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CONSTRUCTION DEFECTS AND SB 800

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In 2002, the California legislature enacted SB 800, adding 10,000 words and a series of 46 new sections to the California Civil Code. SB 800 transformed the law of construction defects in California, both procedurally and substantively. Homeowners associations plagued by known or suspected construction defects need to be aware of the numerous new rules and potential pitfalls found in what has become "Title 7" to the Civil Code.

Substantive Changes in the Law

Prior to SB 800 developers complained that California law was too vague. They argued for a specific definition of what a "construction defect" is so they could design and build to a certain known standard and avoid liability. Thus, Civil Code section 896 sets forth numerous definitions of "construction defects." The definitions are set forth on a building component-by-building component basis. For every building component listed a performance standard is attached. (For example, "Roofs . . . shall not allow water to enter the structure," or "Windows . . . shall not allow water to pass beyond . . . the moisture barriers," or "Decks . . . shall not allow water to pass into the adjacent structure.") Such performance based definitions exist for almost every imaginable building component or system.

The statutorily-defined defects carry both benefits and dangers for homeowners associations. On the beneficial side, proving liability for most construction defects is easier for associations. Once a violation of the performance standard is proven, the developer's liability is established. The requirement to prove consequential property damage caused by the construction defect is eliminated. But, on the detrimental side, each defined defect carries its own distinct statute of limitations (1 year, 2 years, 4 years, 10 years). Some specified defects allow an association up to 10 years to bring a claim while other defined defects allow as little as 1 year. This arbitrary patchwork of various and sundry statutory deadlines for bringing construction defect claims is a pernicious trap for the unwary.

Procedural Changes in the Law

Prior to the enactment of SB 800, pursuant to the Calderon Act enacted in 1995, homeowner associations were required to follow certain procedures and engage

in certain communications with the developer before filing suit in court against the developer. Much of those pre-litigation procedures, or their concepts, is carried forward in SB 800 (e.g., written notice to the builder, right of both parties to obtain relevant documents, right of builder to inspect claimed defects, right of builder to make an offer, etc.). But SB 800 added a significant new feature: The builder's right to repair the claimed defects. When first enacted SB 800 was known in the construction industry as the "fix it law." Several code sections specify the manner in which the builder may propose repairs, how the association may respond, and the consequences of the repairs on claims following their implementation. In practice, however, very few builders have ever exercised their right to implement repairs. Rather, as has been the case for many years, builders' insurance companies prefer to pay money (as little as they can get away with) to resolve construction defect disputes.

Necessity of Involving Attorneys

No homeowner association should endeavor to negotiate construction defect claims with a developer without assistance from attorneys experienced in construction defect litigation. As noted above, a dangerous patchwork of differing statutes of limitations exists for different components and systems. Worse, the statute of limitations can run out even as the Association and developer are following the SB 800 procedures.

There are numerous other nuances and complications to SB 800 which are too complex to describe in detail. For example, SB 800 does not apply to condominium conversions. The SB 800 procedures may be affected or revised by arbitration or alternative dispute resolution provisions. And, where sales of homes in the community occurred both before and after January 1, 2003, a portion of an association's claims may be covered by SB 800 while another portion is governed by pre-existing law. Depending on the circumstances, an association's construction defect claims may be benefited by the statutory construction defect definitions yet not burdened by the statutory procedures.

Consult your attorney!