1995); *Lamoreux v. Langlotz*, 757 P.2d 584, 585 (Alaska 1988).

² *Preblich v. Zorea*, 996 P.2d 730, 734 (Alaska 2000).

³ *John's Heating Service v. Lamb*, 46 P.3d 1024 (Alaska 2002).

⁴ *See Cameron v. State*, 822 P.2d 1362, 1366 (Alaska 1991).

Torts, Personal Property, Statutory Liability, and Wrongful Death Claims

There is a two (2) year statute of limitations for most torts, personal property, statutory liability, and wrongful death claims. AS 09.10.070(a) provides as follows:

Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

Effective August 7, 1997, and subject to certain restrictions, exceptions, and limitations, AS 09.10.055 – the general statute of repose – imposes a maximum time limit of ten (10) years following (1) substantial completion of the construction alleged to have caused the personal injury, death or property damage in question, or (2) the last act alleged to have caused the personal injury, death, or property damage in question. The statute of repose in AS 09.10.055 is constitutional on its face.⁵ There is also a general ten (10) year statute of limitations for any cause of action not otherwise provided for.⁶

Real Property Claims

A person may not bring an action for waste or trespass upon real property unless the action is commenced within six (6) years.⁷ This six-year statute of limitations applies to a nuisance claim.⁸ An action to recover real property or possession of real property must be commenced within ten (10) years.⁹ Because seven (7) years of "uninterrupted adverse notorious possession of real property under color and claim of title ... is

⁵ *Evans v. State*, 56 P.2d 1046 (Alaska 2003).

⁶ See AS 09.10.100.

⁷ See AS 09.10.050.

⁸ *Fernandes v. Portwine*, 56 P.3d 1 (Alaska 2002).

⁹ See AS 09.10.030.

conclusively presumed to give title to the property,"¹⁰ an action to recover real property against a party claiming title to that property must be commenced in less than seven (7) years.

AS 09.10.030 was amended in 2003 to include a new subsection (b) providing that an action to quiet title to real property or to eject someone from that property may be brought at any time by a person who was "seized" or "possessed" of the real property prior to commencement of the action (or whose grantor/predecessor was "seized" or "possessed" of the property prior to commencement of the action) and whose ownership interest is recorded.

AS 09.10.230 carves out an exception to general real property claims for patent claims. Actions that affect a patent to land issued by the State or the United States must be brought within ten (10) years from the date of the patent.

Contract Claims

An action upon a contract or liability, express or implied, must now be commenced within three (3) years, unless otherwise provided by law or unless this statutory provision is waived by the contract.¹¹ In *Preblich v. Zorea*, 996 P.2d 730, 733-34 n.11 (Alaska 1999), the court suggested that this three year statute of limitations would apply to a professional malpractice action (i.e., one claiming economic loss) that accrued after August 7, 1997. A cause of action for breach of contract accrues, and the statute of limitations begins to run, at the time of breach, rather than at the time actual damages are sustained.¹²

A liability insurer's duty to defend its insured against a third-party claim is contractual. In *Brannon*, the court held that a cause of action for breach of this duty accrues when the insurer denies a defense but is equitably tolled until entry of final judgment.¹³

¹⁰ See AS 09.45.052; see also *Shilts v. Young*, 567 P.2d 769, 775 (Alaska 1977) ("In both cases, there must be uninterrupted, adverse[,] or notorious possession, but only seven years is required under AS 09.[45.052] as opposed to ten years under AS 09.10.030.").

¹¹ See AS 09.10.053.

¹² See *Brannon v. Continental Casualty Co.*, 137 P.3d 280 (Alaska 2006).

¹³ See *Brannon*, 137 P.3d at 284-85.

Wrongful Death Claims

AS 09.55.580 sets forth a two (2) year statute of limitations for wrongful death claims and provides that the action shall be maintained by the personal representative. This statute also provides that the cause of action is not affected by the death of a person named or to be named as the defendant in such a suit.

Claims Against A Decedent's Estate

Claims against a decedent's estate which arose before death are barred against the estate, personal representative, heirs and devisees unless "presented," as defined in AS 13.16.465, within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with AS 13.16.450, or if no such notice has been given, within three (3) years after the decedent's death.¹⁴

If a claim against the decedent's estate arose after the death of the decedent, the claim is barred unless presented within four (4) months after it arises.¹⁵ Claims based on contract with the personal representative are barred if not presented within four (4) months after performance by the personal representative is due.

The limitations of AS 13.16.460(a) and (b) do not apply to any proceeding to enforce any mortgage, pledge or lien upon property of the estate. Similarly, the statutory bars do not apply to a proceeding seeking the limits of insurance protection only, or to any proceeding to establish liability of the decedent or the personal representative for which there is protection through liability insurance.¹⁶

UTPA Claims

AS 45.50.531(f) sets forth a two (2) year statute of limitations for actions brought under Alaska's Unfair Trade Practice and Consumer Protection Act (UTPA). In Weimer v. Cont'l Car & Truck, LLC, 237 P.3d 610, 615 (Alaska 2010) the Alaska Supreme Court held that "the UTPA's statute of limitations begins to run when a consumer discovers or reasonably should have discovered the prohibited conduct caused a loss. When the consumer discovers or reasonably should have discovered the conduct was prohibited is immaterial to the UTPA limitations period."

¹⁴ See AS 13.16.460(a).

¹⁵ See AS 13.16.460(b).

¹⁶ See AS 13.16.460(c).

Tolling Statutes of Limitations By Disability of the Claimant

The legal disabilities of minority and incompetence will generally toll the applicable statute of limitations until the disability is removed.¹⁷ However, in the case of the disability of minority, the tolling period varies depending on the age of the minor claimant at the time of the injury (or the cause of action accrues), and the outer limit of the statute of limitations is subject to the 10-year statute of repose in AS 09.10.055.¹⁸

The Alaska Supreme Court found facially constitutional the 1997 tort reform package.¹⁹ In its decision, the court analyzed the statutes of limitations affecting personal injury claims of minors under AS 09.10.070, AS 09.10.055, and AS 09.10.140. The plaintiffs argued AS 09.10.140(c) was an unconstitutional violation of equal protection because the statute of limitations for minors 8 years old and over was tolled until two years after they reached majority under AS 09.10.140(a), whereas for minors who were under the age of 8 at the time of their injury, the statute of limitations was tolled only until they were 8. As such, an injured 4-year-old must bring his action (through his parents or guardian) before he is 10, while an injured 10-year-old has until he is 20.

The court held there was a rational basis for the distinction. The court reasoned that AS 09.10.055 put a 10-year outer limit on a minor's personal injury claim (with exceptions). Thus, a minor under age 8 would never be able to bring the claim in his own right because the statute of repose would cut it off before he reached majority, and claims of this sort would always have to be brought by the parent or guardian. The court reasoned that there was no justification for giving the parent/guardian of a child under 8 an additional 10 years to bring the claim. The court did not address the issue of an 8- or 9-year-old injured minor. At this age, the statute of repose's 10-year outer limit will cut off the minor's claim before AS 09.10.140(a) would, which tolls the statute of limitations to two years past majority (or age 20). The court did preface its opinion with a disclaimer that its decision is based on a facial challenge and may be different if and when it is faced with a real-fact scenario.

¹⁷ See AS 09.10.140(a)

¹⁸ See *Evans v. State*, 56 P.3d 1046 (Alaska 2002).

¹⁹ See *Evans v. State*, 56 P.3d 1046 (Alaska 2002); *C.J. v. State of Alaska*, 151 P.3d 373 (Alaska 2006).

Equitable Tolling of Statutes of Limitations

The Alaska Supreme Court has indicated a willingness to apply equitable considerations in order to prevent the running of a statute of limitations where false or fraudulent conduct is involved and the plaintiff has justifiably relied on defendant's conduct in not filing suit.²⁰ As noted above, the court has held that the contract statute of limitations is equitably tolled in connection with a claim against a liability insurer for breach of the duty to defend until entry of final judgment against the insured, even though the cause of action accrues at the time that the insurer refuses to defend.²¹

Third-Party Claims

If a personal injury plaintiff waits until the day before the two-year statutory limitations period to file suit, and then sues only two out of five possible defendants, the two "original defendants" faced real procedural challenges to any fault-allocation argument against the three absent potential defendants – until the Alaska Supreme Court's decision in *Alaska General Alarm, Inc. v. Grinnell*, 1 P.3d 98, 104 (Alaska 2000), where the court held that "the limitations period governing the underlying claim should not bar the liability of third-party defendants to the plaintiff for their share of fault." In addition, the court concluded that under Alaska's comparative fault scheme "third parties must be joined for purposes of allocating fault, or not at all."²²

Appendices:

AS 09.10.030	AS 09.10.140
AS 09.10.050	AS 09.10.230
AS 09.10.053	AS 09.45.052
AS 09.10.055	AS 09.55.580
AS 09.10.070	AS 13.16.450 - 465
AS 09.10.100	

²⁰ See *Gudenau & Co. v. Sweeney Ins.*, 736 P.2d 763, 769 (Alaska 1987); *State v. Reefer King Co.*, 559 P.2d 56, 63-64 (Alaska 1976).

²¹ See *Brannon v. Continental Casualty Co.*, 137 P.3d 280 (Alaska 2006).

²² See *Alaska General Alarm, Inc.*, 1 P.3d at 104.

Sec. 09.10.030. Actions to recover real property. (a) Except as provided in (b) of this section, a person may not bring an action for the recovery of real property or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained under this subsection for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the action.

(b) An action may be brought at any time by a person who was seized or possessed of the real property in question at some time before the commencement of the action or whose grantor or predecessor was seized or possessed of the real property in question at some time before commencement of the action, and whose ownership interest in the real property is recorded under AS 40.17, in order to

- (1) quiet title to that real property; or
- (2) eject a person from that real property. (§ 1.03 ch 101 SLA 1962; am §§ 1, 2 ch 147 SLA 2003)

Revisor's notes. — In 1994, "A person may not" was substituted for "No person may" and "the action is" was inserted after "unless" in the first sentence, and "An action may not" was substituted for "No action may" in the second sentence to conform this section to the current style of the Alaska Statutes.

Cross references. — For adverse possession, see AS 09.45.052.

Effect of amendments. — The 2003 amendment,

effective July 18, 2003, in subsection (a) added "Except as provided in (b) of this section," at the beginning and inserted "under this subsection" in the second sentence; and added subsection (b).

Editor's notes. — Under § 5, ch. 147, SLA 2003, "AS 09.10.030, as amended in secs. 1 and 2 of this Act, applies to actions that have not been barred before July 18, 2003 by AS 09.10.030 as it read before July 18, 2003."

Sec. 09.10.050. Certain property actions to be brought in six years. Unless the action is commenced within six years, a person may not bring an action for waste or trespass upon real property. (§ 1.05 ch 101 SLA 1962; am § 1 ch 61 SLA 1967; am § 2 ch 28 SLA 1994; am § 3 ch 26 SLA 1997)

Cross references. — For limitation on action against subdivider in contested transactions, see AS 34.55.030(f).

For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1994 amendment, effective August 5, 1994, in the introductory language, substituted "Unless the action is commenced within

six years, a" for "No" and inserted "not"; deleted "or 09.10.055" following "AS 09.10.040" in paragraph (1); and deleted ", except those mentioned in AS 09.10.055; unless commenced within six years" following "specific recovery" in paragraph (3).

The 1997 amendment, effective August 7, 1997, rewrote this section.

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

NOTES TO DECISIONS

Quasi-contractual recovery. — Quasi-contractual recovery is an implied contract for the purpose of applying statutes of limitation. *Estate of Waters v. Hoadley*, 474 P.2d 85 (Alaska 1970).

Relief from duressed contract. — In seeking relief from a duressed contract, the action is on an implied contract under the six-year statute of limitations. *Estate of Waters v. Hoadley*, 474 P.2d 85 (Alaska 1970).

Divorce property settlement agreement. — When the parties incorporate a property settlement agreement into a divorce decree, the applicable statute of limitations is that of AS 9.10.040, not this section, the statute of limitations controlling contracts. *Lantz v. Lantz*, 845 P.2d 429 (Alaska 1993), overruled on other grounds, *State ex rel. Inman v. Dean*, 902 P.2d 1321 (Alaska 1995).

Breach of collective bargaining agreement. — A claim based upon plaintiff's failure to be paid at a rate commensurate with the work he was doing and upon violation of AS 23.05.140(b), as to payment of wages on termination of employment, is not strictly or solely an action for liability upon a statute, but may be construed to state a cause of action for breach of the collective bargaining agreement. As such, it is controlled by the six-year statute of limitations for contract actions (this section), and the superior court erred in dismissing the count based upon the running of the two-year statute of limitations for actions based upon a statute, AS 09.10.070(3). *Reed v. Municipality of Anchorage*, 741 P.2d 1181 (Alaska 1987); *Quinn v. State Employees Ass'n/AFSCME, Local 52*, 944 P.2d 468 (Alaska 1997).

Mortgage not under seal is governed by this section. — The parties to a mortgage may make it a sealed instrument if they so desire and thus bring it within the 10-year statute. If they do not choose to avail themselves of that opportunity the instrument must perforce be governed by the law applicable to instruments not under seal and suit thereon must be brought within six years or the action is barred and the lien expires by operation of law. *Carklin v. Grigsby*, 9 Alaska 378 (1938).

Misrepresentation and negligence are tort concepts, not contract, and the two-year statute of limitations (AS 09.10.070) respecting torts governs. *Austin v. Fulton Ins. Co.*, 444 P.2d 536 (Alaska 1968).

Where the essence of a plaintiff's complaint in an action for legal malpractice was negligence, the period of limitation found in AS 09.10.070, rather than this section, applied. *Van Horn Lodge, Inc. v. White*, 627 P.2d 641 (Alaska 1981), overruled on other grounds, *Lee Houston & Assocs. v. Racine*, 806 P.2d 848 (Alaska 1991).

Where a client sued his attorney for malpractice, claiming that the attorney expressly promised to move his case to trial expeditiously and to keep him informed, the essence of the claim was in contract, and the contract limitations period of this section applied. *Jones v. Wadsworth*, 791 P.2d 1013 (Alaska 1990).

The two-year limitation of AS 09.10.070, not this section, applied to a tort claim for intentional misrepresentation. *Alaska Tae Woong Venture, Inc. v. Westward Seafoods, Inc.*, 963 P.2d 1055 (Alaska 1998).

Medical malpractice claim. — The six-year statute of limitations provided for in this section was inapplicable towards a claim for noneconomic injuries arising out of the doctors' professional malpractice; rather, the claim was governed by the two-year statute of limitations for injuries to the person not arising on contract contained in AS 09.10.070. *Pedersen v. Flannery*, 863 P.2d 856 (Alaska 1993).

When statute of limitations begins to run in contract actions. — The statute of limitations begins to run in contract causes of action from the time the right of action accrues. This is usually the time of the breach of the agreement, rather than the time that actual damages are sustained as a consequence of the breach. *Howarth v. First Nat'l Bank*, 540 P.2d 486 (Alaska 1975), *aff'd on rehearing*, 551 P.2d 934 (Alaska 1976).

It is not material that the injury from the breach is not suffered until afterward, the commencement of the limitation being contemporaneous with the origin of the cause of action. *Howarth v. First Nat'l Bank*, 540 P.2d 486 (Alaska 1975), *aff'd on rehearing*, 551 P.2d 934 (Alaska 1976).

If plaintiff can prove that defendant bank had a contractual duty "to preserve and protect" his property, including a duty to maintain fire insurance, in consideration for assignment of right, title and interest in all moneys due or to become due to plaintiff under a real estate contract with another party, and the bank does not fulfill its duty either by acting as the insurer of the property or by contracting with an insurance company, then the statute of limitations will not bar recovery, and breach would not occur until plaintiff's property suffered fire damage and additionally defendant bank refused to compensate plaintiff. *Howarth v. First Nat'l Bank*, 540 P.2d 486 (Alaska 1975), *aff'd on rehearing*, 551 P.2d 934 (Alaska 1976).

Sec. 09.10.053. Contract actions to be brought in three years. Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040, or as otherwise provided by law, or, except if the provisions of this section are waived by contract. (§ 4 ch 26 SLA 1997; am § 8 ch 32 SLA 1997)

Cross references. — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 and § 45(b), ch. 32, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1997 amendment, effective August 7, 1997, deleted "the provisions of this section may be waived by contract," following "except as provided in AS 09.10.040," and added the exception at the end.

Effective dates. — Section 4, ch. 26, SLA 1997, which enacted this section, took effect on August 7, 1997.

Editor's notes. — Section 55, ch. 26, SLA 1997

provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997." Under § 45(b), ch. 32, SLA 1997, this provision is also made applicable to the amendment to this section made by § 8, ch. 32, SLA 1997.

Sections 45(a) and 46, ch. 32, SLA 1997 made the amendment of this section by § 8, ch. 32, SLA 1997 contingent on the enactment of, and effective on the effective date of, SCS CSSSHB 58 (RLS) am S, Twentieth Alaska State Legislature. SCS CSSSHB 58 (RLS) am S was enacted as ch. 26, SLA 1997, effective August 7, 1997.

Legislative history reports. — For purposes of the amendment to this section made by § 8, ch. 32, SLA 1997, see 1997 House Journal Supp. No. 9.

NOTES TO DECISIONS

Burden of proof on holder of belongings. — The trial court found under former AS 09.10.050 that where mother left her belongings with son and son failed to return some items, this evidence established a prima facie right to recovery for the mother, placing

upon the son the burden of explaining the loss. *Silvers v. Silvers*, 999 P.2d 786 (Alaska 2000).

Cited in *Preblich v. Zorea*, 996 P.2d 730 (Alaska 2000).

Sec. 09.10.055. Statute of repose of 10 years. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within 10 years of the earlier of the date of

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; in this paragraph, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended; or

(2) the last act alleged to have caused the personal injury, death, or property damage.

(b) This section does not apply if

(1) the personal injury, death, or property damage resulted from

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or misrepresentation;

(D) breach of an express warranty or guarantee;

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce; or

(F) breach of trust or fiduciary duty;

(2) the facts that would give notice of a potential cause of action are intentionally concealed;

(3) a shorter period of time for bringing the action is imposed under another provision of law;

(4) the provisions of this section are waived by contract; or

(5) the facts that would constitute accrual of a cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body. (§ 2 ch 61 SLA 1967; am § 3 ch 28 SLA 1994; am § 5 ch 26 SLA 1997)

Cross references. — For legislative findings in connection with the 1994 amendment of this section, and for applicability of those amendments, see §§ 1 and 4, ch. 28, SLA 1994 in the Temporary and Special Acts.

For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1994 amendment, effective August 5, 1994, rewrote this section.

The 1997 amendment, effective August 7, 1997, rewrote this section.

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Sec. 09.10.070. Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. (a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

(b) A person may not bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the nonpayment of money collected upon an execution, unless brought within two years. This subsection does not apply to an action for an escape. (§ 1.07 ch 101 SLA 1962; am § 1 ch 70 SLA 1996; am § 6 ch 26 SLA 1997)

Revisor's notes. — In 1994, "A person may not" was substituted for "No person may" and "the action is" was inserted after "unless" to conform this section to the current style of the Alaska Statutes.

Cross references. — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1996 amendment, effective September 16, 1996, added subsection (b).

The 1997 amendment, effective August 7, 1997, rewrote subsection (a).

Editor's notes. — Section 3, ch. 70, SLA 1996 provides that subsection (b), as added by § 1, ch. 70,

SLA 1996, "applies to civil actions commenced on or after September 16, 1996 regardless of when the cause of action may have arisen."

Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Opinions of attorney general. — Revocation proceedings against a commercial fisheries permit holder, who allegedly submitted false information with respect to his residency in his initial application for an entry permit and in his requests for renewal of the permit, were governed by the six-year period set forth in AS 09.10.120 (actions by state or political subdivision), not the two-year statute of limitation found in AS 09.10.070(2) (forfeiture or penalty). Aug. 17, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

I. General Consideration.

II. Torts.

- A. Generally.
- B. Strict Liability.
- C. Misrepresentation and Negligence.
- D. Libel.

III. Forfeiture or Penalty to State.

IV. Other Statutory Liability.

V. Procedure.

- A. Generally.
- B. Tolling Statute.

Sec. 09.10.100. Other actions in 10 years. An action for a cause not otherwise provided for may be commenced within 10 years after the cause of action has accrued. (§ 1.10 ch 101 SLA 1962)

NOTES TO DECISIONS

Foreclosure actions. — In the absence of a controlling statute a foreclosure action is subject to the same period of limitations as the underlying debt. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

The portion of Alaska's Code of Civil Procedure which deals with limitation of actions does not contain any provision which specifically establishes a limitation period governing the foreclosure of either legal or equitable mortgages. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

In a suit to foreclose a mortgage the six-year period of limitation is controlling and the ten-year period

pertaining to actions upon sealed instruments is inapplicable. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

The six-year statute of limitations (AS 09.10.050), which governs the underlying obligation, is determinative of the period of time in which a party is required to commence an action to foreclose a purported equitable mortgage security. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

Quoted in *Bibo v. Jeffrey's Restaurant*, 770 P.2d 290 (Alaska 1989).

Cited in *Straight v. Hill*, 622 P.2d 425 (Alaska 1981).

Sec. 09.10.140. Disabilities of minority and incompetency. (a) Except as provided under (c) of this section, if a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

(b) An action based on a claim of sexual abuse under AS 09.55.650 may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

(1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;

(2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff's first discovery of the relationship between any one of those acts and the injury or condition, but may be based on plaintiff's discovery of the effect of the series of acts.

(c) In an action for personal injury of a person who was under the age of eight years at the time of the injury, the time period before the person's eighth birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing the civil action. (§ 1.14 ch 101 SLA 1962; am § 1 ch 46 SLA 1979; am § 1 ch 88 SLA 1986; am §§ 2, 3 ch 4 SLA 1990; am §§ 7, 8 ch 26 SLA 1997)

Cross references. — For limitation period on claim of sexual abuse, see AS 09.10.060(c).

For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1990 amendment, effective February 2, 1990, in subsection (a), rewrote item (2) and added the exception at the beginning of the second sentence, and added subsection (b).

The 1997 amendment, effective August 7, 1997, added "Except as provided under (c) of this section," at the beginning of the first sentence in subsection (a) and added subsection (c).

Editor's notes. — Section 11, ch. 4, SLA 1990 provides that the 1990 amendments to this section "apply to all actions commenced on or after February 2, 1990, regardless of when the cause of action may have arisen."

Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

NOTES TO DECISIONS

- I. General Consideration.
- II. Minority.
- III. Incompetency.
- IV. Imprisonment.

I. GENERAL CONSIDERATION.

Construction of limitation period in wrongful death statute. — See *Haakanson v. Wakefield Seafoods, Inc.*, 600 P.2d 1087 (Alaska 1979).

Disability must exist when cause of action arises. — This section tolls the statute only during the continuance of a disability which existed at the time the cause of action arose. *Williams v. Coughlan*, 17 Alaska 147, 244 F.2d 6 (9th Cir. 1957). See AS 09.10.180.

II. MINORITY.

Public policy of safeguarding the interests of minors is the underlying basis for this statute. *Haakanson v. Wakefield Seafoods, Inc.*, 600 P.2d 1087 (Alaska 1979).

Minor's property controlled by custodian. — This section applied to claims of minor shareholders,

even though their shares of stock were controlled by a custodian. *Hanson v. Kake Tribal Corp.*, 939 P.2d 1320 (Alaska 1997).

Extent to which disability tolls statute. — The disability of a minor statutory beneficiary tolls the running of the two-year time limit for commencing a wrongful death action until the disability is concluded. *Haakanson v. Wakefield Seafoods, Inc.*, 600 P.2d 1087 (Alaska 1979).

Determination of age. — Since one is in existence on the day of his birth, he is, in fact, on the first anniversary of his birth, of the age of one year plus a day or some part of a day. The plaintiff did, then, reach the age of nineteen years on the day before the nineteenth anniversary of his birth, and he instituted his suit more than two years thereafter. *Turnbull v. Bonkowski*, 419 F.2d 104 (9th Cir. 1969).

Attainment of the age of majority is analogous to other events that trigger running of time periods; the

Sec. 09.10.230. Certain actions relating to real property. A person may not bring an action for the determination of a right or claim to or interest in real property unless commenced within the limitations provided for actions for the recovery of the possession of real property. However, a person may not bring an action to set aside, cancel, annul, or otherwise affect a patent to land issued by this state or the United States, or to compel a person claiming or holding under a patent to convey the land described in the patent or a portion of the land to the plaintiff in the action, or to hold the land in trust for or to the use and benefit of the plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired before the date of the patent unless the action is commenced within 10 years from the date of the patent. In an action upon a new promise, fraud, or mistake, the running of the time within which an action may be commenced starts from the making of the new promise or the discovery of the fraud or mistake. This section does not bar an equitable owner in possession of real property from defending possession by means of the equitable title. The right of an equitable owner to defend possession in an action or by complaint for injunction is not barred by lapse of time while an action for the possession of the real property is not barred by the provisions of this chapter. (§ 1.23 ch 101 SLA 1962)

Revisor's notes. — In 1994, in the first sentence of this section "A person may not" was substituted for "No person may", and in the second sentence "However, a person may not" was substituted for "But no

person may" and "the action is" was inserted after "unless" to conform this section to the current style of the Alaska Statutes.

NOTES TO DECISIONS

Applicability. — The appellants' fraud and contract claims did not concern any interest in the piece of property but rather the dispute was whether the appellees' misrepresentations induced the appellants to obtain an interest in real property which they would otherwise have no interest in obtaining; therefore, this action is not one in which the statute of limitations for real property actions applied. *Bauman v. Day*, 892 P.2d 817 (Alaska 1995).

Foreclosure actions. — In the absence of a controlling statute a foreclosure action is subject to the same period of limitations as the underlying debt. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

The portion of Alaska's Code of Civil Procedure which deals with limitation of actions does not contain any provision which specifically establishes a limitation period governing the foreclosure of either legal or equitable mortgages. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

In a suit to foreclose a mortgage the six-year period of limitation is controlling and the ten-year period pertaining to actions upon sealed instruments is in-

applicable. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

The six-year statute of limitations (AS 09.10.050), which governs the underlying obligation, is determinative of the period of time in which a party is required to commence an action to foreclose a purported equitable mortgage security. *Dworkin v. First Nat'l Bank*, 444 P.2d 777 (Alaska 1968).

Fraud. — In applying the discovery rule for fraud under this section, there is no requirement that a fraud victim must have acted reasonably. *Carter v. Hoblit*, 755 P.2d 1084 (Alaska 1988).

Where defendant and two other persons had purchased property with the understanding that they would own and later subdivide the property, defendant's failure to disclose the fact that title had been placed in his name alone could be viewed as a fraud. *Carter v. Hoblit*, 755 P.2d 1084 (Alaska 1988).

Applied in *Keener v. State*, 889 P.2d 1063 (Alaska 1995).

Cited in *United States v. Patee*, 564 F.2d 306 (9th Cir. 1977); *Monroe v. California Yearly Meeting of Friends Church*, 564 F.2d 304 (9th Cir. 1977).

Collateral references. — When statute of limitations or laches commences to run against action to set

aside fraudulent conveyance or transfer in fraud of creditors, 100 ALR2d 1094.

Sec. 09.45.052. Adverse possession. (a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958). (§ 3.15 ch 101 SLA 1962; am § 1 ch 141 SLA 1986; am § 58 ch 66 SLA 1991)

Revisor's notes. — Formerly AS 09.25.050. Renumbered in 1994.

Cross references. — For provisions governing recovery of property in 10 years, see AS 09.10.030; for provisions that a municipality may not be divested of title to real property by adverse possession, see AS 29.71.010; for setoff for improvements made by one claiming under color of title, see AS 09.45.640.

Effect of amendments. — The 1991 amendment, effective December 16, 1994, added the second sentence in subsection (a).

Effective dates. — Under § 58(a), ch. 66, SLA 1991, as amended by § 37, ch. 5, FSSLA 1994 and § 2, ch. 1, SSSLA 1994, this section, as set out above, took effect December 16, 1994.

Sec. 09.55.580. Action for wrongful death. (a) Except as provided under (f) of this section, when the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had the person lived, against the latter for an injury done by the same act or omission. The action shall be commenced within two years after the death, and the damages therein shall be the damages the court or jury may consider fair and just. The amount recovered, if any, shall be exclusively for the benefit of the decedent's spouse and children when the decedent is survived by a spouse or children, or other dependents. When the decedent is survived by no spouse or children or other dependents, the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss. When the plaintiff prevails, the trial court shall determine the allowable costs and expenses of the action and may, in its discretion, require notice and hearing thereon. The amount recovered shall be distributed only after payment of all costs and expenses of suit and debts and expenses of administration.

(b) The damages recoverable under this section shall be limited to those which are the natural and proximate consequence of the negligent or wrongful act or omission of another.

(c) In fixing the amount of damages to be awarded under this section, the court or jury shall consider all the facts and circumstances and from them fix the award at a sum which will fairly compensate for the injury resulting from the death. In determining the amount of the award, the court or jury shall consider but is not limited to the following:

(1) deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries, without regard to age thereof, that would have resulted from the continued life of the deceased and without regard to probable accumulations or what the deceased may have saved during the lifetime of the deceased;

(2) loss of contributions for support;

(3) loss of assistance or services irrespective of age or relationship of decedent to the beneficiary or beneficiaries;

(4) loss of consortium;

(5) loss of prospective training and education;

(6) medical and funeral expenses.

(d) The death of a beneficiary or beneficiaries before judgment does not affect the amount of damages recoverable under this section.

(e) The right of action granted by this section is not abated by the death of a person named or to be named the defendant.

(f) A person whose act or omission constitutes the felonious killing of another person may not recover damages for the death of that person either directly or as a personal representative of that person's estate. In this subsection, a "felonious killing" means a crime defined by AS 11.41.100 — 11.41.140. (§ 4 ch 78 SLA 1972; am §§ 1, 2 ch 164 SLA 1988)

Revisor's notes. — In 1992, "or" was substituted for "of" after "accumulations" in paragraph (c)(1) of this section to correct a typographical error in the 1962 codification of § 61-7-3, ACLA 1949, as amended.

Editor's notes. — This section was taken from former AS 13.20.340 which, in turn, was taken from § 61-7-3, ACLA 1949, as amended.

Article 8. Creditors' Claims.

Section

- 450. Notice to creditors
- 455. Statutes of limitations
- 460. Limitations on presentation of claims
- 465. Manner of presentation of claims
- 470. Classification of claims
- 475. Allowance of claims
- 480. Payment of claims
- 485. Individual liability of personal representative
- 490. Secured claims

Section

- 495. Claims not due and contingent or unliquidated claims
- 500. Counterclaims
- 505. Execution and levies prohibited
- 510. Compromise of claims
- 515. Encumbered assets
- 520. Administration in more than one state; duty of personal representative
- 525. Final distribution to domiciliary representative

Sec. 13.16.450. Notice to creditors. Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the judicial district announcing the appointment and address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred. (§ 1 ch 78 SLA 1972)

NOTES TO DECISIONS

Only claims for money due the claimant from the deceased require presentation to the administrator. *Geist v. O'Connor*, 13 Alaska 15, 92 F. Supp. 451 (D. Alaska 1950).

Quoted in *Hitt v. J.B. Coghill, Inc.*, 641 P.2d 211 (Alaska 1982).

Collateral references. — 31 Am. Jur. 2d, Executors and Administrators, § 324 et seq.
54 C.J.S., Executors and Administrators, §§ 367 — 481.

Validity of claims against estate filed prior to publication of notice to creditors. 70 ALR3d 784.

Sec. 13.16.455. Statutes of limitations. Unless an estate is insolvent the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under AS 13.16.465 is equivalent to commencement of a proceeding on the claim. (§ 1 ch 78 SLA 1972; am § 15 ch 154 SLA 1976)

Legislative history reports. — For report on ch. 154, SLA 1976 (SB 717), see 1976 House Journal, p. 1569.

NOTES TO DECISIONS

Suspension of personal injury limitations statute. — Where decedent died after the two-year personal injury limitations period began to run, this

section extended the period by four months. *Hamilton v. Blackman*, 915 P.2d 1210 (Alaska 1996).

Sec. 13.16.460. Limitations on presentation of claims. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the first publication of notice to creditors if notice is given in compliance with AS 13.16.450; however, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state;

(2) within three years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents

(1) any proceeding to enforce any mortgage, pledge, or lien upon property of the estate;

or

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which there is protection through liability insurance. (§ 1 ch 78 SLA 1972)

NOTES TO DECISIONS

This section, et seq., provides detailed and explicit procedures for presentation, allowance and payment of claims against the estate. In re Estate of Pushruk, 562 P.2d 329 (Alaska 1977).

Nothing in AS 13.16.005 — 13.16.705 exempts estates consisting in whole or in part of a wrongful death recovery. In re Estate of Pushruk, 562 P.2d 329 (Alaska 1977).

Liability of personal representative. — This section does not provide for liability of the personal representative. Gudschinsky v. Hartill, 815 P.2d 851 (Alaska 1991).

Liability claims not barred. — This section did not require tort claimants to present their liability

claim to the estate within four months after publication of notice to creditors because they were not claiming liability for an amount exceeding the decedent's liability insurance limits. Hamilton v. Blackman, 915 P.2d 1210 (Alaska 1996).

Claim within limits of deceased's liability insurance. — A plaintiff seeking an award within the limits of a deceased tortfeasor's liability insurance policy must nevertheless obtain court appointment of a personal representative and bring suit against the personal representative. Hamilton v. Blackman, 915 P.2d 1210 (Alaska 1996).

Burden of pleading and proof. — Subsection (a)(1) of this section causes forfeitures in the same way as any other statute of limitations and therefore the burdens of pleading and proof of compliance with the section are on the estate. Hitt v. J.B. Coghill, Inc., 641 P.2d 211 (Alaska 1982).

Applied in In re Estate of Hutchinson, 577 P.2d 1074 (Alaska 1978); Sheehan v. Estate of Gamberg, 677 P.2d 254 (Alaska 1984).

Cited in Jensen v. Ramras, 792 P.2d 668 (Alaska 1990).

Collateral references. — 31 Am. Jur. 2d, Executors and Administrators, § 603 et seq.
33 C.J.S., Executors and Administrators, § 394 et seq.

Claim of government or subdivision thereof as within provision of nonclaim statute. 34 ALR2d 1003.
Exclusiveness of grounds enumerated in statute

providing, under specified circumstances, extension of time for filing claims under decedent's estate. 57 ALR2d 1304.

Amount of claim filed against decedent's estate as limiting amount recoverable in action against estate. 25 ALR3d 1356.

Sec. 13.16.465. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) the claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court; the claim is considered presented on receipt of the written statement of claim by the personal representative or on the filing of the claim with the court, whichever occurs first; if a claim is not yet due, the date when it will become due shall be stated; if the claim is contingent or unliquidated, the nature of the uncertainty shall be stated; if the claim is secured, the security shall be described; failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made;

(2) the claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of a claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim; no presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of death;

(3) if a claim is presented under (1) of this section, no proceeding on it may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations. (§ 1 ch 78 SLA 1972)

NOTES TO DECISIONS

Character of claim. — The claim that is to be presented to the administrator is not a claim of any peculiar or particular character, but is any claim that

might be asserted as a cause of action or as a right demanded. In re Estate of Gladough, 1 Alaska 649 (D. Alaska 1902).

Collateral references. — 31 Am. Jur. 2d, Executors and Administrators, § 662.

Amendment of claim against decedent's estate after expiration of time for filing claims. 56 ALR2d 627.

Presentation of claim to executor or administrator

as prerequisite of its availability as counterclaim or setoff. 36 ALR3d 693.

Validity of claims against estate filed prior to publication of notice to creditors. 70 ALR3d 784.