J. Kevin Bridston

Partner and General Counsel
303.295.8104
Denver
kbridston@hollandhart.com

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A couple of years ago I wrote about the "Repair Doctrine." According to the Repair Doctrine, a contractor who undertakes to repair a defect may, by doing so, toll (or extend) the applicable statute of limitations during the period in which repairs are performed or attempted.

In *Highline Village Associates v. Hersh Companies, Inc*., the Colorado Court of Appeals adopted the repair doctrine. However, the Colorado Supreme Court abandoned that decision, ruling instead that in that particular case the claims were governed by the warranty statute of limitations, as opposed to the general builder's statute of limitations. In essence, the Colorado Supreme Court declined at that time to adopt the repair doctrine, although it did not reject it either.

In a recent case, the Colorado Court of Appeals has again adopted the Repair Doctrine. The case is *Curragh Queensland Mining Ltd. v. Dresser Industries, Inc.*, Court of Appeals No. 00CA1049 (April 25, 2002).

In the *Curragh* case, the Court of Appeals again held that at least in some circumstances the Repair Doctrine will serve to toll the statute of limitations. In other words, a buyer is not required to institute suit for past repairs or defects while a seller or builder is still attempting to make repairs, even if under ordinary circumstances the statute of limitations would otherwise bar claims for such prior repairs or defects.

It is important to be aware of the Repair Doctrine because it can undermine the existing statute of limitations that applies to architects, contractors, builders, engineers and certain others in construction-related professions. Ordinarily, the statute of limitations (C.R.S. § 13 80 102) bars claims brought more than two years after the defect was or should have been discovered. It further bars any actions brought more than six years after substantial completion of the improvement, regardless of the date of discovery (some minor exceptions apply).

If the defects are discovered and the builder offers to repair them, all bets may be off with respect to the statute of limitations. As an example, if a defect is discovered in August of 1999, ordinarily the buyer would be barred from bringing a claim related to that defect unless the claim was brought prior to August of 2001.

Suppose, however, that the builder offered to fix the defect. Suppose further that the builder works on repairs for the next year-and-a-half, and then declares that the repairs are complete and no further work will be

done.

In that circumstance, the buyer might actually be able to bring a claim as late as sometime in 2002, or well more than two years after the defect was discovered, notwithstanding the statute of limitations. That is because under the Repair Doctrine, the statute of limitations is tolled during any repair effort.

Somewhat paradoxically, if the builder had not offered to make repairs, those claims ordinarily would be barred if they were brought that late. In some ways, the doctrine appears to support the old adage that "no good deal goes unpunished." It does so because the builder doing a "good deed" by attempting repairs on what may or may not be a problem could be hit with a claim that might be time barred with respect to a builder who does nothing.

This is not to say that builders should not make efforts to satisfy their clients and customers. They should. It is simply good business practice to do so.

At the same time, builders should make clear when they have completed repairs and intend to do no further repair work. Failure to do so may result in an even longer statute of limitations and therefore unexpectedly late claims.
