

SB 800'S NASTY SURPRISE: AN EXPANDED 10 YEAR WARRANTY FOR CONSTRUCTION DEFECTS

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SB 800, a law passed in 2002, significantly modifies warranty obligations owed by developers, contractors and subcontractors on residential construction projects. Because of SB 800's length and complexity, a careful review and analysis of the statute's warranty provisions is necessary to fully understand the impact of SB 800 on warranty obligations. This article attempts to undertake and summarize such a review.

The Law

SB 800 was signed into law on September 20, 2002, by Gov. Davis. It applies to new construction intended to be sold as individual dwelling units, whether as single-family homes or attached units. It was sought by plaintiffs' attorneys in response to the *Aas* decision, which precluded recovery in tort for construction defects that had not yet caused property damage or physical injury. SB 800 is codified at Civil Code §§895, *et seq.*

The New 10 Year Warranty

Civil Code Section 896, provides that a "builder" and other participants in the construction process shall be liable for violation of certain specified standards that must be met for new residential construction. The standards essentially establish quality requirements for residential construction. Quality requirements are generally known as warranties. With the addition of the standards, one obvious issue is the time period during which the parties may be held liable for violation of the standards.

Prior law provided for a 3 or 4 year statute of limitations for patent construction defects and 10 years for latent defects (Civil Code Sections 337.1 and 337.15). The majority of the standards are silent as to their duration, although a few of them do provide for specified periods, as noted below. Section 941(a) provides a 10 year limitation period for actions under the new title, while 941(d) expressly provides that Sections 337.1 and 337.15 "shall not apply to actions under this title." Thus, developers, contractors and subcontractors in California now provide **TEN YEAR WARRANTIES** for all of the "standards."

The impact of this ten year warranty must be clearly understood by participants in the construction industry. While it has generally been understood in the industry that potential liability existed for up to 10 years if a building developed severe water leakage or serious soil subsidence and settlement, it is a safe bet that neither contractors or subcontractors working on residential construction projects appreciate that for ten years (citing some of the more egregious examples):

-Paths, patios and drainage systems shall not be installed in such a way as to cause water or soil erosion to enter into or come into contact with the structure so as to cause damage to another building component;

-Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design;

-The lines and components of the plumbing, sewer and utility systems “shall not leak,” (regardless of whether the cause resulting damage) and “shall not corrode so as to impede the useful life of the systems”;

-Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or other components so as to cause damage; and

-Stucco, exterior siding and other exterior wall finishes “shall not contain significant cracks and separations.”

It must also be stressed that the 10 year period applies even if the defect is “patent,” or was noticed within the first year after the residence was purchased.

Exceptions to the Ten Year Warranty

Since the standards encompass virtually all aspects of a construction project, one must assume a ten year warranty exists unless there are exceptions to the general rule. There are. Sections 896(e), (f) and (g) revisit some of these same issues and address some new issues, and provide the following primary limitations periods, all of which run from the date of “close of escrow:”

5 years: Paint and stain applications

4 years: Electrical, plumbing and sewer systems (must be installed to operate properly and shall not materially impair the use of the structure or its inhabitants for up to four years);

Exterior pathways, driveways, hardscape, sidewalls, sidewalks and patios, (“shall not contain cracks that display significant vertical displacement or that are excessive” for up to four years);

2 years: Landscape systems, dryer ducts and untreated wood posts in contact with soil

1 year: Irrigation systems and drainage

1 year: Noise transmission from adjacent in attached structures (runs from date of original occupancy of the adjacent unit)

Some systems are listed in different portions of the statute, requiring a careful analysis. For example, in the case of plumbing and sewer systems, Section 896(a)(14) provides that they “shall not leak,” while Section 896(e) provides a four year limitation for material impairment of use. Thus, an action cannot be brought for defects in plumbing and sewer systems that “impair” their use after four years, unless they leak (even though no property damage occurs), in which case there is a ten year limitations period.

The Fit and Finish Warranty

Under Section 900 a “builder” is required to provide a homebuyer with a “minimum express one-year limited warranty covering the fit and finish of” several specified building components, including cabinets, flooring, countertops, paint finishes and trim. The “fit and finish” warranty is not defined, but whatever it is, if the builder fails to provide one, “the warranty for these items shall be a period of one year.”

A “builder” can go one of two ways with the fit and finish warranty: issue an express warranty that says it is a fit and finish warranty, and then goes on to specify in detail the tolerances for paint, cabinets, countertops, interior walls and trim. The warranty could also include strict notice requirements. Alternatively, the builder can omit the fit and finish warranty, and default to the ambiguous statute.

Since “fit and finish” is not defined, however, if the builder’s express warranty was less than industry standard, an argument can be made that it is invalid. Section 901 provides that “a builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner.” The “fit and finish” warranty is in CHAPTER 3! By implication, the statutory scheme appears to allow a builder to “lower” the protection of an industry standard fit and finish through the express fit and finish warranty.

On balance, a builder should probably provide a written fit and finish warranty. It should contain generous tolerances, as well as a statement that the fit and finish warranty does not extend to alleged fit and finish items which existed and could be observed on the date of the walk-through with the buyer and which were not included on the buyer’s punchlist. This should go a long way toward minimizing nuisance type fit and finish claims, an important exercise considering the (potentially) extended fit and finish warranty periods on condominium projects, discussed below.

The Warranty Commencement Dates

Section 941(a) provides an outside limit of “10 years after substantial completion” for bringing an action to recover damages under the new Title 7. However, as noted above, there are 1, 2, 4 and 5 year limitations periods in Section 896, all of which run from the date of the “close of escrow.” In the case of single family homes or “attached dwellings” the date of the “close of escrow” is easily determined. However, the date is not clear for condominium projects. Section 895(e) provides:

With respect to claims by an association, as defined in Section 1351, “close of escrow” means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, 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.

While the statute does not provide a definition of “relinquishment of control,” presumably this date will always be well after the date of substantial completion, as condominium units cannot be sold until a certificate of occupancy is obtained, which is also typically the date of substantial completion. In theory the date of relinquishment of control could be several years after the date of substantial completion, as it is not unusual for large condominium projects to take several years to sell out. Thus, the 1, 2, 4 and 5 year warranties may be for considerably longer periods on condominium projects, as measured from the date of substantial completion.

Warranties on Individual Condominium Units

There is substantial uncertainty as to whether the warranties in Sections 896 and 900 even apply to individual condominium units. Section 895(e) includes only one definition of “close of escrow” for the commencement date for certain claims by an association, and this is NOT the date of the sale of the individual condominium unit. The “close of escrow” date is the date of substantial completion “or the date the builder relinquishes control over the association’s ability to decide whether to initiate a claim,” whichever is later. Further, the definition of “claimant” and “homeowner” is limited, in the case of common interest developments, to the association. Thus, an argument can be made that the warranties under Sections 896 and 900 simply do not apply to individual condominium units, and therefore developers should consider NOT providing an express fit and finish warranty for individual condominium units.

Resolution of the issue of whether the SB800 warranties apply to the “separate interests” in a condominium project potentially has substantial implications. If the fit and finish warranty applies to the sales of the individual units, the developer will essentially have “punch list” obligations extending out for many years, being one year following the sale of the last unit.

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