

## What Is “Substantial Completion” and Why Does It Matter?

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### What is “Substantial Completion”?

In the realm of construction law, the concept of “substantial completion,” also referred to as “substantial performance,” is of critical importance. The point in time at which substantial completion is achieved for a project has a number of implications for the rights of both parties to a construction contract. Therefore, it is important to have a basic understanding of substantial completion and its potential effects.

As its name suggests, substantial completion is not the same as final completion. While the statutory definition of substantial completion varies from state to state, most agree that a project is substantially complete when it can be used for its intended purpose. A construction project need not be *absolutely* complete; however, any remaining work or defects must be relatively minor and unimportant. For instance, courts would likely consider an office building to be substantially complete if a company has moved in and begun to conduct business, despite that the finishing touches of the project are still being completed. The very fact that a business has occupied the building indicates that it can be used for its intended purpose. But, if the building is missing an important feature—like a functioning plumbing system—it is not yet substantially complete.

The common definition of substantial completion may seem clear, but reasonable minds—and courts—can differ as to what exactly substantial completion entails. To avoid confusion and costly litigation, many contracts mitigate risk by including

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provisions that explicitly detail what the parties consider substantial completion to be.

### Why “Substantial Completion” Matters: Statutes of Limitation and Statutes of Repose

Substantial completion has significant implications for purposes of statutes of limitations and statutes of repose because the concept of substantial completion often signifies the point at which each begins to accrue. Both the statute of limitations and the statute of repose limit the period of time in which a builder or contractor is liable and limit the period of time in which a property owner can recover for injury and damages.

A statute of limitations restricts the period of time within which a party may file a claim. In Nebraska, the statute of limitations for claims relating to builders and contractors making improvements to real property is four years. This applies to any acts or omissions that constitute a breach of warranty or a design defect. Generally, the statute of limitations begins to run on the date of substantial completion. However, there are several exceptions: the first exception is known as the “discovery rule,” wherein the statute provides that causes of action which are not discovered within the four-year period, or within one year following the end of the four-year period, and could not reasonably be discovered within that time, may be commenced within two years of discovery of the breach or defect or within two years of the point in time at which the breach or defect should reasonably be discovered. The second exception applies to implied and express warranties. In 2015, the Nebraska Supreme Court determined that the four-year statute of limitations does not commence until the end of the warranty period, rather than at the point of substantial completion.

Similar to a statute of limitations, a statute of repose begins on a set date and acts as a complete bar to claims for breach of warranty and design defects. Unlike the statute of limitations, the statute of repose accrues regardless of the date of discovery or the reasonableness of discovery. In Nebraska, the statute of repose is ten years from the point of substantial completion. For example, in *Witherspoon v. Sides Const. Co., Inc.*, a homeowner’s action against a contractor for damage resulting from a broken pipe was timely because it was filed within ten years of completion of the home.

In sum, contractors and builders should be aware of the length of the statute of limitations and the statute of repose in their respective jurisdictions and consider how the date of substantial completion may limit or bar a property owner from bringing a future claim. If you have any questions about how a substantial completion date may impact your project, please do not hesitate to contact one of the members of Koley Jessen’s **Construction Industry and Litigation Practice Area**.