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Law in Hand

SB 800 MODIFIES CONSTRUCTION DEFECT STANDARDS AND PROCEDURES FOR 2003 AND BEYOND

In 2003, the California Legislature responded to intense pressure from the building industry, insurers, and consumer advocates by passing Senate Bill 800. The law significantly modifies existing rules that govern construction defect claims for the sole purpose of creating a fast and fair process for their resolution. After a great deal of discussion and give and take in Sacramento, the final bill was the result of a major compromise between homeowners and builders in the wake of the California Supreme Court's seminal ruling in *Aas v. Superior Court*.

The comprehensive bill adds language to the California Civil Code establishing minimum standards of performance for new residential housing, including an issue-by-issue breakdown of limitation periods, burdens of proof, and damages recoverable. It also provides builders with an absolute right to repair defects before a lawsuit if filed, provided the issue is not in dispute.

Perhaps the most important benefit for consumers, however, is that the legislation will provide homeowners and associations an avenue to recover for defects that do not immediately show physical damage—something the post-*Aas* judiciary would not allow.

Note that the new law only affects new residential homes sold on or after **January 1, 2003**. Some of the highlights of this bill include:

A. Amendment of Civil Code 43.99 – Qualified Immunity

This section simply grants immunity to certain qualified third parties, such as building inspectors, architects and general contractors, giving applicants an “independent quality review of the plans and specifications” and assists with determining whether the work falls into compliance. No immunity is granted in breach of contract or negligence actions, however, if damage was caused solely by the qualified person's negligence or willful misconduct. Also, inspectors must have a certain amount of

experience and at least \$2,000,000.00 in liability insurance to be deemed “qualified” and benefit from the immunity.

New Requirements for Actions for Construction Defects

B. Civil Code §§895 – 907 – Applicable Parties, Structures/Actionable Defects/Warranties and Obligations

- The law applies to single family homeowners, condominium owners, and HOAs. Condo conversions, apartment complexes and remodels are not affected.
- Minimum construction standards are provided for individual building components, including doors, windows, roofs, decks, foundation systems and slabs, plumbing and sewer, fire-rated walls, electrical, HVAC, hardscape, stucco, sound transmission, ceramic tile, structural load-bearing components, retaining walls, irrigation and drainage. Other components may be included if they cause physical damage.
- Developers are *strictly liable* for failure to meet these standards; subcontractors, design professionals and materialmen are liable for negligent acts or omissions.
- Builders must provide homeowners with minimum one-year warranty for “fit and finish” items (i.e., cabinets, mirrors, flooring, etc.) that cannot be reduced. Homeowners must follow maintenance recommendations or risk barring their claim in litigation.

C. Civil Code §§910 – 938 – Pre-litigation Procedures

- **Written** notice of defects must be given in reasonable detail to builder via certified mail
- Builder must acknowledge receipt within **14 days in writing**; if builder wants to inspect, must complete inspection **within 14 days of acknowledgement**. A second inspection may be requested within three days and must be completed **within 40 days of the first**. Notice must also be given to subcontractors, design professionals, or any other third party the builder holds responsible.
- **Within 30 days of request**, builder must provide all relevant construction documentation and reports
- **Within 30 days of first inspection**, the builder can make a detailed written offer to repair. It must include nature & scope, including enough money to pay for damage to other property and consequential damages (i.e., relocation or storage), and advise homeowner that he or she may request up to three additional contractors who can do the work (thus, it isn’t just the builder who is allowed to make the repairs). The contractor must be fully insured, licensed, qualified.
- **Within 30 days of the offer**, the claimant must authorize the builder to proceed or reject the offer. If additional subs were requested, builder can perform an additional inspection with the contractors requested within 30 days of the request, and select one within 35 days of the election in a presentation. Within 20 days after this presentation, claimant must authorize either the builder or one of the proposed alternate subs to do the repair.
- **Within 14 days of the authorization** or within 7 days of a mediation, or within 5 days after a permit is obtained if necessary, the repair must begin. The repair must be completed within **120 days** using due diligence.
- If an attempt to repair is made and a dispute still exists, a mediation must occur **within 15 days** before any action is filed.

- The builder may offer a cash payment in lieu of repairs and obtain a “reasonable release” from the claimant, but may not get such a release if he performs actual repairs. The claimant can either accept the cash payment, or reject it and go directly to a lawsuit. The parties can agree to extend the deadline to make the repairs if they desire.
- If a homeowner’s association alleges violations under this statute, the parties will be excused from going through the standard “Calderon Process” (C.C. §1375).
- There is no mediation privilege if someone commences enforcement of one the statutory standards. This means that the builder’s repair effort and the condition of the property prior to the repair may be introduced later at trial to show the repair work was inadequate and the violation still exists.
- The builder can file a motion to stay court proceedings if the claimant fails to follow these requirements (and costs and reasonable attorney’s fees may be awarded to the prevailing party).

D. Civil Code §§941 – 945.5 – Limitations, Burdens, and Defenses

- **Ten years** remains the statute of repose in defect matters involving latent defects; however, the time periods for “patent” (reasonably obvious) defects have changed significantly. For example:
 - Exterior paints, stains = 5 years**
 - Plumbing, sewer, electrical, hardscape, untreated steel fences = 4 years;**
 - Dryer ducts, landscaping systems, untreated wood posts = 2 years;**
 - Irrigation systems, drainage, sound transmission, “fit and finish” items = ONE YEAR.**
- A claimant needs only to show that a violation of the building performance standard has taken place in order to satisfy the burden of proof; no damage or causation need be shown. As mentioned above, however, the builder can assert homeowner neglect, misuse, abuse as a defense, as well as the statute of limitations.
- Tolling provisions do apply in certain situations:
 - If the statutes have run during compliance with this section – tolling of 100 days from the date of repair
 - If the builder chooses not to proceed with the process or fails to acknowledge – tolling of 45 days after the time for responding has expired
 - If the builder elects to use their own procedure to handle the claim – tolling of 100 days after the conclusion of the builder’s own alternative “non-adversarial” procedure.
- If the builder fails to acknowledge receipt of the notice of claim or refuses to participate in the process altogether, then **the claimant may proceed directly to a lawsuit** and is released from compliance with these requirements.

Conclusion

Given that this new legislation affects new homes sold on or after January 1, 2003, the effects of the new rules may not truly be understood for years to come. However, if the compromises made by the building industry and the consumer advocates are indicative of a willingness for both sides to work more closely in the future on resolving construction-related problems before seeing the Judge, it appears that SB 800 has laid the groundwork for a more practical, less costly process for handling these problems.