

# Contractual Limitations Provisions: Why Are You Suing Me When Our Contract Says You Can't?

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## 1. Example of Contractual Limitations Provision.

"No action on this agreement may be brought more than 12 months after it accrues."

## 2. Statement of General Rule re Contractual Limitations Provisions.

**General Rule** — In the absence of a controlling statute a contract provision limiting the time for bringing an action is valid if the stipulated time is reasonable.

**Reasonableness** — The time allowed should be sufficient to allow the plaintiff to investigate and file a case within the limitation period.

"It is a well-settled principle that parties may agree to a limitations period shorter than that provided by state law. [citations] The general rule has been stated, in the absence of a controlling statute to the contrary, a provision in a contract may validly limit, between the parties, the time for bringing an action on such contract to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period. [citations] This rule reflects two axioms. First, it reflects the importance of the parties' freedom of contract absent clear policy to the contrary. [citations] Second, it reflects the policy underlying statutes of limitations, namely to encourage promptness in bringing actions so as to avoid a loss of evidence from the death or disappearance of witnesses, destruction of documents, or failure of memory. [citation] Thus, because statutes of limitations do not open a window to suit, but instead close a door, there is nothing in the policy or language of statutes of limitations 'which inhibits parties from stipulating for a shorter period within which to assert their respective claims.'" [citation] *Badgett v. Fed. Express Corp.*, 378 F. Supp. 2d 613, 622-624 (M.D.N.C. 2005)

## 3. Missouri Followed the General Rule Until 1887.

Before 1887, Missouri courts enforced contractual limitations provisions. For example, the validity of a fire insurance policy provision requiring that suit be brought within one year after the accrual of the cause of action was upheld in *Glass v. Walker*, 66 Mo. 32 (Mo. 1877).

“Conditions of this kind have been frequently introduced by insurance companies into their policies, and have been almost universally sustained. There are many good reasons, in cases of insurance against fire, why the insurers should introduce such conditions in their policies. The object is merely to compel a speedy determination of the controversy while the proofs and witnesses are accessible and all the matters pertaining to the contest are fresh in the recollection of the parties. They work no injury to the claimants, and may be of great benefit to the insurers.” *Keim v. Home Mut. Fire & Marine Ins. Co.*, 42 Mo. 38, 42 (Mo. 1867).

#### **4. The Missouri Legislature Rejected the General Rule in 1887.**

The general rule was in effect in Missouri until the late 1800s, but a statute rendering contractual limitations provisions void was enacted in 1887.

As described in *Cobble v. Royal Neighbors of America*, 291 Mo. 125, 137 (Mo. 1921), “Formerly limitation as to the time within which an action could be brought could be waived. But that has not been allowable since the adoption of the laws hereinafter set out first appeared in Laws of 1887, page 89. This act was contained in Revised Statutes 1889, section, 2394; again in Revised Statutes 1909, section 2780, and Revised Statutes 1919, section 2166. It appears though [sic] all of these statutes without amendment from said session acts, supra, to date. They read as follows: ‘All parts of any contract or agreement made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be null and void.’”

*Karnes v. American Fire Ins. Co.*, 144 Mo. 413, 417 (Mo. 1898) states the policy rationale underlying the statute, “The legislature determined that a sound public policy demands that the courts of the State shall remain open to litigants as long as their claims are not barred by the statute of limitations, and hence passed this act. The statute proceeds upon the theory that rules limiting the time for bringing suits should be uniform and general, and should not be left to private contract.”

The provision was later codified in R.S. Mo. 1939 § 3351 before finding its current home in chapter 431.

#### **5. Missouri’s Public Policy is Currently Stated in R.S. Mo. § 431.030.**

“Provisions limiting time for bringing suits prohibited — All parts of any contract or agreement hereafter made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be null and void.”

## **6. However, R.S. Mo. § 400.2-725 Applies to the Sale of Goods.**

Statute of limitations in contracts for sale. “(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.”

## **7. Examples of Exceptions to the General Rule from Other Jurisdictions.**

Missouri is not alone in prohibiting contractual limitations provisions. Here are some examples:

Under a Nebraska statute regulating contractual limitations provisions, a 12-month contractual limitation provisions in a machinery and equipment policy was not enforced in an action for damages to a construction company’s crane. *Babcock & Wilcox Co. v. Parsons Corp.*, 298 F. Supp. 898, 904 (D. Neb. 1969).

Under Mississippi statute providing that contractual limitations provisions are null and void, a provision in a fidelity bond that required suit to be brought within one year after discovery of the loss was void as an attempt to set aside the six-year statute of limitations for actions on contracts. *Latham v. United States Fidelity & Guaranty Co.*, 267 So. 2d 895 (Miss. 1972).

A 12-month contractual limitations provision in a property insurance policy interpreted under Alabama law was not enforced because due to an Alabama statute that limits the enforceability of contractual limitations provisions. *General Electric Credit Corp. v. Home Indem. Co.*, 168 Ga. App. 344 (Ga. Ct. App. 1983).

Also under Alabama law, a one-year contractual limitations period in contract involving the sale, installation, and monitoring of an alarm system was held to be invalid because it was shorter than the statute of limitations. *Honeywell, Inc. v. Ruby Tuesday, Inc.*, 43 F. Supp. 2d 1074 (D. Minn. 1999) (applying Alabama law).

## **8. Discussion of Missouri Cases.**

**Thomas.** Court did not enforce 90-day notice provision in a bond. Strict compliance with notice provision is not required, because under insurance policies the purpose of the notice requirement is to prevent prejudice. The court stated in dicta that the provision might run afoul of 431.030. *Thomas v. A.G. Elec., Inc.*, 304 S.W.3d 179 (Mo. Ct. App. 2009).

**Lumbermen’s.** Insurer refused to pay under a grain elevator’s insurance policy on a claim involving the dishonesty of the elevator’s employee. The court refused to enforce a contractual limitations provision and held the action to be timely filed.

“But, almost certainly in consequence of the Riddlesbarger opinion and its progeny, and of the aggression of the insurance enterprise and the ingenuity of its counsel, 'the policy of the statute of limitations,' on whose tolerance Mr. Justice Field relied, supra, historically underwent a substantial reformation .... Directly applicable here and of a pattern common to much of the change producing legislation, the legislature of Missouri in 1887 enacted a statute which, unaltered through the intervening revisions and compilations of the state's statutes, is now Section 431.030, Vernon's Annotated Missouri Statutes.

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“The comprehensive reach of that sentence need not, probably could not, be emphasized. By the words, 'any contract,' it repels the supposition that it applies only to policies of insurance, yet manifestly includes them within its ambit. And it 'nullifies and avoids,' all parts of any contract or agreement made and entered into after its enactment, i.e. after 1887, which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted. Its remedial character and entitlement to liberal construction in furtherance of its manifest objective are obvious. And it has been characterized as reflective of 'the public policy of Missouri,' in numerous cases ....” *Lumbermen's Mut. Casualty Co. v. Norris Grain Co.*, 343 F.2d 670, 682-683 (8th Cir. Mo. 1965).

**Caimi.** District court predicts that the Eighth Circuit would resolve a split among Missouri federal district courts by following “Doe [Seventh Circuit] and Northlake [Eleventh Circuit], and therefore holds that § 431.030 is inapplicable to contractual limitations periods for ERISA claims.” *Caimi v. DaimlerChrysler Corp.*, 2008 U.S. Dist. LEXIS 16116 (E.D. Mo. Mar. 3, 2008).

**Frank Powell Lumber.** Court enforced a 90-day notice provision in a surety bond, holding that the provision didn't run afoul of section 431.030: “Here, the time requirement applies to when the notice must be given in order for a claim to be covered under the surety bond. The terms of the surety bond in this case do not attempt to limit when a suit may be brought. The challenged terms of this surety bond involve only when a third-party beneficiary of the contract must give notice of a claim in order for the claim to be covered by the terms of the bond. *St. Paul Fire & Marine Ins. Co.* applied to the time in which a suit was required to be brought. *Lumbermen's Mutual Casualty Co.* is likewise inapplicable. That case also involved a limitation contained in an insurance policy that restricted when suit could be brought. The limitation in the policy was shorter than the applicable statute of limitation.

“In this case, the 90-day period of limitation did not affect when suit could be brought on the surety bond. Rather, it determined what notice was required in order for claimants who had no direct contract with Contractor to have coverage under the terms of the surety bond. The 90-day notice provision in the surety bond did not limit, or tend to limit, the time in which a suit or action could be instituted. Likewise, as observed, supra, the notice requirement did not affect any remedy available by reason of Missouri's mechanics' and materialmen's lien statutes. Section 431.030 is not applicable to the facts of this case.” *Frank Powell Lumber Co. v. Federal Ins. Co.*, 817 S.W.2d 648, 653 (Mo. Ct. App. 1991).

**Ellis.** *Ellis v. DaimlerChrysler Corp.* seems to be an anomaly. The case was decided without considering R.S. Mo. § 431.030 and it enforces a six-month contractual limitations period in a collective bargaining agreement:

“It is undisputed that plaintiff’s complaint was filed in excess of six months from the time the plaintiff alleges the last act he contends constitutes discrimination occurred. Under the terms of plaintiff’s Employment Agreement, which requires all claims to be filed within six months from the date of the alleged illegal conduct, plaintiff’s claims are time barred. Plaintiff expressly agreed that any suit relating to his employment must be filed within six months after the employment action. Plaintiff expressly waived any statute of limitations to the contrary in the Agreement.

“Plaintiff fails to controvert the authority presented by defendant which clearly establishes that contractually agreed upon limitations periods are valid and enforceable. See, *Missouri, Kansas & Texas Ry. V. Harriman Bros*, 227 U.S. 657, 672-73, 33 S. Ct. 397, 57 L. Ed. 690 (1913) [but, involved federal transportation law, which supersedes Missouri law]; *Order of United Commercial Travelers of America v. Wolfe*, 331 U.S. 586, 608 n. 20, 67 S. Ct. 1355, 91 L. Ed. 1687 (1947) [but, involved Full Faith and Credit Clause with respect to the constitution of a fraternal]; *AMOCO Canada Petroleum Co., Ltd. v. Lakehead Pipe Line Co., Inc.*, 618 F.2d 504, 506 (8th Cir. 1980) [but, applied Minnesota law, which follows the general rule]. (‘Parties to a contract normally are free to set a limitation period for bringing suit that is shorter than that provided by the applicable statute of limitation; it is only when the contractual limitation period is unreasonably short that it is void as violative of public policy. (citation). [sic] Applying this standard, courts almost invariably uphold contractual limitation periods of six months or more, especially where the parties have equal bargaining power and the limitation period does not effectively preclude the plaintiff’s remedy. See, e. g., *Fitger Brewing Co. v. American Bonding Co.*, 127 Minn. 330, 149 N.W. 539 (1914). See generally Annot., *Validity of Contractual Time Period, Shorter Than Statute of Limitations, For Bringing Action*, 6 A.L.R.3d 1197 (1966)’).” *Ellis v. DaimlerChrysler Corp.*, 2005 U.S. Dist. LEXIS 46641 (E.D. Mo. Mar. 9, 2005)

## **8. Can You Contract Around the Issue?**

**Choice of law option** — probably ineffective — The Missouri Supreme Court found that an accident insurance policy that contained a six-month contractual limitations clause was governed by the laws of Ohio, but it refused to enforce the clause because it violated Missouri public policy as stated in R.S. Mo. 1939 § 3351. *Asel v. Order of United Commercial Travelers*, 355 Mo. 658, 667-668 (Mo. 1946)

Also, see *Consolidated Fin. Invs. v. Manion*, 948 S.W.2d 222 (Mo. Ct. App. 1997), which stated that a choice of law provision governs substantive law unless it is against Missouri public policy, while procedural law is governed by Missouri.

**Notice period option** — maybe — *Frank Powell Lumber* provides support to the approach. The performance bond at issue required third party beneficiaries to provide notice of a claim within 90 days of its accrual. The court held that the provision didn’t run afoul of section 431.030.