

Real Estate Update :

Arizona Supreme Court Rejects Homeowners' Attempt to Lengthen The Statute of Repose for Property Defect Claims

By Sherry Janssen Downer

On June 30, 2011, the Arizona Supreme Court, in *Albano v. Shea Homes*, issued an advisory opinion to the Ninth Circuit Court of Appeals, concluding class action "tolling" does not apply to extend the time limit set by Arizona's Statute of Repose for homeowners to file lawsuits against builders for construction defects. Tolling is a legal doctrine used to extend the deadline by which to file a lawsuit. The Statute of Repose, A.R.S. § 12-552(A), provides construction defect lawsuits based on express or implied contracts must be brought within eight years of substantial completion, or within nine years if a latent defect is first discovered in the eighth year. *Albano* involved a group of homeowners who filed suit ten years after substantial completion, claiming the "tolling" theory applied to extend the filing deadline for all affected homeowners because some homeowners had timely filed suit against the builders seeking to be designated as a class action. The court concluded "tolling" was contrary to the Statute's basic purpose of creating an outer time limit of exposure for breach of contract and implied warranty claims against those engaged in the development or construction of real property and related activities.



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Ms. Downer practices in the areas of labor and employment, commercial and business litigation, and professional liability. Ms. Downer represents companies in employment litigation, commercial disputes, contract claims and the defense of tort claims. She has successfully defended and obtained dismissals for professionals, including attorneys and doctors, against professional malpractice claims.

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