

**STATE-BY-STATE GUIDE
TO DESIGN AND
CONSTRUCTION
CONTRACTS AND CLAIMS**

S E C O N D E D I T I O N

**Michael Dodd
J. Duncan Findlay**

VOLUME 2

CONSTRUCTION LAW LIBRARY



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Law & Business



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STATE-BY-STATE GUIDE TO DESIGN AND CONSTRUCTION CONTRACTS AND CLAIMS

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Volume 2

Editors

**Michael Dodd, Esq.
J. Duncan Findlay, Esq.**



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Law & Business

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Under Mont. Code Ann. § 28-2-708, any provision in a contract that restricts a party from enforcing its rights under the contract or that limits the time for the party to enforce such rights is void.¹ This statute has been applied to void an insurance policy provision that required that a lawsuit be brought within one year after an occurrence giving rise to coverage,² and to void the constitution of an Ohio fraternal benefit society that limited the time for bringing actions against the society.³ Montana's anti-shortening statute, however, has been held to be preempted by federal law and allow parties to contractually agree to a shortened limitations period in an ERISA plan.⁴

There is no reported case addressing this statute in the context of a professional services or construction contract. All of the reported cases that address whether a contractual statute of limitations provision is enforceable involve insurance policies. In Montana, words of limitation in an insurance policy are strictly construed against the insurer.⁵ Therefore, these cases are not necessarily controlling or dispositive if the provision is contained in a construction contract that does not involve a consumer as one of the contracting parties. A court might find such a provision enforceable. For example, in a contract of sale of goods, the Montana Uniform Commercial Code specifically permits the statute of limitations of four years for breach of contract to be reduced by agreement to a period not less than one year.⁶

A contract provision attempting to shorten the statute of limitations should be distinguished from a contract provision that requires notice of claims to be given within a prescribed period or else such claims will be waived. Arguably, Mont. Code Ann. § 28-2-708 does not apply to such a clause because a notice of claim requirement affects whether the party complied with a contract in such a way as to have rights to enforce rather than how they may be enforced.⁷

¹ Mont. Code Ann. § 28-2-708.

² Thielbar Realities, Inc. v. National Union Fire Ins. Co., 91 Mont. 525, 9 P.2d 469, 471 (1932); see School Dist. No. 1 v. Globe & Republic Ins. Co., 146 Mont. 208, 215, 404 P.2d 889, 893 (1965).

³ Trammel v. Bhd. of Locomotive Firemen & Enginemen, 126 Mont. 400, 253 P.2d 329 (1953).

⁴ Chambers v. Montana Contractors Ass'n Health Care Trust, 797 F. Supp. 2d 1050 (D. Mont. 2009).

⁵ Leibrand v. National Farmers Union Prop. & Cas. Co., 272 Mont. 1, 6, 898 P.2d 1220, 1223 (1995).

⁶ Mont. Code Ann. § 30-2-725(1).

⁷ See Keeney Constr. v. James Talcott Constr. Co., 2002 MT 69, ¶ 25, 309 Mont. 226, 45 P.3d 19; Best Mfg. Co. v. Hutton, 49 Mont. 78, 141 P. 653 (1914).