

# Managing Risk

## Your Pre-Inspection Agreement: STATUTE OF LIMITATIONS

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**R**ecently, a kitchen fire resulted in \$100,000 in damages to a home inspection client's property. Upon investigation, the inspection client discovered that the fire was caused by a defective electrical component in the dishwasher, which was subject to a national recall.

A review of the state's regulations showed that nothing requires a home inspector to document the model number or to determine whether an appliance was subject to recall. Furthermore, the American Society of Home Inspectors' (ASHI) Standard of Practice (SOP) specifically excludes the requirement to identify recalled appliances.

"The inspector is NOT required to determine ... whether items, materials, conditions and components are subject to recall, controversy, litigation, product liability, and other adverse claims and conditions" (ASHI SOP § 13.2 [A][17], ["General Exclusions"]).



Despite all the evidence negating the inspector's liability, the inspection client persisted in their claim against the inspector. But when they did, they were faced with an even bigger problem. The inspection took place six years ago. Their state's statute of limitations is five years. Based on state law, the client's claim was time-barred. Our claims team dismissed what could have been a difficult and expensive claim at no cost to the inspector.

### WHAT IS A STATUTE OF LIMITATIONS PROVISION?

A statute of limitations provision limits a client's ability to file a claim against a home inspector to a specific period of time. The purpose of such a statute is to deter clients from coming back with complaints after their inspection findings are relevant.



*Note: The Managing Risk column with InspectorPro Insurance provides home inspectors with tips to protect their businesses against insurance claims and examines best practices for crafting effective pre-inspection agreements.*

## STATUTES OF LIMITATIONS CAN VARY BASED ON THE TYPE OF CLAIM. AS SUCH, IT'S IMPORTANT TO RESEARCH WHAT VARIATIONS MAY EXIST IN YOUR STATE.

For example, one of our home inspectors received a claim for roof defects that manifested 18 years after the inspection. Since the average life span of a roof is 20 to 30 years, it's no surprise that the inspection client experienced roof defects nearly two decades after their inspection.

Typically, these clauses appear in the same section as your notice requirements, which dictate how and when clients must tell you they have an issue.



**THE FOLLOWING IS AN EXAMPLE OF A DISPUTE RESOLUTION PROVISION WRITTEN BY OUR CLAIMS TEAM:**

“Any action must be commenced within one (1) year from the date of the inspection. The inspector shall have no liability for any action commenced more than one (1) year after the date of the inspection.”

*NOTE THAT YOUR CLAUSE DOES NOT NEED TO EXPLICITLY CALL ITSELF A STATUTE OF LIMITATIONS. HOWEVER, IT DOES NEED TO CLEARLY STATE THE AMOUNT OF TIME A CLIENT HAS TO MAKE A CLAIM AND THE REPERCUSSIONS FOR NOT MEETING THAT DEADLINE.*

**WHERE DO STATUTES OF LIMITATIONS COME FROM?**

When including a statute of limitations provision in your pre-inspection agreement, it’s important to know your state’s laws. Most states have legislation or case law specifying the maximum time claimants have to initiate legal proceedings. However, you shouldn’t take a state’s statute of limitations at face value. Here are some important factors to consider:

- Statutes of limitations can vary based on the type of claim. As such, it’s important to research what variations may exist in your state.
- Some states have statutes of limitations specific to home inspectors. These inspector-specific statutes can override the state’s general statute of limitations.
- Different states have different rules dictating how their statute of limitations is enforced. For example, some laws say that the statute of limitations begins on the day after you perform your inspection. Others start the clock based on when you deliver your inspection report. Still others go by the date the claimant knew or should have known of the defect.
- Court rulings, too, can affect how or even whether a state statute will apply. In some situations, such case law trumps existing legislation.

Be sure to have the lawyer assisting you with your pre-inspection agreement check the state law regularly because these statutes can change.

**WHILE IT IS POSSIBLE TO WRITE A SHORTER STATUTE OF LIMITATIONS IN YOUR CONTRACT, A SHORTER STATUTE ISN’T NECESSARILY ENFORCEABLE.**

**CAN YOU HAVE A SHORTER STATUTE OF LIMITATIONS IN YOUR CONTRACT?**

Many home inspectors wonder whether they can have a shorter statute of limitations in their contracts. For example, if the inspector lives in a state with a five-year contractual statute of limitations, can their pre-inspection agreement propose a one-year statute instead? By reducing the amount of time clients can make a claim, inspectors hope to minimize the number of claims they receive.

While it is possible to write a shorter statute of limitations in your contract, a shorter statute isn’t necessarily enforceable. For example, your statute may be ruled unreasonably short and, therefore, unfair to the consumer. Additionally, some state laws prohibit people from shortening statutes of limitations. Before shortening your contract’s statute of limitations, consult a local attorney to ensure that you do not go against any laws.

**MANAGE YOUR RISK AGAINST POTENTIAL CLAIMS.**

Don’t let clients bring claims against you long after your findings are relevant. Include a statute of limitations provision in your pre-inspection agreement to protect your home inspection business.

To learn more about pre-inspection agreement clauses, read this column next month when we explore the severability provision.