

Holding Meetings and Record Keeping for Claims Under SB 800

For those of you who haven't heard, SB 800 was passed by the legislature in 2002 and is codified in California Civil Code §895 et seq.

Briefly, SB 800 establishes a minimum performance standard for new housing sold as of January 1, 2003. There will be strict performance standards (set by statute) for architectural issues, as well as soils, plumbing, noise transmission and a laundry list of other components. If any of the components do not perform to the codified performance standards, the developer will be strictly liable. Along with the minimum performance standards, the legislature changed, and in some instances significantly shortened, the 10 year statute of repose.

Notwithstanding the foregoing, at least as to latent defects, the 10 year statute of repose remains the same. However, listed below are significant changes of which all managers of common interest developments should be aware to defend an association/homeowner's rights under SB 800 through proper record keeping and component performance reviews.

As a manager, it will be your duty to help the Board of Directors in planning a maintenance program, timeline for performance reviews and coordinating all parties necessary for each component review.

Performance Review

Whether you manage a condominium/townhouse development, a PUD or a single family home development, this legislation applies to you. The reduced statutory periods for which certain specified defect claims must be brought will necessitate the completion of component

performance reviews to ensure that common interest developments do not waive their rights to pursue claims controlled by the reduced statutory periods.

A performance review should entail hiring a licensed contractor to evaluate each component part which is approaching its statute of repose. The contractor hired should document the effectiveness of the component and make a written recommendation to the Board of Directors as to whether a repair is necessary. The Board of Directors should then meet at a properly noticed meeting place (before the statute has run and with counsel) to vote as to whether the developer should be notified to make the repair under the SB 800 repair timeline.

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Fit and Finish Items (one year)

The statute requires each builder to provide at least a one year warranty as to the “fit and finish” of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim. The statute does not impose any specific obligation on the developer to provide an express warranty for any other components of the house.

General Defects

Builders are still responsible for latent defects for a period of 10 years after completion of the work. However, for certain defects, the legislation has significantly shortened the 10 year statute. Those areas are the following:

- ❶ noise transmission into adjacent units (1 year);
- ❷ irrigation systems and drainage (1 year);
- ❸ landscaping systems (2 years);
- ❹ dryer ducts (2 years);
- ❺ decay of untreated wood posts and steel fencing (2 years);
- ❻ operation of plumbing and sewer and electrical systems (4 years);
- ❼ cracks in hardscape improvements (4 years); and
- ❽ exterior paint (5 years).

10 Year Latent Defect

However, by establishing specific performance standards for each component of the home, and by holding the developer strictly liable for any defects, the legislation effectively requires the developer to warrant the entire house for ten years (except for those defects where the statute of repose period has been shortened by the legislation referenced above).

SB 800 TIMELINE OF PRE-LITIGATION CLAIM

With the help of legal counsel, a manager should help guide the Board of Directors through the maze of the pre-litigation claim process. The claim process itself is very convoluted. The builder must acknowledge the claim within 14 days. If the builder fails to acknowledge the claim, the homeowner or association may file a lawsuit or take other action.

If the builder acknowledges the claim the record keeping will become burdensome for all parties involved, especially manager. After the builder acknowledges the claim, it has 14 days to complete an inspection. If the inspection is not completed, the association or homeowner has the right to file a lawsuit or take other action.

If the inspection is completed, the builder then has 30 days to offer repairs and compensation to the homeowner or association. The homeowner/association then has 30 days to decide if they want the builder to repair. If the homeowner/association authorizes the repair, the builder is expected to follow the repair process as outlined below.

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The Repair Process

Repairs must commence within 14 days of the acceptance by the association/homeowner, with the understanding that the utmost diligence will be used to complete the repairs as soon as is reasonable possible. The repairs must be completed within 120 days. If the builder fails to perform the repairs as soon as is reasonably possible, the association/homeowner has the right to file a lawsuit or take other action.

If the association/homeowner opts for the builder not to make the repair(s), there is a multitude of procedures and timelines to follow. A few of those procedures are mediation, alternative contractors bids, to perform repairs and additional inspections, with the final option (if necessary) being litigation.

In Conclusion

As you know, it is vitally important that a common interest development create clear records of Board meetings and resolutions of the Board, and, in addition maintain comprehensive association records and documents. Based on the multiple reduced statutes of limitations, it is even more important that common interest developments create and maintain accurate records of dates, times, performance reviews, and minutes related to the litigation in order to protect the rights of redress of a homeowner/association. Always remember there are professionals for the homeowner/association to rely upon; contractors, general counsel attorneys and construction defect counsel should be utilized in this process.

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If you have any questions about this article or construction defects in general, please feel free to contact us at 949-752-1222 in California or 602-254-4222 in Arizona.