

1 if the time prescribed or limited had not expired when the
2 original pleading was filed, and if it shall appear from the
3 original and amended pleadings that the cause of action
4 asserted, or the defense or cross claim interposed in the
5 amended pleading grew out of the same transaction or
6 occurrence set up in the original pleading, even though the
7 original pleading was defective in that it failed to allege
8 the performance of some act or the existence of some fact or
9 some other matter which is a necessary condition precedent to
10 the right of recovery or defense asserted, if the condition
11 precedent has in fact been performed, and for the purpose of
12 preserving the cause of action, cross claim or defense set up
13 in the amended pleading, and for that purpose only, an
14 amendment to any pleading shall be held to relate back to the
15 date of the filing of the original pleading so amended.

16 (c) A pleading may be amended at any time, before or
17 after judgment, to conform the pleadings to the proofs, upon
18 terms as to costs and continuance that may be just.

19 (d) A cause of action against a person not originally
20 named a defendant is not barred by lapse of time under any
21 statute or contract prescribing or limiting the time within
22 which an action may be brought or right asserted, if all the
23 following terms and conditions are met: (1) the time
24 prescribed or limited had not expired when the original
25 action was commenced; (2) ~~failure-to-join-the-person-as-a~~
26 ~~defendant-was-inadvertent;-~~(3) ~~service-of-summons-was-in-fact~~
27 ~~had-upon-the-person,-his-or-her--agent--or--partner,-as--the~~
28 ~~nature--of--the-defendant-made-appropriate,-even-though-he-or~~
29 ~~she-was-served-in-the-wrong-capacity-or-as-agent-of--another,-~~
30 ~~or-upon-a-trustee-who-has-title-to-but-no-power-of-management~~
31 ~~or--control--over-real-property-constituting-a-trust-of-which~~
32 ~~the-person-is-a-beneficiary;-~~(4) the person, within the time
33 that the action might have been brought or the right asserted
34 against him or her plus the time for service permitted under

1 Supreme Court Rule 103(b), received such notice of the
2 commencement of the action that the person will not be
3 prejudiced in maintaining a defense on the merits and knew or
4 should have known that, but for a mistake concerning the
5 identity of the proper party, the action would have been
6 brought against him or her ~~knew-that-the-original-action--was~~
7 ~~pending--and--that-it-grew-out-of-a-transaction-or-occurrence~~
8 ~~involving-or-concerning-him-or-her;~~ and (3) (5) it appears
9 from the original and amended pleadings that the cause of
10 action asserted in the amended pleading grew out of the same
11 transaction or occurrence set up in the original pleading,
12 even though the original pleading was defective in that it
13 failed to allege the performance of some act or the existence
14 of some fact or some other matter which is a necessary
15 condition precedent to the right of recovery when the
16 condition precedent has in fact been performed, and even
17 though the person was not named originally as a defendant.
18 For the purpose of preserving the cause of action under those
19 conditions, an amendment adding the person as a defendant
20 relates back to the date of the filing of the original
21 pleading so amended.

22 (e) A cause of action against a beneficiary of a land
23 trust not originally named a defendant is not barred by lapse
24 of time under any statute or contract prescribing or limiting
25 the time within which an action may be brought or right
26 asserted, if all the following terms and conditions are met:
27 (1) the cause of action arises from the ownership, use or
28 possession of real estate, record title where to is held by a
29 land trustee; (2) the time prescribed or limited had not
30 expired when the original action was commenced; (3) the land
31 trustee of record is named as a defendant; and (4) the
32 plaintiff proceeds with reasonable diligence subsequent to
33 the commencement of the action to serve process upon the land
34 trustee, to determine the identity of the beneficiary, and to

1 amend the complaint to name the beneficiary as a defendant.

2 (f) The changes made by this amendatory Act of the 92nd
3 General Assembly apply to all complaints filed on or after
4 the effective date of this amendatory Act, and to complaints
5 filed before the effective date of this amendatory Act if the
6 limitation period has not ended before the effective date.

7 (Source: P.A. 85-907.)".