

RIGHT TO CLAIM: A MATTER OF TIME

In order to exercise the right to claim one needs to be aware of the time limits imposed by the laws. These time limits vary from case to case and from trade to trade. The basic aim of fixing deadlines to the right to claim is also to protect the party responsible for the harm object of the claim (manufacturer, vendor, service provider, as the case may be) where claims are presented at a moment in time when proof of evidence is deemed difficult to achieve with the certainty required by the law.

Spanish Law established two different classes of time limits, with different effects: Prescription (prescripción) and expiration (caducidad).

According to the law (Civil Code 1973), an action subject to prescription will be interrupted by either a judicial or extrajudicial claim or by acknowledgement of debt by the defendant. The implications of this are that once the action is brought, the time limit starts counting again from the date of the claim. The Civil Code does not require the claim to be through the courts. A notarised letter, and more recently, a burofax (a fax sent from the post office with acknowledgement of content and recorded delivery) are enough, and even if the plaintiff subsequently decides to discontinue with his claim, the time limit begins to run from the date of the action.

Expiration (caducidad) is also a time limit after which the plaintiff loses his right to make a claim. However, expiration is a rather more strict period, in that the claim has to be lodged through a Court of law within the time limit in order not to lose the right of claim.

In general, time limits vary from action to action: a claim under the provisions of the Consumers Protection laws will be different from a claim between two companies. Similarly, mandatory guarantees arising from real estate transactions, insurance, travel or transport contracts vary significantly. Also, actions founded on tort shall not be brought after the elapsing of a certain time limit.

These are the different and most important time limits imposed by law to bring actions founded on:

A) General Time Limit: 15 years

This time limit is the general period granted by the Civil Code and applicable to any contract where a special period is not specifically contemplated. For example, any claim against providers of professional services (lawyers, accountants, doctors...), supply companies (water, electricity, gas...), and generally any other not subject to a shorter time limit

B) Property Purchase: 10, 3 and 1 year**• 10 year guarantee period**

The Spanish Civil Code establishes that an action founded on defective construction of the essential parts of a building shall be accepted provided the cause of action accrued within a ten year period from the date of the conclusion of the works. Once the defect is apparent and known to the proprietor, an action founded

on it shall not be brought after 15 years from the date on which the cause of action accrued. The faults or defects contemplated in this article are:

- Foundations
- Beams, pillars
- Support elements
- Retention walls and other structural elements
- Generally, any other element that directly compromises the mechanical resistance and stability of the building

• 3 year guarantee period

This period of 10 years is reduced to 3 years where the defects are of construction elements or installations which have an adverse effect on the following habitability conditions:

- Hygiene, health and protection of the environment, understood as necessary for achieving the necessary conditions of salubrity, watertightness and airtightness.
- Protection against noise, understood as being enough to prevent risk to the health of people and enabling them to carry out their activities normally.
- Energy saving and heat proffness , understood as necessary for achieving a rational use of energy to allow an adequate use of the building.
- Other functional aspects of the constructive elements or of the installations to allow a satisfactory use of the building.

All the intervening agents in the construction are answerable for these construction faults or defects. This means that the developer (if the property has been sold), constructor, architect and building engineer are liable to the extent of their competences in the construction, although the action can be brought jointly to all of them where the individual responsibility for the faults or defects cannot be ascertained. (TS 3-4-95)

• 1 year guarantee period

In addition to this responsibility, the constructor will be liable for any defect or fault regarding the finish of the construction during a period of 1 year from the moment of completion of the works.

C) RETAIL PURCHASE:**Guarantee period: 6 months minimum**

Purchase-sale agreements between consumers and retailers are governed by the Consumer Protection Act, which establishes a minimum period of guarantee of 6 months. Many manufacturers extend this period up to one year from the date of purchase, or even more. The guarantee given by the retailer or manufacturer gives the choice of having the product repaired, and if the repair is not satisfactory, to have the product replaced or alternatively obtain a refund of the purchase price.

The nature of this time limit is of prescription, which means that any action done within that period amounting to a claim will have

the effect of interrupting the 6-month time limit. The claimant can then avail himself of the general period of 15 years (expiration time limit) from the date of the claim within which the lawsuit will have to be filed.

Some judges are of the view that the period of guarantee runs simultaneously to that of expiration, which would mean that a suit would have to be filed within the guarantee period. This interpretation is seemingly unfair in that the Consumers Protection laws are precisely designed to protect the weakest party to a transaction ensuring a higher degree of flexibility if the interests of the consumers are compromised. In the light of these contradictory interpretations it is recommended that the suit is filed within the guarantee period.

D) INSURANCE: 2 or 5 years

The law when it comes to insurance establishes two time limits:

- Claims brought under an insurance contract covering material damages (property insurance, car insurance...) within 2 years from the date of the report of the event.
- Claims brought under an insurance contract covering personal damages (life insurance, medical insurance) within 5 years from the date of report of the event. In order to avail from these time limits, the claimant will have to report the happening of the event within 7 days from the date of knowing it, unless the policy provides for an extended period.

E) COMBINED TRAVEL: 2 years

The law governing combined transport in Spain is an adaptation from the European directive. The time limit imposed on claims is of 2 years for any breach of contract: non-fulfillment of the agreed conditions, for example, change in the projected route, allocation in inferior accommodation or inferior transport conditions to those agreed, charges for services or facilities which were supposed to be included in the price...

F) TRANSPORT: 2 years or 6 months

In air transport, when a company falls in breach of contract, the customer has two years within to claim where the flight is international (this time limit is an expiration limit, so the claim has to necessarily be judicial). In national flights, the time limit is reduced to 6 months, but it is a prescription time limit in which any claim interrupts this period.

In land transport, the time limit (prescription period) is of 1 year.

In order to bring judicial action, a prior claim to the company will be necessary where the claim is based on a delay, lost or damaged luggage or goods transported: these time limits are extremely short:

- In land transport, the claim will have to be lodged in the following 24 hours from the time of delivery or the agreed time of delivery.

- In air transport, the claim will have to be lodged in the following 10 days from the time of delivery or the agreed time of delivery. If the flight is international, the period is of 7 days when the claim is based in damage to luggage and 21 days if the luggage has been lost.

If the claim is not presented in due time, the consumer will be precluded from bringing an action against the company.

G) PURCHASE-SALE transaction between consumers: 6 month

In a sale between consumers, whether it is a movable good (cars, electrical appliances...) or real estate, the vendor is answerable for any hidden defect during a six-month period from the date of purchase. If in that period the buyer discovers that there is a defect that existed at the time of purchase, he is entitled to obtain a proportional refund of money or to undo the sale. In addition to this, he will be entitled to claim damages if he can prove the vendor knew there were a defect and did not disclose it. This is an expiration time limit, so quick action is to be taken if any defect is discovered within that period.

In real estate, the 6-month expiration period is complemented by the constructor's mandatory guarantee (joint 10-year period liability) if the property is less than 10 years old.

H) DAMAGES not arising from a contractual relationship

In the two situations included here, the claimant and the suspected agent producing the damage are not linked by any agreement. The time limits to pursue a claim are the following:

• Lack of security of a product: 3 years

This case arises from damage occurred due to a faulty manufacturing of the product. For example, some electronic appliance overheats and sets fire to the property, causing considerable damage. Although the guarantee period may have expired, the claimants can contest that the product lacked a device to prevent overheating and therefore have a legitimate claim. The time limit to bring an action founded on lack of security of a product is of 3 years counted from the date the damage occurred, provided it happened within ten years from the date the defective product was put on the market for sale.

• Fault or negligence: 1 year

Damage occurring through the fault or negligence of someone entitles the aggrieved party to claim compensation during the first year from the date he has knowledge of the harm suffered. The defendant can well be a physical or juridical person or the Administration. In this last case, it will be necessary to claim directly to the administrative office in question within that year. If it is rejected by return, the claimant has two months to file a lawsuit for damages. If the claimant does not receive an answer within six months from the date of the claim (administrative silence), he can then file a lawsuit within the following six months.