

A Guide for Civil Actions in Virginia General District Courts:

**with References to VA. Supreme Court
Rules, Code Sections (including Virginia's
Rules of Evidence), Case Law and Official
and Supplemental Forms[©]**

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STATUTE OF LIMITATIONS

PERSONAL ACTION BASED ON WRITTEN CONTRACTS

"2. In actions on any contract which is not otherwise specified and which is in writing and signed by the party to be charged thereby, or by his agent, within  five years whether such writing be under seal or not;..." [§ 8.01-246](#). Personal actions based on contracts.

PERSONAL ACTION BASED ON UNWRITTEN, EXPRESSED OR IMPLIED CONTRACTS

"...4. In actions upon any unwritten contract, express or implied, within  three years..." [§ 8.01-246](#). Personal actions based on contracts.

ACTION FOR PERSONAL INJURIES OR FRAUD

"A. ..., every action for personal injuries, whatever the theory of recovery, and every action for damages resulting from fraud, shall be brought within  two years after the cause of action accrues." [§ 8.01-243](#). Personal action for injury to person or property generally; extension in actions for malpractice against health care provider.

When Action Accrues

"...the right of action shall be deemed to accrue and the prescribed limitation period shall begin to run from the date the injury is sustained in the case of injury to the person or damage to property, when the breach of contract occurs in actions ex contractu and not when the resulting damage is discovered,..." [§ 8.01-230](#) Accrual of right of action.

See also, [§ 8.01-249](#). When cause of action shall be deemed to accrue in certain personal actions.

OPEN ACCOUNT

One of the unanswered questions in Virginia law is what is the limitation for an open account,  two or three years? A logical starting point is to define an open account. Unfortunately the term is not clearly defined in Virginia law. A Ninth Circuit case, defines an open account as:

An account which has not been finally settled or closed, but is still running or open to future adjustment or liquidation. Open account, in legal as well as in ordinary language, means an indebtedness subject to future adjustment, and which may be reduced or modified by proof.

Pacific Micronesia Lines, Inc., v. New Zealand Insurance Company, Ltd., 366 F. 2d (1966)

As noted, Virginia Code [§ 8.01-246](#) sets forth the limitation for a contract in writing and signed by the party as  five years and three years for an unwritten contract, expressed or implied. There is no reference in this statute to the limitation for an open account.

PLEADINGS, STATUTE OF LIMITATIONS & SERVICE

Of the statutes that deal with the accrual time for limitations only [§ 8.01-249](#) specifically addresses an open account. See paragraph 8. In actions on an open account, from the later of the last payment or last charge for goods or services rendered on the account.

Since the legislature has carved out a specific accrual time for an open account, it can be argued that it is not simply a common law unwritten contract. If so, since [§ 8.01-249](#) is silent as to the limitation for an open account then you could argue the limitation catchall statute, [§ 8.01-248](#) and, the 2-year limitation applies.

UNIFORM COMMERCIAL CODE

“(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.” [§ 8.2-725](#). Statute of limitations in contracts for sale.

See also, [§ 8.2-106](#). Definitions: “Contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming” to contract; “termination”; “cancellation.”

Chart 5. Some Statutes of Limitations

2 YEARS	PERSONAL INJURY AND FRAUD/  POSSIBLY OPEN ACCOUNT
3 YEARS	UNWRITTEN CONTRACT EXPRESSED OR IMPLIED
4 YEARS	CONTRACTS FOR SALE (UCC)
5 YEARS	WRITTEN CONTRACT AND DAMAGE TO PROPERTY

The period begins to run generally from the date a cause of action accrues, but there is a growing number of exceptions, both statutory and in case law. See *Farley v. Goode*, 219 Va. 969, 252 S.E.2d 594 [SC 1979]; *Wood v. Carwile*, 231 Va. 320, 343 S.E.2d 346 [SC 1986]; *Harbour Gate Owners Ass'n v. Berg*, 232 Va. 98, 348 S.E.2d 252 [SC 1986]; *Stone v. Ethan Allen, Inc.*, 232 Va. 365, 350 S.E.2d 629 [SC 1986].

SUSPENSION OR TOLLING OF LIMITATIONS

See [§ 8.01-229](#). Suspension or tolling of statute of limitations; effect of disabilities; death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits.

THE NONSUIT AND STATUTE OF LIMITATIONS

A common question is posed when the plaintiff takes a nonsuit. How long is the statute of limitations tolled? The time the action was pending that led to the nonsuit is not computed as part of the period.

“1. ..., if any action is commenced within the prescribed limitation period and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period.” [§ 8.01-229](#). Suspension or tolling of statute of limitations; effect of disabilities; death;