

# CLIENT ADVISORY

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## CONSTRUCTION DEFECTS NOW GOVERNED BY SB 800 OR THE “FIX IT” LAW

By Nina LoCoco, Esq.

Construction defect lawsuits are now governed by what has been commonly referred to as “The Fix It Law” or SB 800. The California legislature enacted the statutory scheme in an effort to allow home builders the opportunity to repair construction defects, while still affording homeowners their right to sue if the repairs are not made in accordance with the statutes.

After years of negotiations consumer advocates and the building industry have finally agreed on the “Fix It” law. The intended purpose of the new law is to promote prompt and fair resolution of construction defect claims, control costs of the claims, provide more certainty as to what constitutes a defect and reduce litigation. It remains to be seen whether these goals will be met by the “Fix It” law.

The new law applies only to homes sold after January 1, 2003. Single Family Homeowners and Homeowners Associations are covered by the new law. Every homeowner who purchases a home after January 1, 2003, must be provided a full and complete copy of the new law. If the builder fails to comply with this provision, the homeowner is not required to give the builder the opportunity to repair the problems. Likewise, if the builder fails to satisfy any of the requirements under the statute the right to repair is forfeited.

The “Fix It” law is complicated to say the least, and it makes several changes to the existing law. First, it provides a specific definition of construction defects. The defects for which a homeowner is entitled to a repair are specifically set forth in the statute and each defect carries its own statute of limitations. For example, there are some specified defects which allow the homeowners up to 10 years to bring to the attention of the builder and others only offer a 1 year statute of limitations.

The new code sections require a homeowner or Homeowners Association making a claim for defects to give notice to the builder prior to filing a lawsuit. It is important that the notice comply with the requirements set forth in the civil code. For example, the homeowner must provide notice via certified mail, overnight mail or

personal delivery to the builder. Civil Code section 910 specifically states, “That notice shall provide the claimant’s name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation.” The notice may be given by the homeowner personally or through his attorney.

The builder then has the right to inspect and test the defective conditions that exist. Once proper notice is given the builder has 14 days to inspect the property and alleged claims. Additionally, giving notice triggers the builders obligation to provide plans, specifications, grading plans, soils reports, engineering calculations and public reports to the homeowner within 30 days.

After receiving proper notice the builder may inspect and test the defective conditions that exist. Once inspection and testing has occurred, the builder has the option of either repair the problem or provide monetary compensation to the homeowner. A release or waiver cannot be required by the builder if repairs are made. However, if the builder chooses to offer monetary compensation a “reasonable” release may be negotiated.

If the builder fails to make an offer to repair or otherwise strictly comply with the statutes the homeowner may then file a legal action against the builder. Likewise, if the repairs are not performed adequately or in a timely manner the homeowner pursue his legal rights in court. A court action requires that the homeowner only demonstrate that the home does not meet the applicable standard set forth in the statutes. No further showing of causation or damages is required.

Although the homeowner may not bring a legal action until the builder has been afforded the opportunity to repair, the homeowner may have legal counsel during this process. This new statutory scheme adds over 10,000 words and 46 new code sections to the Civil Code. Due to the complicated and complex nature of these new statutes it is recommended that legal counsel be consulted prior to making a claim.