



# SB 800: California's Construction Defect Law

Member Legal Services

Tel (213) 739-8282

Fax (213) 480-7724

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## Key Questions

- *When does SB 800 apply?* See Question 3
  - *What are the statutes of limitations under SB 800?* See Question 10
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### I. Introduction

On September 20, 2002, Governor Davis signed into law SB 800 (codified in California Civil Code Sections 895 through 945.5). C.A.R. members may obtain a copy of **SB 800** online. The law made significant changes in the area of construction defect litigation and established warranties on new construction. SB 800 is applicable to all newly-constructed residential property intended to be sold as an individual dwelling unit, where the purchase agreement was signed by the seller on or after January 1, 2003. However, it does not apply to condominium conversions. SB 800 applies not only to the original purchaser, but also to subsequent purchasers.

SB 800 is rather complicated, reflecting the compromises made between the competing interests of homeowners, trial lawyers and the building industry. This legal article provides an overview of the law's requirements which is relevant to all REALTORS® who sell new residential single-family properties.

#### Q1. *Why a construction defect law?*

**A1.** On December 4, 2000, the California Supreme Court decided the case of *Aas v. Superior Court*, 24 Cal. 4th 627 (2000), which held that a homeowner could not recover damages in a negligence lawsuit against a

developer unless he or she suffered actual physical damage. As a result of this decision, a homeowner could not recover damages against a builder, even if the builder had violated building codes resulting in, for example, a home with significant earthquake and fire risks, until the homeowner suffered actual physical damage. While the homeowner retained the right to sue, if applicable, for breach of warranty and breach of contract, and possibly recover under those causes of action, the *Aas* decision caused great concern among homeowners, consumer groups and trial lawyers.

Consumer and trial lawyer groups worked to get the Legislature to address the results of *Aas* and give the consumer a remedy to builder negligence or violation of building codes even in the absence of actual damage. The building and insurance industries, however, concerned about the escalating cost of litigation wanted to make sure that any new law would also address developer and insurance industry concerns about unnecessary and costly litigation.

The resulting law creates a complex series of requirements, rules and procedures to address construction defects in California. The goal of the legislation is to benefit homeowners by providing them a means to effectively address construction defects, while at the same time allowing builders the opportunity to fix problems before a suit can be filed.

***Q2. What about properties for which a purchase agreement was signed prior to January 1, 2003?***

**A2.** For those properties where a purchase agreement was signed prior to January 1, 2003, the relevant law is codified in California Code of Civil Procedure Sections 337 and 337.15. These statutes allow a homeowner a four-year statute of limitation to sue for patent construction defects and a ten-year statute of limitation for latent defects. Also, the *Aas* decision described above applies to these properties, precluding a homeowner from recovering damages unless they can establish actual physical damage due to the defects.

**II. The Basics**

***Q3. When does SB 800 apply?***

**A3.** The law applies to all newly-constructed residential property intended to be sold as an individual dwelling unit (for example; a single-family home or a condominium unit) where a purchase agreement was signed by the seller on or after January 1, 2003. It does not apply to condominium conversions. (Cal. Civ. Code §§ 896, 938).

***Q4. Does SB 800 apply only to the original purchaser, or to future purchasers as well?***

**A4.** The "provisions, standards, rights and obligations" of SB 800 apply not only to the original purchaser of the property but also to subsequent purchasers (Cal. Civ. Code § 945). In fact, SB 800 requires that the builder instruct the original purchaser to give to the subsequent purchaser all the documents provided in conjunction with the original sale (Cal. Civ. Code § 912(h)).

***Q5. Who is a builder of new residential properties under SB 800?***

**A5.** The law applies to all builders of new residential properties. "Builder" under SB 800 includes all of the following: "any entity or individual including, but not limited to a builder, developer, general contractor, contractor, or original seller, who at the time of sale, was also in the business of selling residential units to the public." (Cal. Civ. Code § 911(a)). The law also applies to all "general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals" to the extent these parties

caused a violation of the SB 800 standards (see Question 5) as a result of a "negligent act or omission or breach of contract." (Cal. Civ. Code § 936).

**Q6. Does SB 800 set up standards that a builder must meet when constructing new residential properties?**

**A6.** Yes. SB 800 sets forth building standards "intended to address every function or component of a structure" (Cal. Civ. Code § 897). The law, in effect, creates a de facto building code defining the standards a structure should meet. The standards are listed in California Civil Code Section 896.

**Q7. What are examples of these SB 800 "building standards"?**

**A7.** Examples of these building standards are as follows:

**Water Issues:**

"A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any."

**Structural Issues:**

"Foundations, load bearing components and slabs, shall not contain significant cracks or significant vertical displacements."

**Plumbing Issues:**

"Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants."

**General Construction Issues:**

"[M]anufactured products including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as to not interfere with the products' useful life, if any."

**Q8. What if a structure is in violation of one of the standards in Civil Code Section 896?**

**A8.** The violation of these standards creates an actionable defect for the homeowner to pursue against the builder.

**Q9. Are violations of these standards the only actionable defects a builder has to be concerned about?**

**A9.** No. While the list is quite thorough, the law provides that "to the extent a function or component is not addressed by these standards, it shall be actionable if it causes damage." This "catch-all" provision opens up a builder to possible litigation for problems not addressed and there is no clear definition of "damage" for this section. (Cal. Civ. Code. § 897).

**Q10. What are the statutes of limitations under SB 800?**

**A10.** There are varying statutes of limitations under SB 800. There is a general ten-year statute of limitation for construction defects (i.e., violations of the building standards listed in Civil Code Section 896) (Cal. Civ. Code § 941). However, the law also sets specific statutes of limitations for certain types of defects. Where

the law sets forth shorter statutes of limitations, those time periods will apply. (Cal. Civ. Code § 896).

**Q11. Which building standards have shorter statutes of limitations?**

**A11.** The statutes of limitations are shorter than ten years for the following building standards found in California Civil Code Section 896:

- Plumbing and sewer systems must operate properly and not materially impair the use of the structure by their inhabitants: **four years from close of escrow.**
- Electrical systems shall operate properly so as to not materially impair the use of the structure by its inhabitants: **four years from close of escrow.** (Note that the standard that electrical systems must not cause an unreasonable risk of fire has a **ten-year statute of limitation.**)
- Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patio shall not contain cracks that are excessive or that display significant vertical displacement: **four years from close of escrow.**
- Manufactured products, including but not limited to windows, doors, roofs, plumbing products, and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as to not interfere with products' useful life: **one year from close of escrow** or longer if manufacturer states greater "useful life" term.
- Noise from attached units in violation of applicable "interunit noise transmission standards set by government building codes, ordinances or regulation in effect at the time of original construction": **one year from close of escrow.**
- Irrigation and drainage systems must function properly so as to not damage landscaping or other external improvements: **one year from close of escrow.**
- Untreated wood posts shall not be installed in contact with soil such as to cause unreasonable decay to the wood based upon the finish grade at the time of construction: **two years from close of escrow.**
- Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion: **four years from close of escrow.**
- Paint and stains shall be applied in such a manner so as to not cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations: **no action beyond five years from close of escrow.**
- Landscaping systems shall be installed so as to survive for at least one year: **two years from close of escrow.**
- Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements: **two years from close of escrow.**
- Fit and Finish Warranty: **one year from close of escrow.** (See Question 12.)

**Q12. Do builders need to offer a fit and finish warranty?**

**A12.** The law requires a builder to provide a homeowner with a "minimum one year express written limited warranty" covering the fit and finish of the following building components: "cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim." The one year warranty, however, will not apply to damage to those components caused by defects in other parts of the property governed by other statutes of limitation. (Cal. Civ. Code § 900) (The C.A.R. new construction form contracts include a fit and finish warranty).

**Q13. Is there an automatic fit and finish warranty under SB 800?**

**A13.** Yes. The law creates an automatic one-year warranty for the components enumerated in Question 12 if the builder does not provide an express (written) warranty (Cal. Civ. Code § 900).

**Q14. What is an "Enhanced Protection Agreement"?**

**A14.** The builder has the option of providing what the law calls, "an enhanced protection agreement" which can offer greater or comparable protection to the homebuyer. If the builder provides such an agreement, she or he is bound by the contract and not the building standards outlined in California Civil Code Sections 896 and 897.

These standards cannot be less than those provided by the statute and there are a number of strict notice requirements which the law requires if a builder chooses to provide an enhanced protection agreement.

**Q15. Should a builder use an "Enhanced Protection Agreement"?**

**A15.** This is a decision a builder should make with an attorney who can address the builder's particular concerns.

**Q16. If a homeowner claims that a building standard has been violated can he file a lawsuit immediately?**

**A16.** No, prior to filing a lawsuit the homeowner must utilize the pre-litigation procedure set forth in SB 800. (See Section III below on the pre-litigation procedures.)

**Q17. Does SB 800 address all claims that a homeowner could put forth against a builder?**

**A17.** No, the law does not cover claims by the homeowner to enforce an express contractual provision violated by the builder, or any action for fraud, personal injury, or a violation of another statute. A homeowner's right to bring such common law claims is expressly reserved by SB 800. However, pursuant to a recent California Supreme Court decision SB 800 *is* the exclusive remedy for a homeowner who has suffered purely economic loss or property damage as the result of a construction defect. In other words, a homeowner seeking to recover for economic loss or property damage resulting from a construction defect may not make a common law claim against a builder and may only seek recovery under SB 800 starting with the pre-litigation dispute resolution procedures discussed below in Part III. The only common law construction defect claims that may proceed without regard to SB 800 are those expressly excluded from the statute; such as actions for breach of contract, fraud, personal injury, or violation of another statute. (*McMillin Albany LLC v. Superior Court*, 4 Cal. 5th 241, 249 (2018)).

**Q18. Does SB 800 limit the damages if, in fact, the homebuyer does file suit?**

**A18.** Yes, the homebuyer is limited to damages under California Civil Code Section 944 for the following:

- The reasonable value of repairing any violation of the standards.
- The reasonable cost of repairing and rectifying any damages resulting from failure of the home to meet the standards.
- Reasonable cost of removing and replacing any improper repair of the builder.
- Reasonable relocation and storage expenses.
- Lost business income if the home was used as a principal place of business.
- Reasonable investigation cost for each violation.
- Other applicable fees and costs.

Keep in mind that these are the damages recoverable under SB 800; the homebuyer can still recover additional claims for damages resulting from other causes of action not covered under SB 800. (See Question 17.)

**Q19. *If the manufactures of a component of the property is at fault, may a builder seek indemnity against another party who caused the SB 800 violation?***

**A19.** builder maybe held responsible for any violation of the SB 800 building standards. However, a builder may bring an equitable indemnity action against another party that caused the violation in whole or in part under SB 800. In *Greystone Homes v. Midtec*, 168 Cal. App 1194, the court held that a builder may seek indemnification from the manufacturer of faulty plumbing components that caused installed plumbing systems to leak, damaging some condos and which required the builder to remedy the damage and preemptively remove those components that had not yet actually failed to prevent future problem. The court ruled that as SB 800 creates a cause of action by a homeowner against a builder for the homeowner's economic loss connected to replacement or repair costs for violation of the SB800 building standards, the builder may pursue an indemnity claim against a manufacturer whose faulty products caused the economic loss in the first place. *Greystone Homes v. Midtec*, 168 Cal. App 1194, 1219 (2008) See also *Centex Homes v. Superior Court*, 214 Cal. App. 4th 1090 (2013) (holding that a builder may move forward in an indemnification claim against a city. The builder alleges that city sewers released hydrochloric gas, which damaged the cast iron components in an apartment building plumbing system).

However, a builder does not have the right to file a direct claim against a product manufacturer under SB 800, only the homeowner has the right to bring an action. Any claim filed by a builder against another party under SB 800 must be derivative action relating to/ or in connection with the action filed by homeowner. *Greystone Homes*, 168 Cal. App.at 1219.

### **III. SB 800 Pre-Litigation Procedures**

**Q20. *What is the purpose of the pre-litigation procedure presented in SB 800?***

**A20.** One of the stated goals of SB 800 is to reduce litigation between builders and homeowners. The law provides a detailed pre-litigation procedure which must be followed before a homeowner can file suit against builder for a construction defect.

**Q21. *Does a builder have to use this pre-litigation procedure?***

**A21.** No, the law provides that the builder may provide a different, but substantively similar pre-litigation procedure to the one provided by SB 800. However, if the builder's alternative pre-litigation procedures are deemed unenforceable, he or she may not then enforce the statutory pre-litigation procedures. (*Anders v. Superior Court*, 192 Cal. App. 4th 579, 589 (2011) Once the court determines that pre-litigation procedures are unenforceable, the builder "may still offer to repair any defects, but the homeowner is not bound to accept the offer." *Id.* at 591 "The builder thus has an incentive to ensure its alternative procedures are proper and enforceable, and the homeowner's protection against unnecessary delay is preserved." *Id.* If a builder decides to offer his/her own alternative dispute resolution procedure, it is important for the builder to consult with an attorney to make sure that procedure complies with the law.

If a builder chooses not to establish his/her own alternative dispute resolution procedure or does not respond to a homebuyer's written notice to resolve a dispute using the pre-litigation procedure set forth in SB 800, the homebuyer may file suit and the matter will be resolved in court. While the non-adversarial procedures will not apply, the builder is still bound by the other provisions of the law.

In other words, if a builder ignores SB 800, then the homeowner is not limited by the *Aas* decision (only suing for actual physical damages) and the homeowner may sue for all the actionable defects, including building code violations enumerated in Sections 896 and 897, plus the fit and finish warranty of Section 900.

(Cal. Civ. Code §§ 912, 915).

**Q22. *Is the builder obligated to inform the homeowner of this pre-litigation procedure?***

**A22.** Yes.

- First, the builder must record on title a notice as to the existence of these pre-litigation procedures and a notice that these procedures impact the legal rights of the homeowner. The information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser. (Cal. Civ. Code. § 912(f)).
- A builder must provide with the original sales documentation, a written copy of the law which must be initialed and acknowledged by the purchaser. (Cal. Civ. Code § 912(g)) (A written copy of the law may be found at [SB 800](#)).
- If the builder has an enhanced protection agreement, the builder must inform the homebuyer prior to the close of escrow that he or she is opting out of the SB 800 standards and provide a copy of SB 800 standards. (Cal. Civ. Code § 903).
- The builder must also provide instructions to the homebuyer that all documents provided at the time of sale must be provided to a subsequent purchaser. (Cal. Civ. Code § 912(h)).

The C.A.R. new construction standard form addenda, NCAD and NCRPA, address the above requirements.

**Q23. *What are the SB 800 pre-litigation procedures?***

**A23.** The pre-litigation procedures are as follows:

- Homeowner notifies the builder that the construction violates one or more of the standards set forth in the law. The notice must be in writing and sent via certified or overnight mail or personal delivery to the builder. The claim must describe the claim in "reasonable detail sufficient to determine the nature and location of the violation." (Cal. Civ. Code § 910(a)). Serving notice of a construction defect claim under §910 initiates the pre-litigation procedures. The builder is not obligated to respond to any document requests until the homeowner serves notice of a claim. (*Darling v. Superior Court*, 211 Cal. App. 4th 69, 72 (2012)).
- Within 14 days the builder must acknowledge the claim in writing. If the claim is not acknowledged, the homeowner can begin litigation. (Cal. Civ. Code § 913).
- If the builder elects, within 14 days from the acknowledgment of the claim the builder can do an inspection. If the builder elects to do an inspection and the inspection requires any changes to the property, the builder has 48 hours to bring the property back to its original pre-testing condition. (Cal. Civ. Code § 916).
- If the builder decides it needs a second inspection, then the builder must within 3 days send the homeowner the demand for a second inspection in writing and explain the reasons. The second inspection must take place within 40 days of the initial inspection. As with the first inspection, the builder has 48 hours to bring the property back to its original pre-testing condition. (Cal. Civ. Code § 916).
- Within 30 days of the last inspection, the builder may offer to repair the violation. The offer to repair must contain a detailed written statement of the work to be done, a reasonable completion date, compensation to the homeowner for recoverable damages and details regarding the contractor that the builder will be employing to do the repair. The offer must also advise the homeowner of his or her right to request up to three additional contractors that could do the work. (Cal. Civ. Code § 917).
- The builder must accompany the repair offer with an "offer to mediate the dispute if the homeowner

so chooses" (Cal. Civ. Code § 919).

- If the homeowner decides to accept the builder's offer of mediation the following procedures apply:
  - The builder selects a 'nonaffiliated' mediator and pays the mediator's fees. However, at "the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly." (Cal. Civ. Code § 919).
  - The mediation must occur within 15 days after the homeowner's request to mediate is received (Cal. Civ. Code § 919).
  - The mediation must take place "at a mutually convenient location within the county where the action is pending." (If no lawsuit has been filed, the mediation most likely should still occur at a mutually convenient location within the county in which the lawsuit would likely be filed). (Cal. Civ. Code § 919).
  - The mediation is limited to four hours, unless the parties agree otherwise (Cal. Civ. Code § 919).
- If the builder offers to repair the violation, and the mediator fails to otherwise resolve the dispute, the homeowner must allow the work to be performed (Cal. Civ. Code § 919).
- If a mediation occurs and pursuant to the results of the mediation, work is to be done to repair the violation, the work must commence within seven days of the mediation or if a permit is required within five days of obtaining that permit (Cal. Civ. Code § 921(a)).
- If mediation is rejected by the homeowner then the following applies:
  - Upon receipt of the repair offer, the homeowner has 30 days to authorize the builder to proceed with the repair (Cal. Civ. Code. § 918).
  - At the homeowner's request, the builder has 35 days to provide the homeowner with three alternative contractors who are not owned or financially controlled by the builder. If the homeowner requests the alternative contractors, the builder is entitled to an additional non-invasive inspection within 20 days. (Cal. Civ. Code § 918).
  - The homeowner has 20 days after receiving notice of the three alternative contractors to authorize the repair (Cal. Civ. Code § 918).
  - If the homeowner authorizes the repair, work must commence within 14 days of the acceptance of the offer to repair or 14 days of the selection of an alternative contractor or five days after a permit is issued if a permit is required (Cal. Civ. Code § 921(a)).
  - The builder must make every effort to complete the repair within 120 days (Cal. Civ. Code. § 921(b)).

**Q24. *Can the builder offer cash rather than repair the problems?***

**A24.** Yes, the builder can offer cash and obtain a "reasonable release." The option to accept the offer is that of the homebuyer. If the offer of cash is refused and the builder does not otherwise comply with the repair requirements, the homeowner may file a lawsuit. (Cal. Civ. Code § 929).

**Q25. *What if the builder does not offer to repair or does not comply with the timelines?***

**A25.** The homebuyer may file a lawsuit. This provides a strong incentive for a builder who wishes to avoid litigation to strictly comply with the statute's timelines and requirements.

**IV. Builder Defense to Homeowner Claims/Homeowner Obligation**

**Q26. *Are there any defenses that a builder can assert against a homebuyer or is the builder strictly liable for violations of the construction standards?***



**A26.** SB 800 provides various defenses which the builder can assert to defend against a homeowner. These defenses are summarized below:

- Unforeseen acts such as terrorism and acts of nature which cause the structure not to meet the standards. For example, an unusual flood of such severity that it creates a defect despite the fact that the house was constructed according to existing rules regarding water intrusion. (Cal. Civ. Code § 945.5(a)).
- A failure by the homeowner to timely mitigate, minimize or prevent damages in a timely manner. This includes a failure of the homeowner to timely notify the builder of a problem and the failure of the homeowner to allow the builder "reasonable and timely access for inspection and repairs." (Cal. Civ. Code § 945.5(b)).
- The failure of the homeowner to follow the builder's maintenance obligations provided the builder can show that those directions were in fact communicated to the homeowner (Cal. Civ. Code § 945.5(c)).
- Damages caused by alterations to the property by the homeowner or by a third party hired by the homeowner, "ordinary wear and tear, misuse, abuse, or neglect or the use of the structure for something other than its intended purpose." (Cal. Civ. Code § 945.5(d)).
- Claim filed outside the statute of limitation (Cal. Civ. Code § 945.5(e)).
- If the homeowner validly released the builder (Cal. Civ. Code § 945.5(f)).
- The builder repaired the problem (Cal. Civ. Code § 945.5(g)).
- If the claim falls outside of the scope of SB 800 such as a fraud, breach of contract or other civil claim (See Question 15) (Cal. Civ. Code § 945.5(h)).

**Q27.** *Where can I obtain additional information about this and related subjects?*

**A27.** This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit [car.org](http://car.org).

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

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Los Angeles, CA 90020

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The information contained herein is believed accurate as of April 4, 2019. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Revised by Lee Kaplan, Esq.

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