

Chapter 22

STATUTES OF LIMITATIONS*

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***Editor's note**—Ord. No. 790, adopted June 14, 2001, amended the Code by repealing former Ch. 22, § 22-1, and added a new Ch. 22, §§ 22-1—22-15, to read as set out herein. Former Ch. 22 pertained to limitations, and derived from Ord. No. 24, adopted October 27, 1981.

Cross references—Civil procedure, ch. 1; criminal procedure, ch. 15.

ARTICLE I. APPLICATION

Sec. 22-1. Chapter applicable to actions by private parties and the Tribe.

This chapter applies to actions brought in the Cherokee Court by or for the benefit of private parties and to actions brought by or for the benefit of the Tribe. As used in this chapter, "Tribe" means the government of the Eastern Band of Cherokee Indians and all of its agencies, enterprises, entities, instrumentalities, organizations, commissions and all other bodies owned or operated by the government of the Eastern Band of Cherokee Indians.
(Ord. No. 790, 6-14-2001)

Sec. 22-2. Period of limitation runs from accrual of action.

Actions in the Cherokee Court may only be commenced within the time periods prescribed in this chapter, after the cause of action has accrued, unless a different time period is expressly provided by law.
(Ord. No. 790, 6-14-2001)

Sec. 22-3. Sovereign immunity not waived.

Nothing in this chapter constitutes a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.
(Ord. No. 790, 6-14-2001)

ARTICLE II. TIME PERIODS DESCRIBED

Sec. 22-4. One year.

The following actions must be brought within one year after the cause of action accrues:

- (1) All actions against the Tribe or its officers acting in their official capacity, regardless of the form or grounds for the action.
- (2) Actions for libel, slander, assault, battery or false imprisonment.
- (3) For the year's allowance of a surviving spouse or children.

- (4) For a deficiency judgment on any debt, promissory note, bond or other evidence of indebtedness.
(Ord. No. 790, 6-14-2001)

Sec. 22-5. Three years.

The following actions must be brought within three years after the cause of action accrues:

- (1) Actions on an express or implied contract, except as provided in Section 22-6, Cherokee Code.
- (2) Actions in tort, except for torts enumerated in Section 22-4, Cherokee Code, and except as provided in Section 22-6, Cherokee Code. Provided, that a cause of action for personal injury does not accrue until the bodily harm to the claimant becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. However, no cause of action may accrue more than seven years from the last act or omission of the defendant giving rise to the cause of action.
- (3) For trespass upon real property.
- (4) For taking, detaining, converting or injuring personal property. The cause of action does not accrue until the taking, detaining, converting or injury to personal property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. However, no cause of action may accrue more than seven years from the last act or omission of the defendant giving rise to the cause of action.
- (5) For relief on the ground of fraud or mistake. The cause of action does not accrue until the aggrieved party discovers the facts constituting the fraud or mistake.

(Ord. No. 790, 6-14-2001)

Sec. 22-6. Six years.

The following actions must be brought within six years after the cause of action accrues:

- (1) Any action brought by the Tribe, notwithstanding any other provision of this chapter.

- (2) Actions for the prosecution of all crimes prohibited by the Tribe.
- (3) For injury to any intangible right in land, such as an easement.
- (4) Actions on an express or implied contract or in tort for damages based upon or arising out of the defective or unsafe condition of an improvement to real property.
 - a. The actions must be brought within six years from the last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement, whichever is later. For purposes of this subdivision, "substantial completion" means that degree of completion of a project or improvement upon which the owner can use the project or improvement for the purpose for which it was intended. The date of substantial completion may be established by written agreement.
 - b. For actions for personal injury based on or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the plaintiff. However, no action may be brought more than seven years from the later of the specific last act or omission or substantial completion.
- (5) Actions based on or arising out of any alleged defect or any failure in relation to a product. The action must be brought within six years after the date of initial purchase of the product for use or consumption.

(Ord. No. 790, 6-14-2001)

Sec. 22-7. Seven years for all actions not expressly articulated.

All actions not expressly articulated in this chapter or other chapter of the Cherokee Code must be commenced within seven years after the cause of action accrues.

(Ord. No. 790, 6-14-2001)

Sec. 22-8. Conflicts with federal law—Federal law prevails.

If federal law provides a different limitation for an action than is provided in this chapter or other chapter of the Cherokee Code, the limitation in the federal law shall prevail.

(Ord. No. 790, 6-14-2001)

ARTICLE III. GENERAL PROVISIONS

Sec. 22-9. Disabilities.

A person who is entitled to commence an action and who, at the time the cause of action accrued, is under a disability such as minority, insanity, incompetency or other disability recognized by the Cherokee Court, may bring an action within the periods provided in this chapter, after the disability is removed. For those persons under a disability on July 1, 2001, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from July 1, 2001.

(Ord. No. 790, 6-14-2001)

Sec. 22-10. Cumulative disabilities; disability must exist when right of action accrues.

(a) If two or more disabilities coexist at the time the right of action accrues, or if one disability supervenes an existing one, the limitation does not attach until both disabilities are removed.

(b) A person may not avail himself of a disability unless the disability existed when the right of action accrued, except as authorized in this section for cumulative disabilities.

(Ord. No. 790, 6-14-2001)

Sec. 22-11. Death before limitation expires; action by or against personal representative or collector.

(a) If a person entitled to bring an action dies before the expiration of the period of limitation for bringing the action, and the cause of action survives, an action may be commenced by his per-

sonal representative or collector after the expiration of that time, and within one year from the person's death.

(b) If a person against whom an action may be brought dies before the expiration of the time for bringing the action, and the cause of action survives, an action may be begun against his personal representative or collector after the expiration of that time. Provided, the action must be brought or notice of the claim upon which the action is based must be presented to the personal representative or collector within two years of the date of death.

(c) The time that elapses during a controversy on the probate of a will or granting of letters of administration is not counted when calculating time under this section, until an administrator is duly appointed, with authority to sue or be sued. (Ord. No. 790, 6-14-2001)

Sec. 22-12. Transition provision.

The limitation periods established herein apply to all actions filed on or after the effective date of this chapter. Actions that accrued before the effective date of this chapter and are not already barred by a pre-existing statute of limitations must be filed within: (a) The limitation period established by this chapter; or (b) one year after the effective date of this chapter, whichever is later.

(Ord. No. 790, 6-14-2001)

Sec. 22-13. New promise must be in writing.

No acknowledgment or promise is evidence of a new or continuing contract, from which the period of limitations runs, unless it is contained in a writing signed by the party to be charged thereby. However, this section does not alter the effect of any payment of principal or interest.

(Ord. No. 790, 6-14-2001)

Sec. 22-14. Actions stayed by injunction or prohibition.

When the commencement of an action is stayed by an injunction or prohibition imposed by ordinance of the Tribe or an order of the Cherokee Court, the time during which the injunction or

prohibition exists is not counted as part of the time for which the commencement of the action is limited.

(Ord. No. 790, 6-14-2001)