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**CALIFORNIA'S RESIDENTIAL CONSTRUCTION CLAIMS STATUTES**

Written by Kevin Bush, Esquire

Presented by Howard D. Maycon, Esquire

e-mail: [hmaycon@cozen.com](mailto:hmaycon@cozen.com)

777 South Figueroa Street, Suite 2850

Los Angeles, California 90017

Telephone: (213) 892-7900

Facsimile: (213) 892-7999

# **CALIFORNIA'S RESIDENTIAL CONSTRUCTION CLAIMS STATUTES**

## **I.**

### **INTRODUCTION**

In 1999, in response to intense lobbying by builders and builders' trade organizations who were concerned about an increase in the costs associated with residential construction litigation, Texas enacted the nation's first Residential Construction Liability Act ("RCLA"). Its sponsors argued that the Act was needed to remedy an expansion of residential construction litigation brought against homebuilders by homeowners. Many view the Act as providing significant benefits and protections to the homebuilders. Soon after Texas enacted its RCLA, other states, including California, followed suit.

In 2003, California adopted variants of the Texas RCLA. The gist of the California statutes is that claimants must give *written* notice of claimed defects and provide a fair opportunity to builders, design professionals, sellers and even material suppliers to remedy the defects. In most states, including California, a legal action may be dismissed without prejudice or stayed until the claimant has complied with the notice provisions of the relevant state's Act.

Following notice of claimed defects, California law provides a "time out" period during which the claimant and builder seek an out-of-court resolution to their dispute, while complying with certain statutory deadlines in which to respond to the other side's proposals. At the end of the process, if the dispute has not been resolved in good faith, none of the statutes bar subsequent legal actions. Still, many of the statutes limit the types of damages recoverable in a subsequent legal action, or provide certain legal defenses to home builders (i.e., absolving the builder of liability for the claimant's failure to mitigate damages or maintain the structure).

## II.

### **APPLICATION TO SUBROGATION CLAIMS**

Except for the Texas RCLA, none of the residential construction claims statutes in other states even hint at whether the requirements apply to subrogation claims or whether subrogating carriers may (or are required to) provide the requisite notice to builders. In California, there is no statutory or case law indicating whether the statutes are applicable to subrogation actions. Until such law is established, the relevant statutes should be followed in order to prevent a potential waiver of any rights or recovery, i.e., a subrogating carrier should provide notice of the loss to the home builder as soon as liability becomes apparent. If the circumstances allow, invite the homebuilder out to the loss site and advise that repairs are to be promptly made in order to restore the insured's property to its pre-loss condition.

Because the California statutes are newly enacted and adopted significant questions remain as to their application in subrogation and other claims. Hence, caution must be taken until the statutes are modified or cases interpreting the statutes are decided and published. Until then, the statutes should be consulted and followed as though applicable to a subrogation matters. What follows is a brief analysis of the statutes that exist in California.

**STATE: CALIFORNIA**

**(Effective Date: January 1, 2003)**

**1. Who is subject to Act?**

Homeowners or homeowners associations. Cal. Civil Code §910, 938.

**2. Who is protected?**

Contractors, developers, or sellers who at the time of sale were in the business of constructing, developing, or selling residential units to the public. Cal. Civil Code §911.

**3. Notice required before filing suit.**

Written notice prior to commencing action. Cal. Civil Code §910.

If respondent has invoked the protections of the Act and made repairs following notice of claim, and the matter is still disputed, the claimant shall request in writing and participate in mediation of the claim before filing suit. Cal. Civil Code §928.

**4. Consequences of claimant's failure to comply.**

Suit may be stayed until requirements of Act complied with. Court may award costs and attorneys' fees to prevailing party in connection with a motion for stay. Cal. Civil Code §930(b).

**5. Consequences of respondent's failure to comply.**

Respondent who fails to comply with Act is not entitled to protections of Act and homeowner is released from obligations of Act. Cal. Civil Code §912(i), 920, 925.

**6. Effect on statute of limitations.**

Statute of limitations tolled as follows:

i. Until 100 days after agreed-upon repairs are completed; except that if repairs are completed but the dispute remains and is therefore required to be mediated pursuant to Cal. Civil Code §928, then the statute is tolled until the latest of the 100 day period or the next court day following completion of mediation; or

ii. Until 45 days after time for responding to claim has expired, if respondent fails to respond, fails to request an inspection, or elects not to abide by provisions of act; or

iii. Until 100 days after a contractual alternative dispute resolution proceeding is completed or is deemed unenforceable. Cal. Civil Code §927, 928.

**7. Effect on damages.**

None.

**8. Other considerations.**

Act does not limit contractual alternative dispute resolution mechanisms. Respondent must, in agreement of sale, make an election between the Act's alternative dispute resolution mechanism or contractual provisions. Cal. Civil Code §914(a).

Respondent may not obtain a release or waiver from claimant in exchange for repairs. Cal. Civil Code §926. However, respondent may obtain release or waiver in exchange for cash settlement. Cal. Civil Code §928.

If claim combines cause of action for construction defects with claims not otherwise subject to the Act (i.e., personal injuries, fraud, or class action remedies), the construction defects claim is still subject to the requirements of the Act; except that a class action solely alleging the incorporation of a defective component into a residence need not comply with the Act. Cal. Civil Code §931.