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BUILDING NEWS

2025 GAHBA MEMBERSHIP DRIVE BRINGS IN 124 NEW MEMBERS

PG. 24



BUILDING YOUR CLIENT'S DREAM HOME

pg. 36

CONTENTS



FEATURES

- 23** SPRING CLAY SHOOT
- 24** 2025 GAHBA MEMBERSHIP DRIVE BRINGS IN 124 NEW MEMBERS
- 32** WILL HOUSING INVENTORY INCREASE IN 2025?
- 36** BUILDING YOUR CLIENT'S DREAM HOME
- 41** NEW WORKFORCE DEVELOPMENT BILL 'CONSTRUCTS' RESIDENTIAL HOUSING
- 44** INSTAGRAM-READY HOMES: AESTHETICS VERSUS FUNCTIONALITY

DEPARTMENTS

- 5** President's Letter
- 6** GAHBA Staff
- 6** Board of Directors
- 7** Spike List
- 10** Chapter Update
- 11** Council Round Up
- 19** EarthCraft
- 22** Government Affairs
- 26** Education
- 29** Legal Corner
- 30** Member Spotlight: Wayne Hiott, Tyler Chandler Homes
- 47** HomeAid Georgia



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How Long Should a Builder Retain Records to Protect Against Homeowner Claims?

by Tyler Dunn, Weissman P.C.

A builder client recently asked how long it should retain records to protect against homeowner claims. This article addresses that question. To understand my suggestion, we need to briefly discuss statutes of limitation and the construction-related statute of repose.

Statutes of Limitation and Accrual of Claims

Georgia has various statutes of limitation. A statute of limitation is the period when a claim can be asserted after it has accrued. Accrual occurs when the claim can first be brought.

Different claims accrue at different times. Most homeowner claims against a builder, including negligence, code violation and breach of contract claims, accrue on the date of closing. Breach of warranty claims generally accrue when a homeowner makes a warranty claim. Fraud claims accrue later when a homeowner learns or should have learned of the defects in question.

The periods of time for pursuing these common claims after they accrue are generally as follows:

- Negligence claim: four years (from closing)
- Code violation claim: four years (from closing)
- Breach of contract claim: six years (from closing)
- Breach of warranty claim: six years (from notice of warranty claim during the warranty period)
- Fraud: four years (from discovery of fraud or when reasonable care would have led to its discovery)

The exceptions to these periods are beyond the scope of this article.

Statute of Repose

Georgia also has a construction-related “statute of repose.” It sets a maximum eight to 10-year period for pursuit of construction-related claims. The eight-year period is the general rule; however, if an injury occurred during the seventh or eighth year, the statute of repose may extend to a maximum of 10 years. The construction statute of repose is intended to set an outside limit on the time when a construction-related claim can be pursued even if it has not yet accrued. It is important to note that it is irrelevant for negligence, code violation and breach of contract claims.

The construction statute of repose is relevant to fraud claims, which generally accrue when fraud is or should be discovered. If a homeowner discovers a hidden defect seven years after closing and couldn’t reasonably have been expected to learn of it prior, the homeowner can pursue a fraud claim even though the statute of limitations expired. However, once the maximum period has expired, the fraud claim is precluded.

Period of Record Retention

For most builders, I suggest retaining records for 10 years to protect against potential homeowner claims. If you’re comfortable with more risk and/or concerned about storage costs, you could retain them for seven years since most claims must be brought within that period. For builders providing a warranty of five years or longer, I suggest retaining records for six years after notice of any significant warranty claim. 🏡

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