

Special Report



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24326 Mission Blvd., Suite 7, Hayward, California 94544-1058

Telephone: (510) 537-6000 • Facsimile: (510) 537-8666 • Web: www.allabouthomes.com

CALIFORNIA STATUTES OF LIMITATION FOR CONSTRUCTION DEFECTS

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A SUMMARY AND REVIEW

by John R. Schneider

To assist the consumer, All About Homes, Inc., has developed this summary and review of the statutes of limitations for claiming construction defects. These statutes are contained in California Civil Code, Sections 337.1 and 337.15, and the recently passed Senate Bill 800. The information contained in this document is to provide only a general understanding of the related material, and not meant to be relied upon as legal advice or suggestions. For complete information about the statutes of limitations, the requirements of SB 800, or the legal rights of a homeowner, the appropriate sections of the California Civil Code should be reviewed, and discussed with a competent attorney.

SECTION 337.15

Patent Defects, four-year statute of limitations

No action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision, observation of construction or construction of an improvement to real property more than four years after the *substantial completion* of such improvement for any of the following:

- 1) Any patent deficiency in the design, specifications, surveying, planning, supervision, or construction of an improvement to real property.
- 2) Injury to real or personal property arising out of any such patent deficiency.
- 3) Injury to a person, or for wrongful death arising out of any such patent deficiency.

SECTION 337.15

Latent defects, ten-year statute of limitations

No action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision, observation of construction or construction of an improvement to real property more than ten years after the *substantial completion* of such improvement for any of the following:

- 1) Any latent deficiency in the design, specifications, surveying, planning, supervision, or construction of an improvement to real property.
- 2) Injury to real or personal property arising out of any such patent deficiency.
- 3) Injury to a person, or for wrongful death arising out of any such patent deficiency.

Substantial completion of the improvement will be based on one of the following, whichever occurs first;

- 1) The date of final inspection by the applicable public agency.
- 2) The date a notice of completion was filed and recorded.
- 3) The date of use or occupation of the improvement.
- 4) One year after termination or cessation of work on the improvement.

STATUTE OF LIMITATIONS – STRENGTHS

- Sets definite and specific time limits of a four and ten year period for filing actions claiming construction defects
- Does not limit defect to a specific item or component.

STATUTE OF LIMITATIONS – WEAKNESSES

- Does not define “*apparent by reasonable inspection*”, which makes it somewhat legally subjective in determining if a defect would qualify.
- Defect may not be actionable unless there is personal or property damage due to the Aas decision. (In the case *Aas v. William Lyon Company* (2000) 24 Cal.4th 627, the California State Supreme Court held that a builder was not responsible for a construction defect unless it had caused either personal or property damage).

SENATE BILL 800

Legislative changes to California Civil Code Sections 337.1 and 337.15

(Affects all homes built and purchased after January 1, 2003)

Senate Bill 800, codified as California Civil Code Section 895, et seq, became law in January 1, 2003.

- It establishes standards for residential construction by defining basic performance standards for products and components, warranty periods, and it defines what constitutes an actionable defect.

- The Bill includes pre-litigation procedures that allow landowners and builders a means through which defects can be identified and corrected by the builder without the need for litigation.

CHAPTER 1

DEFINITIONS

This section of the bill defines the following key terms to ensure a uniform understanding of the bills requirements; structure, actual or designed moisture barrier, unintended water, close of escrow, claimant and homeowner.

- **Structure** means any residential dwelling, other building, or improvement located upon a lot or within a common area.
- **Designed moisture barrier** means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer’s recommendations.
- **Actual moisture barrier** means any component or material actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.
- **Unintended water** means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.
- **Close of escrow** means the date of the close of escrow between the builder and the original homeowner. With respect to claims made by an association (governing a condo, townhouse, or planned unit developments), “close of escrow” means the date of substantial completion, or the date the builder relinquishes control over the association’s ability to decide whether to initiate a claim under this title, whichever is later.
- **Claimant or homeowner** includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association (governing condo, townhouse, or planned unit developments).”

CHAPTER 2

ACTIONABLE DEFECTS

SECTION 896

SB 800 states that the provisions of this law apply to original construction intended to be sold as individual dwelling units. This would include single family dwellings, townhomes, and condominiums.

Any action seeking recovery of damages arising out of, or related to deficiencies in the residential construction, design, specifications, surveying, planning, supervising, or observation of construction, from a builder, subcontractor, material supplier, product manufacturer, or design professional is limited to the provisions of this chapter.

WATER RELATED DEFECTS

“Water shall not pass through any exterior component of the building, allowing moisture to enter the building or concealed surfaces and cause damage.”

- Doors, windows, roofs, decks, balconies, foundations, and exterior sidings shall be installed in such a way so as not to allow water or vapor to pass beyond designed or actual moisture barriers, and enter the structure and cause damage.
- Hardscape, walks, patios, and irrigations systems that are installed as part of original construction shall not cause water or soil erosion to enter into, or come in contact with the structure as to cause damage to another building component.
- Shower and bath enclosures, as well as ceramic tile and countertops shall not allow water into the interior walls floors, or other components so as to cause damage.
- However, no action may be brought for a violation of this section more than ten years after the date of a valid notice of completion.

STRUCTURAL DEFECTS

Foundation, load bearing components, and slabs shall not contain significant cracks or significant vertical displacement or cause the structure to be structurally unsafe. They shall comply with the approved design criteria for earthquake and wind loads.

- A structure shall be constructed to comply with the applicable building codes, regulations, and ordinances for fire protection in effect at the time of construction.

- Soils and engineered retaining walls shall not cause the structure to be structurally unsound.
- However, no action may be brought for a violation of this section more than ten years after the date of a valid notice of completion.

SOIL DEFECTS

Soils and engineered retaining walls shall not cause the structure to be structurally unsafe.

- Soils shall not cause the land upon which the structure is built to become unusable for the purpose for which the land is to be used.
- However, no action may be brought for a violation of this section more than ten years after the date of a valid notice of completion.

MECHANICAL DEFECTS

Plumbing lines, sewer lines, and utility lines shall not leak, or corrode so as to impede the useful life of the system.

- Sewer lines shall allow the designated amount of sewage to flow through the system.
- Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants.
- However, no action may be brought for a violation of this section more than four years after the close of escrow.

The electrical and mechanical systems shall be constructed in installed in such a way so as not to cause an unreasonable risk of fire.

- Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants.
- Heaters shall be capable of maintaining room temperature of 70 degrees, at a point 3 feet above the floor.
- However, no action may be brought for a violation of this section more than four years after the close of escrow.

LANDSCAPING DEFECTS

Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain significant cracks or vertical displacement.

- However, no action may be brought for a violation more than four years after the close of escrow.

Landscaping systems shall be installed in such a manner as to survive for at least one year.

- However, no action shall be brought more than two years after the close of escrow.

Irrigation systems and drainage shall operate properly so as not to damage the landscaping, or other external improvements.

- However, no action may be brought for a violation of this section more than one year after the close of escrow.

MANUFACTURED PRODUCTS

Manufactured products, including doors, windows, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops cabinets, paint, and appliances will be installed so as not to interfere with the product's useful life.

- “Useful life” is defined as the length of time a product is warranted or represented to last by a manufacturer, including recommended and required maintenance.
- If no useful life representation is made, it shall be warranted for a period of one year.

SECTION 897

The standards set forth in Chapter 2 are intended to address every function or component of a structure.

- To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.
- This language incorporates the findings of the California Supreme Court decision. *Aas v. William Lyon Company* (2000) 24 Cal.4th 627, which state that a builder is not responsible for a construction defect until it causes personal or property damage.

CHAPTER 3

OBLIGATIONS OF THE BUILDER AND HOMEOWNER

SECTION 900

A builder is required to:

- Offer a one year express written limited warranty covering the fit and finish of the following building components: cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim.
- If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.
- A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner. However, the offer must be made in writing with the homeowner no later than the close of escrow.

SECTION 907

A homeowner is obligated to:

- Follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices.
- Failure to follow these obligations, schedules, and practices may prevent the homeowner from legally claiming damages for a construction defect.

CHAPTER 4

PROCEDURES FOR FILING A DEFECT CLAIM AGAINST A BUILDER

SECTION 910

Prior to filing an action against any party alleged to have violated the standards set forth in Chapter 2, the claimant shall initiate the following prelitigation procedures:

- The claimant shall provide the builder with written notification of the claim of a defect.
- The notification shall provide the owner's name, contact information, and statement of a claim.
- The statement shall provide enough detail to determine the nature and location of the claim.

SECTION 912

A builder shall within 30 days of a written request by a homeowner (if the request is made relative to structural, fire safety, or soils provisions of these code sections), provide copies of all plans, specifications, reports, and product information and warranties which pertains to a homeowner's residence, specifically, or as part of a tract.

- The requesting party will bear all reasonable copying costs.
- The builder is allowed to contract with a third party to accept claims on the builder's behalf. If so, the builder must file the name of the third party with the Secretary of State, notify the owner in writing, and list the contact information for the third party in the original sales documentation.

SECTION 913

A builder or his or her representative shall acknowledge, in writing, that they have received such claim within 14 days of receipt.

SECTION 915

If the builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, this chapter does not apply, and the homeowner is released from the requirements of this chapter, and may proceed with filing an action.

However, the standards listed in other chapters will still apply to the action.

SECTION 917

Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation.

- Any such offer shall be accompanied by a detailed, specific, step by step statement identifying the violation being repaired, explain the nature and scope of the repair, a setting a reasonable date of completion.
- The offer shall also include pertinent and contact information of the contractor(s) making the repair.
- The builder shall also notify the homeowner of his or her right to request bids from up to three additional contractors.

SECTION 918

Upon receipt of the offer from the builder, the homeowner shall have 30 days to authorize the builder to proceed with the repair.

- The homeowner has the right to request up to three additional contractors to bid the repair. If the homeowner does choose to have additional contractors bid the work, the builder will have an additional 20 days to allow them to inspect the proposed repair.
- Within 35 days of the request for additional contractors, the builder must present the homeowner with a choice of contractors.
- Twenty days after the homeowner is presented with this list, he or she must authorize the builder or one of the contractors to perform the repair.

SECTION 919

The offer of repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

- The mediation shall be limited to a four-hour mediation unless both parties agree to use a mediator chosen and paid for by the builder.
- The homeowner may choose to split the cost of the mediator, and if so, the mediator shall be selected by both parties.
- The mediation shall occur within 15 days of request. If the builder has offered to make the repair, and the mediation fails to resolve the dispute, the homeowner shall allow the repair to be performed by the builder or alternate contractor.

SECTION 920

If the builder fails to make an offer to repair within the time specified, or elects not to go through the process set forth in this chapter then this chapter does not apply and the homeowner is released from the requirements of this chapter.

- The homeowner may proceed with filing an action.
- However, the standards listed in other chapters will still apply to the action.

SECTION 926

The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of this standard, or for a claim of inadequate repair, or both.

SECTION 929

This chapter does not prohibit the builder from making only a cash offer and no repair.

- If this occurs, the homeowner may accept or reject the offer.
- If the offer is accepted by the homeowner, the builder may obtain a reasonable release for the specific claim.

CHAPTER 5

SPECIFIC LIMITATIONS

SECTION 941

Except as specifically set forth in these sections, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date a valid notice of completion is recorded.

- Sections 337.1 (patent defects) and 337.15 (latent defects) of the California Civil Code shall not apply to actions under this title.

SECTION 942

This title only applies to the existence of construction defects, and does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute.

SECTION 944

If a claim for damages is made under this title, the homeowner is only entitled to:

- Damages for the reasonable value of repairing any violation of the standards in this title, the reasonable cost of repairing any damages caused by the repair efforts.
- The reasonable cost of repairing and rectifying any damage resulting from the defect,
- The reasonable relocation and storage expenses, reasonable investigative costs, and all other costs or fees recoverable by contract or statute.

SECTION 945.5

A builder may be excused in whole or part from any obligation, damage, loss, or liability if the builder can demonstrate:

- a) The defect was the result of nature, act of God or war.
- b) The defect was caused by a homeowner's failure to mitigate damage in a timely manner.
- c) The defect was caused by the homeowner's failure to follow recommended maintenance procedures by either the builder or manufacturer.
- d) The defect was the result of an alteration, or the result of normal wear and tear, misuse, abuse, or neglect.

WHAT DOES THIS MEAN TO A HOMEOWNER?

Before a homeowner can file a claim for a construction defect, the homeowner must give the contractor an opportunity to inspect the defect, and if the contractor agrees that it is a defect, allow the contractor the option of either repairing the defect or paying for the repair. If the contractor fails to perform to the requirements of this title, the homeowner may proceed with legal action.

The bill places specific responsibilities on the homeowner to maintain the property according to the builder's and manufacturers' requirements, and a legal procedure to follow when notifying the builder about construction defect. If a homeowner is not aware of, or does not follow the requirements for maintenance, or they do not follow the stated procedure for bringing the claim to the attention of the builder, they may lose their ability to make a claim for a construction defect.

GENERAL COMMENTS

Due to the complexities of SB 800 and its potential impact on a homeowner's rights to file a claim for construction defects, it is suggested that homeowners obtain a complete version of the bill, and understand its contents. Specific questions regarding the legal aspects of the bill should be addressed to a competent real estate or construction law attorney.

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