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Statutes of Limitations for Construction Defect Claims

California Civil Code Sections 895, et. seq., set forth the Right to Repair Act or, as it is commonly known, "SB 800." This law governs construction defect claims for original construction in California. Section 896 establishes specific timeframes within which construction defect claims relating to homes sold after January 1, 2003 may be brought. These timelines or "statutes of limitation" are generally described as follows:

Irrigation systems and drainage §896(g)(7)	1 year from close of escrow
Excessive inter-unit noise §896(g)(6)	1 year from original occupancy of the adjacent unit
Dryer ducts §896(g)(14)	2 years from close of escrow
Landscaping systems §896(g)(12)	2 years from close of escrow
Untreated wood posts §896(g)(8)	2 years from close of escrow
Electrical §896(f)	4 years after close of escrow
Exterior pathways/driveways/hardscape/sidewalks/patios §896(g)(1)	4 years after close of escrow
Untreated steel fences §896(g)(9)	4 years from close of escrow
Plumbing §896(e)	4 years after close of escrow
Sewer §896(e)	4 years after close of escrow
Paint and stains §896(g)(10)	5 years from close of escrow

Most claims relating to other building components (roofs, windows, decks, stucco, siding, foundations, etc.) are typically subject to a 10-year limitations period, measured from the date of substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

For a single family home, "close of escrow" is a straightforward term. It means the date of the close of escrow between the builder and the original homeowner. However, the term "close of escrow" has a special definition when it relates to claims by a community association. Civil Code Section 895(e) provides that the "close of escrow" is measured from the date of "substantial completion," or the date the builder relinquishes control over the Association's ability to decide whether to initiate a defect claim, whichever is later.

Given the two possible definitions, identifying the operative date from which to measure the above time periods is a tricky proposition for most Associations. More often than not, the latter definition will govern since builder representatives will control the Board for at least some period of time after substantial completion.

But how does an Association identify the date the builder "relinquishes control?" Many Associations interpret the above to mean the date when the builder no longer has majority control of the board of directors. Some Boards believe they aren't in a position to decide whether to initiate a defect claim until **all** builder-affiliated representatives are off the Board. However, these assumptions may not withstand legal scrutiny. For instance, builders are increasingly inserting "conflict of interest" provisions into governing documents. These provisions require builder-affiliated board members to recuse themselves from decisions on whether to initiate construction defect claims. Although such provisions may seem to protect the Association, they often, in fact, are intended to accelerate the date by which the builder is deemed to have relinquished control over the HOA's ability to decide whether to initiate a claim. Such a provision can cause the limitations periods to expire faster, because the builder can claim that even one homeowner board member was free to make the determination of whether to initiate construction defect claims immediately upon election or appointment to the Board.

The law is not well-tested on the above points. Since a Board of Directors has a fiduciary obligation to evaluate construction defect claims within applicable limitations periods, **Associations should have their legal counsel carefully review its CC&Rs, Bylaws, and meeting minutes to perform this analysis.** Failure to properly analyze the limitations periods could render an Association's claims completely time-barred. In other words, if an Association does not act within the applicable timelines, it could have no legal recourse against the builder. Failure to act can also expose the Board of Directors to potential liability.

As if Associations weren't already facing a complex task, the legislature further confounds the process by referencing certain components in multiple places in Civil Code Section 896. Some references contain a limitations period and some do not. As a result, sometimes the limitations periods listed above may interplay with other limitations periods, potentially resulting in a different analysis regarding the same component. Take, for instance, claims regarding plumbing and sewer systems. California Civil Code Section 896(e) provides a limitations period of 4 years for claims that a plumbing or sewer system does not operate properly and/or materially impairs the use of the structure by the inhabitants. However, additional grounds for plumbing and sewer related claims may be found under Civil Code Sections 896(a)(14) and (15), which provide that plumbing and sewer systems shall not leak, and shall not corrode to impede their useful lives, respectively. Civil Code Sections 896(g)(3)(A) and 897 may also be implicated by a plumbing claim. Claims asserted under these sections may be subject to a 10-year limitations period, as opposed to the 4-year period under Section 896(e). It is important to keep this potential overlap in mind when evaluating whether the limitations period for making a claim may have lapsed.

The foregoing is a general discussion of major considerations relating to statutes of limitations issues for construction defect claims. This discussion is by no means comprehensive, and is not intended to constitute a legal opinion or legal advice. Should you have any questions or concerns relating to statutes of limitations and/or construction defect claims, the attorneys at Angius & Terry LLP have expertise in evaluating, preserving and advancing construction defect claims on behalf of community associations. Please contact us for more information.