

800.00A FRAUD—STATUTE OF LIMITATIONS.

The (*state number*) issue reads:

“Did the plaintiff file this action within three years after discovery of the facts constituting the fraud?”

If you have answered the (*state number*) issue “Yes” in favor of the plaintiff, the plaintiff’s claim may nonetheless be legally barred by what is called the statute of limitations.¹ The law provides that a lawsuit claiming fraud must be filed within three years after discovery of the facts constituting the fraud.² The plaintiff filed the present lawsuit on (*state date of filing of fraud action*).

On this issue, the burden of proof is on the plaintiff.³ This means that the plaintiff must prove, by the greater weight of the evidence, that the plaintiff filed this action within three years after discovery of the facts constituting the fraud. A person discovers facts constituting a fraud when *he* becomes aware of facts or circumstances which, in the exercise of reasonable diligence, would have enabled *him* to discover the defendant’s [false representation] [concealment].⁴

The law imposes a duty on a plaintiff to exercise reasonable diligence to discover the [false representation] [concealment] that forms the basis for *his* claim.⁵ A plaintiff’s obligation to investigate begins when an event occurs that raises *his* suspicion, or would have raised the suspicion of a reasonable and prudent person in the same or similar circumstances as the plaintiff.⁶

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence, that the plaintiff filed this action within three years after discovery of the facts constituting the fraud, then it would be your duty to answer this issue

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“Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

1 A “statute of limitations” is “the action of the State in determining that, after the lapse of a specified time, a claim shall not be legally enforceable.” *South Dakota v. North Carolina*, 192 U.S. 286, 346 (1904). “Generally, whether a cause of action is barred by the statute of limitations is a mixed question of law and fact.” *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 69 N.C. App. 505, 508, 317 S.E.2d 41, 43 (1984).

2 N.C. Gen. Stat. § 1-52(9) provides that a plaintiff must file an action within three years “[f]or relief on the ground of fraud or mistake.” However, it is further provided that a cause of action “for relief on the ground of fraud . . . shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud” *Id.*

3 *See Hudson v. Game World, Inc.*, 126 N.C. App. 139, 145, 484 S.E.2d 435, 439 (1997):

While the plea of the statute of limitations is a positive defense and must be pleaded, . . . when it has been properly pleaded, the burden of proof is then upon the party against whom the statute is pleaded to show that his claim is not barred, and is not upon the party pleading the statute to show that it is barred (quoting *Solon Lodge v. Ionic Lodge*, 247 N.C. 310, 316, 101 S.E.2d 8, 13 (1957)).

See also White v. Consolidated Planning, Inc., 166 N.C. App. 283, 305, 603 S.E.2d 147, 162 (2004) (stating that the burden rests on plaintiff to prove claims were timely filed when defendant asserts statute of limitations as an affirmative defense).

4 *Doe v. Roman Catholic Diocese* ___ N.C. App. ___, ___, 775 S.E.2d 918, 922 (2015) (citing *Toomer v. Branch Banking & Trust Co.*, 171 N.C. App. 58, 66, 614 S.E.2d 328, 335 (2005), for the proposition that the limitations period applicable to fraud and misrepresentation claims begins to run “when the plaintiff first becomes aware of facts and circumstances that would enable him to discover the defendant’s wrongdoing in the exercise of due diligence.”).

5 *Forbis v. Neal*, 361 N.C. 519, 525, 649 S.E.2d 382, 386 (2007).

6 *Id.*