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The statute of limitations exists in order to force an aggrieved party to take action on their claim within a reasonable period of time or risk having their claim barred. State Law contract actions in North Carolina are subject to a three-year statute of limitations. However, the statute of limitations is four years if the action involves a contract for the sale of goods. The statute of limitations can be extended for as long as ten years if the contract is signed under seal. In North Carolina, the statute of limitations does not begin to run until the plaintiff is entitled to institute and maintain a suit. In other words, the statute of limitations time period does not begin to run until the contract between the parties is breached.

Examples of Statute of Limitations Charges:

- Personal Property Damage
- Sexual Assault
- Personal Injury Cases
- Malicious Misdemeanors
- False Imprisonment

How to Reset the Limitations Period

There are several ways to “reset” the limitations period. A new promise to pay the debt begins a new date from which the statute of limitations starts to run. However, in order for that promise to be binding, it must be in writing and occur prior to the expiration of the statute of limitations. In addition, the writing must be signed. The writing must contain “an express, unconditional promise to pay” or “a definite, unqualified acknowledgment of the debt.” A verbal promise to pay the debt will not toll the statute of limitations. Nor will there be a vague expression to pay an undefined amount such as “I am going to pay it as soon as I can.”

A partial payment on a debt is another common, perhaps the most common, way in which the statute of limitations is “reset.” However, the partial payment must be made in such a manner in which it can be inferred that the debtor, by making the payment, “acknowledged and admit[ted] the greater debt to be due.” The statute of limitations begins to run anew from the date the last payment was made on the account.

There is case law in North Carolina law which states that the statute of limitations can not be used as a defense when a creditor has held off on filing a lawsuit as a result of a debtor’s promise to pay the debt, even if the promise is not in writing, along with a promise by the debtor not use the statute of limitations as a defense of the action. It would be inequitable for a court to dismiss the plaintiff’s action when the debtor, notwithstanding its previous promise, subsequently raised the statute of limitations as a defense in its answer.

North Carolina's Statute of Limitations

Compared to most States, North Carolina has a relatively short statute of limitations. As a result, a creditor should not deliberately reduce, even further, its right to pursue a breach of a contract. For example, a creditor drafted its contract to state that "Any action for breach of contract or other claim arising out of the parties' business relationship must be commenced within one year after the cause of action has accrued." An assumption could be made that the contract was drafted in that fashion in an attempt to limit the right of the customer to bring a claim against the creditor. However, in this particular case, it eliminated the creditor's right to pursue its own cause of action since more than one year had elapsed by the time the lawsuit had been filed.

Affirmative Defenses

The Statute of Limitations is an affirmative defense. Failure by the defendant to raise the statute of limitation as an affirmative defense in its Answer results in a waiver of that defense. However, if the defense is properly raised in the defendant's Answer, the plaintiff is pretty much "dead in the water" and its action will be dismissed. Obviously, this does not apply to consumer claims. It is a violation of the Fair Debt Collection Practices Act to file a lawsuit on a time-barred claim.

A creditor should avoid placing themselves in a position where they need to be concerned about the statute of limitations. It is a well-known fact that the longer you wait to pursue a claim, the less likely there will be a recovery on that claim. As a result, a creditor

should have in place specific policies and procedures that require legal action on the claim well in advance if any statutorily imposed limitations.

Contact us today to learn more about the Statute of Limitations in North Carolina.

Smith Debnam lawyers are here to assist you with the statute of limitations in the state of North Carolina. [Contact us](#) today to learn more about the perspective period.

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Gary Groon is a partner in the firm and member of the firm's creditors' rights section. He is a certified Creditors' Rights Specialist and concentrates his practice in the areas of debt collection and civil litigation. A member of the *Million Dollar Advocates Forum®*, *The Top Trial Lawyers in America®*, Gary represents national and local businesses in collection matters throughout North Carolina.

Gary speaks several times each year at seminars on collection law and enforcement of judgments. He has been featured as a speaker at educational programs sponsored by Heritage Professional Education, Lorman Education Services, and National Business Institute.

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