

Lantzy v. Centex Homes: The Ten-Year Statute Of Limitations, And What Homeowners Should Know?

The recent California Appellate Court (First Appellate District) decision of *Lantzy v. Centex Homes, et al.*, (2001) DJDAR 5812, struck a minor victory for homeowner/owner associations by affording some leeway to potential claimants on the ten-year statute of limitations.

California Code of Civil Procedure §337.15, sets forth a ten-year statute of limitations of actions brought by homeowners to recover damages for latent construction defects. In 1999, the California Appellate Court for the 4th District issued a decision which held that CCP §337.15 provided an absolute outside ten-year limit from the point of substantial completion of a home by which suit for latent construction defects must be brought. That limitation was not subject to extension (tolling) for any reason, save for agreement by and among the parties. (*FNB Mortgage Corp v. Pacific General Group* (1999) 76 Cal App. 4th 1116.) *The Centex Homes* decision expressly disagrees with the FNB Mortgage court, and returns to a prior line of authority which permitted equitable tolling of the ten-year statute of limitations under certain circumstances. (*Cascade Gardens Homeowners Association v. McKellar & Associates* (1987) 194 Cal. App. 3d 1252.)

Simply stated, *the Centex Homes* decision states that CCP Section 337.15 “is tolled during periods of repair.” In arriving at it’s decision, the court reasoned that it would be inequitable to penalize a homeowner or a homeowners association who afforded a developer/builder an opportunity to remedy the defective condition, and who relied on such repair attempts or promises to repair in deciding to delay filing suit.

Thus, the equities, the individual facts and circumstances of each case must be analyzed to determine if the homeowners were put in such a position by developers repairs and/or promises to repair, to determine if tolling or extending the ten-year statute is appropriate.

Legal analysis notwithstanding, what is the practical effect of this decision upon California homeowners? The case is unequivocally a plus to homeowners. A homeowner or an association gains some assurances that if they afford developers/builders the courtesy of an opportunity to perform repairs to defective conditions, they will not be compromising valuable time under the ten-year statute of limitation in deciding whether or not to file suit. The statutes will be “tolled” or extended for the period of repair. If such repairs were attempted over a two-year period, all things being equal, the ten-year statute may be extended for that length of time.

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However, a word of caution: whenever one is dealing with statutes of limitation, it is wise to take the most conservative view possible. It is always better to file within the strict time periods set forth in such statutes where possible, than to rely on equitable arguments and factual representations which by their nature are subject to subjective interpretation and disparate conclusions. Thus, all homeowners/associations who are experiencing construction problems should still have clearly marked on their calendars the ten-year anniversary from substantial completion of their homes.

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