

Overall Statute on Latent Defects Remains 10 Years

## Construction Defect Law Changes Some Statute of Limitations



BY PATEE L. BARTA, EDITOR

At the end of September in 2002, Gov. Gray Davis signed SB 800 which is now enacted in California Code of Civil Procedure Sections 910 *et seq.*, effective Jan. 1, 2003. The purpose of the change was the legislature's desire to assist in the development of a safe and more affordable housing environment — with less litigation.

The legislation covers all aspects of construction regarding existing minimum performance standards whether or not the condition causes "resulting damage." These standards were set in place to describe what is and is not acceptable. However, the legislation has terms which require interpretation, "excessive condensation" to name one.

Strict liability (liability without fault) is still applicable to all builders, but they will be under a different standard for all new housing construction. Where previously they were held strictly liable, the new standard requires a determination for the builder to be held responsible merely for construction inadequacies. There would be no effect on subcontractor liability standards.

Changes in the statute of limitation for certain defects appear to be those which a homeowner would readily perceive within the statute allowed. However, the overall statute of limitations for latent defects remains 10 years. Below is a list of defect statutes that have been altered by this legislation and should be noted:

1. Plumbing and electrical systems (four years);
2. Cracks in flatscape improvements (four years);
3. Noise transmission into adjacent units (one year);
4. Drainage and irrigation systems (one year);
5. Premature deterioration of fencing (two years);
6. Exterior paint (five years);
7. Landscaping (two years); and

8. Dryer duct systems (two years). Each builder must provide a minimum warranty period of one year and this legislation requires that the following items must be "fit and finished" at the time of sale:

1. Cabinets
2. Flooring
3. Interior and Exterior Walls
4. Finishes

Standards have been set for voluntary repair by the builder before jumping into trial. Once notice has been given of claimed defects, the builder may make an "offer to repair" to the homeowner within

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an approximate three-month time frame. However, repairs must begin as early as 14 days after the builder's initial offer to repair.

The builder will most likely rely on a subcontractor to perform the repairs agreed to, and under the new litigation, the builder has the burden to contact said subcontractors within 28 days after notice of the homeowner's claims of construction defects.

Homeowners will have the immediate right to file suit against the builder should there be a failure to follow the time line as outlined by litigation. On a positive note, by complying with the time line, the builder has the absolute right at attempting to remediate the claimed defects before any lawsuit is filed. The legislature, at this point in the process, banks on the idea that "there will be no reason for the homeowner to bring litigation," yet the homeowner is still entitled

to file suit after the pre-litigation procedure has been completed.

There are pre-litigation disclosures under the new litigation which give homeowners the absolute right to demand copies of plans, specifications and details relative to the construction of their home. Pre-trial discovery is apparently a one-way-street as the developer is not entitled to conduct pre-litigation discovery regarding homeowner modifications done to the home or delve into how the home has been used since the original construction was completed.

Close of escrow disclosures are required of the builder in order to address issues with each purchaser. These issues are:

(1) Whether or not the developer will provide an "enhanced protection agreement" (warranty program above and beyond those requirements specified by this litigation), and

(2) Whether the developer elects to follow the pre-litigation procedure (or whether he has no intent to do so). Each homeowner, included in escrow documentation, will receive a notice of the builder's election along with a copy of statutory procedure. Maintenance schedules, warranty information, and product manufacturer's warranty information should be provided at close of escrow as well.

Homes sold after Jan. 1, 2003 must adhere to these litigation laws. Those in the common interest development industry and those in the construction industry are carefully examining this new litigation requirement which may impose standards exceeding those drawn up by the Uniform Building Code or local building requirements.

*Patee Barta is the Marketing and Public Relations Director for Anderson & Kriger, focusing on common interest developments. Portions of this article were taken from information provided by the Business Journal, and edited by A&K Attorney Steve Kamolnick for legal accuracy.*

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