

DESIGN PROFESSIONALS' PRACTICE UPDATE

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November 6, 2003

Issue No. 4

California Law: New Statute of Limitations for Residential Construction Defects (§§ 896, 941)

Senate Bill 800 (effective January 1, 2003); Civil Code §§ 43.99, 895-945.5

This is the third in a continuing series of Design Professionals' Practice Updates about Senate Bill 800 (SB800) and its potential impact on the design and construction industry.

Senate Bill 800 changed the statute of limitations for construction defect claims for **new** residences sold on or after January 1, 2003.

SB800's first change was to eliminate the distinction between patent and latent defects. In its place, it imposed a general ten-year statute of repose for violation of SB800 building standards. Accordingly, a homeowner may file suit for construction defect within ten years. The ten-year period begins to run on substantial completion of the residence.

Notwithstanding the **general** ten-year statute of repose, SB800 imposes shorter deadlines for filing suit, according to the component or function of the residence affected by a construction defect. In most cases, the shorter statutes of limitations are triggered by the close of the escrow on the **original** sale of the residence.

- Five Year Statute of Limitations

Homeowners must file claims for the failure of paints or stains within five years of the close of escrow.

- Four Year Statute of Limitations

Homeowners must file suit for violation of plumbing, sewer or electrical building standards within four years of the close of escrow.

Homeowners must file claims for "significant" or "excessive" displacement in exterior hardscape within four years of the close of the original escrow.

Homeowners must file claims for corrosion of untreated steel frames and components within four years of the close of the original escrow.

- Two Year Statute of Limitations

Homeowners must file suit for failure to properly install dryer ducts within

two years of the close the original escrow.

Homeowners must file suit for the failure of a landscape system to survive for one year within two years from the close of the original escrow.

Homeowners must file claims for decay of untreated wooden posts within two years of the close of original escrow.

- One Year Statute of Limitations

Homeowners must file suit for failure of irrigation and drainage systems within one year of the close of the original escrow.

Homeowners alleging violation of inter-unit noise standards must file suit within one year of the original **occupancy** of an **adjacent** unit.

Application of the Statutes

SB800's ten-year statute of repose cannot be read in a vacuum. There are existing statutes of limitations that may shorten the statute of repose.

For example, if a homeowner discovers damage to a component of a residence, suit must be filed within three years (Code of Civil Procedure §338). The general rule is that a construction defect claim must be made within the *earlier* of two time periods: that established by the three year statute of limitations for known property damage, or that established by SB800's ten year statute of repose. A homeowner cannot rely on the ten-year statute of limitations to save what

would otherwise be a late claim under another statute of limitations.

The time limitations established by SB800 do not apply to actions based on breach of contract or on express contractual provisions. Moreover, SB800 does not proscribe a homeowner and a builder agreeing to a different statute of limitations.

The interplay between SB800's ten-year statute of repose and existing statutes of limitations, in combination with the vagaries of the real world, make hard-and-fast rules for the application of the statute of limitations difficult at best.

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