

## CALIFORNIA CONSTRUCTION DEFECT LAW FOR THE HOME OWNER © 2018

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### ***NEW CONSTRUCTION INSPECTION LAW***

*What a contractor is responsible for under the California Law regarding new construction.*

#### **CONSTRUCTION DEFECT: California Civil Code [896-897 and 900-907]**

Enacted into law by the Governor of California September 2002

Defined by the California Supreme Court January 2018

**A Construction Defect can be defined as** the result of any contractor or builder who fails to meet the minimum standards as set forth in the California Building Codes, Local Municipal Codes, Manufacturer's Installation Requirements and the Standard of Care. "Standard of Care" means that a contractor has a duty to perform and build to the same level or standards as similar contractors would while meeting the codes and installation requirements. On new construction the contractor or builder is held liable for repairing ANY defect found which does not meet the minimum standards as described above. If a contractor or builder does not correct all items which are considered a defect under the law, the home owner can have the items repaired and take the builder to Small Claims Court to recoup the cost to repair the defect if the total amount of repairs is under \$15,000. You can also add the cost incurred by you to investigate and report the defect, and in some cases storage of personal belongings and relocation of the occupant.

A licensed contractor is required under the law to warranty and repair all construction and cosmetic defects that do not meet the standard of care, building code requirements or the manufacturer's installation requirement even if the City or County inspector has overlooked the defect during their inspection, and even if it has not caused any damage. In other words, a contractor is required to install all systems and components to the local Building Codes, Ordinances, the Standards of Care and the Manufacturer's Installation Requirements **without** exception.

If a builder refuses to correct **all** the issues within the time limits provided by law, a home owner can file a complaint against the contractor with the California Contractors State License Board ([cslb.ca.gov](http://cslb.ca.gov)) which, if found legitimate, can become a part of their permanent record. The CSLB can also help to resolve any violation of the construction defect law up to \$50,000. A claim can be filed against the contractor's license bond which is their completion insurance, and/or you can take them to court: Small Claims or Civil. The law is very specific and strict on any licensed contractor who fails to correct any defect within a reasonable time within the statute of limitations.

#### **California Civil Code [896-897]** (examples are paraphrased)

- With respect to water issues (Doors, Windows, Patios, Deck, Roof Systems, Exterior Walls, Showers, Plumbing Systems, Driveways, Sidewalks and Landscaping shall not allow water to intrude into the building or cause damage to the home.
- Electrical, Mechanical, Water Heaters, Furnaces, Kitchen Exhaust Hoods, Dryer Venting, Fireplaces and Chimneys "Must be installed in such a way as not to cause an unreasonable risk of fire".
- Concrete cracking in patios, driveways, sidewalks etc. cannot be excessive.

- Exterior stucco cracking cannot be excessive. All manufactured products shall be installed to the manufacturer's installation requirements and shall not be installed in a manner as to interfere with the product's useful life.
- All tile installed inside or outside shall not become loose.
- All Structure systems and components shall be constructed as not to impair the occupant's safety.
- Any new landscaping installed including; plants, trees and lawn shall be warranted for 1 year against death or defect, but is required to be properly maintained by the owner. [896. 18.12]
- [897] States that a builder is liable for anything not covered by chapter 896 if it causes damage.

**OK, SO NOW WE HAVE DISCOVERED YOU HAVE A DEFECT AS DEFINED BY THE LAW.  
WHAT NOW?**

Well next we need to determine WHEN the defective system or component was installed, WHO installed it and is there an opportunity to seek compensation from someone. Now here is where the tricky parts of construction defect laws come into play. Don't get overwhelmed is not as tough as it sounds.

First: **WHEN WAS THE DEFECTIVE SYSTEM OR COMPONENT INSTALLED?** (Statute of limitations)  
It is important to understand prior to moving forward that you understand the two types of warranties. All contractors are required under the law to warranty there work. These warranties do not have to be provided to you in writing nor is a contractor required to tell you about them. The two types are the ONE YEAR EXPRESS LIMITED WARRANTY aka" the fit and finish warranty and the other is the LATENT DEFECT WARRANTY. Both warranties are explained below.

If you have a construction defect you are required to notify your contractor in writing within a certain amount of time after the house closes escrow or the remodel or repairs were performed. If you exceed to time allowed by law you may not be able to get compensation. This time frame allow by the law is call the Statute of Limitations and is defined by the CALIFORNIA CIVIL CODE [900-907],. The time frame varies by specific system or component. Some statutes are as short as 12 months and some are 10 years. Listed below are some specific statutes of limitations and the definitions of the two types of warranties.

**1. The ONE YEAR EXPRESS LIMITED WARRANTY aka" the FIT AND FINISH [CALIFORNIA CIVIL CODE 900-907] (examples are paraphrased)**

The standard "ONE YEAR EXPRESS LIMITED WARRANTY" also known as the "Fit and Finish Warranty" basically is a warranty provided by a contractor under the law, which states your home will be free of "cosmetic" and "construction defects" for a minimum of 12 months after the close of escrow on new construction or after the job is completed on remodels and repairs. The "fit and finish" warranty does not have to be in writing as the State has adopted a Standard of Care practice which states that a system or component shall be installed in such a manner as most competent contractors doing the same job. Some examples are; cracked or loose tiles in a showers or floor, loose toilets, peeling paint, doors that rub and stick, dripping faucets, no warping of the wood flooring and even weird noises that your home makes.

**2. LATENT DEFECT: Latent defects are defects which lay dormant and/or are undiscoverable without certain expertise, tools or testing. (examples are paraphrased)**

**ONE YEAR** latent defect warranty

- a. Landscaping must survive a minimum of 1 year. However, no action shall be taken after 2 years. [CCC 896 (g) (12)]

**TWO YEAR** latent defect warranty

- a. Dryer venting: [CCC 896 (g) (14)]

**FOUR YEAR** latent defect warranty

- a. Driveways, patios, walkways, shall not have excessive cracking or displacement, four years
- b. Electrical, Plumbing be operating properly.

**FIVE YEAR** latent defect warranty

a. Deteriorating paint and stains are required to last the minimum as stated by the manufacturer. However, no action shall take place after five years. Deteriorating paint and stains are required to last the minimum as stated by the manufacturer. However, no action shall take place after five years.

**TEN YEAR** latent defect warranty

[941]

Except where specifically noted above or within SB 800 all defects are warranted for (10 years) after the completion of construction or valid notice of completion by the City or County not close of escrow.

- a. Electrical or Mechanical as to potential fire safety
- b. Fireplaces and chimneys
- c. Fire protection systems
- d. Any engineered system must perform as designed; Structural framing, Soils and site stability, Engineered retaining walls...
- e. The waterproofing in showers and tub enclosures
- f. Plumbing lines/ piping shall be free from leaks
- g. Sewer pipe installation
- h. Water proofing of retaining walls and the French drainage systems associated with the movement of water.
- i. The exterior of a house shall be water tight.
- j. Driveways, walkways, patios and drainage systems shall properly move water away from the building and shall not cause soil erosion or improperly terminate in an inappropriate place.
- k. Water or moisture shall not wick up through the concrete floor / slab as to limit the type of flooring used in the home.
- l. Decks and stairways shall not leak if waterproofed shall drain properly and shall not allow water into the house.
- m. Roofs shall be free from leaks of a minimum of ten years.
- n. Exterior walls, window, doors, any exterior wall penetration shall not leak water.
- o. Waterproof Decks, deck systems, balconies, balcony systems, waterproof exterior stairs, and exterior stairways systems shall be watertight and shall not leak water into the living space of cause any type of damage

**SO, WE HAVE A LEGITIMATE CLAIM AND WE ARE WITHIN THE STATUTE OF LIMITATIONS.**

**HOW DO I GET MY DEFECT FIXED AND PAID FOR?**

If we determine that you have a legitimate claim against a contractor for defective installation, or non-professional workmanship and you are within the statute of limitations, there are specific rules you must follow to getting the defects repaired or recouping monies from the contractor or builder. The processes are actually quite simple and there are multiple options.

- 1. Mediation
- 2. Small Claims Court
- 3. State Contractors License Board
- 4. Civil Law suit

**HOW DO I HANDLE A CLAIM AGAINST MY BUILDER OR CONTRACTOR? California Civil Code**

**[910- 938]**

**DO NOT CONTACT AN ATTORNEY YET!!!**

**First**, before any action can be initiated you must define and document all the defects and the violations, weather it is a code violation (with the code #), improperly installed per the manufacturer's installation requirements (page #) and/or not installed per the standard of care (as defined by the industry). What that means is that you will need to have an unbiased construction defect specialist investigate your claim, one that is knowledgeable in all 3 practices and can properly define and document the complaint. Then the

Law is very specific about the process of notifying the contractor or builder, allowing a certain amount of time for him or her to respond to your claim and allowing a specific amount of time for the contractor to investigate your claim. This is called the "Pre Litigation Procedures". "The failure of these processes can be the defining moment in whether you win or lose on a mere technically and in some cases whether or not you can get compensation for the money you have spent getting to this point. This is best done by an experience construction defect investigators like the highly skilled professionals at P.H.I.S. Inc. and not your local contractor.

Filing a Lawsuit should be your last resort. My best recommendation is to try and mediate with the builder only after all the defects have been properly defined and documented. This should NOT be done on your own. P.H.I.S.Inc. specializes in mediation services and is so much more cost effective as compared to hiring an attorney and going to court. It costs about \$50k to take a legitimate claim to trial and about 2-3 years. Mediation is generally completed in 30-90 days or less. Oh yea, prior to going to a trial you will be required by the courts go to mediation anyways.

Knowledge is the key. Most issues can be resolved quickly without expensive attorney fees. If a settlement cannot be reached during mediation, than legal proceedings may be your next option. This include small claims court (maximum claim of \$15k / no lawyer), mediation through the California Contractors Board (maximum claim of \$25k / no lawyer), or filing a civil law suit (now you will need a lawyer). Prior to hiring an attorney P.H.I.S Inc. can package your claim professionally to hand off to an attorney saving you bundles of money. "Only a fool represents one's self in a matter for which they know nothing and even more dangerous is a man who knows a little something". You will still need to have your claim legitimized and the procedures explained so you don't sound like a bumbling fool or a whining home owner.

**\$\$\$ CAN I GET THE CONTRACTOR TO REIMBURSE ME OR THE COST OF HIRING P.H.I.S INC. TO ASSIST ME? "YES" in most cases.**

**Recovering damaged Civil Code Section [944]**

California construction defect law California civil code sections 895 to 945.5

Definition of a construction defect:

[900]

California Fit and finish (1 year)

[896]

(e) All Plumbing issues (4 years)

(f) All Electrical issues (4 years)

(g) (1) No significant cracks in driveways sidewalks or patios (4 years)

(g) (2) Stucco shall not contain significant cracks or separations (10 years)

(g) (7) Irrigation and sight drainage (1 year)

(g) (10) Paint shall be applied in such a manner so as not to cause deterioration of the Building Services for the length of time specified by the paint manufacturer (5 years)

(g) (12) Landscape and she'll survive at least (one year) (2 years to file a claim)

(g) (14) Defective dryer vent termination (2 years)

[941]

Except where specifically noted above or within SB 800 all defects are warranted for (10 years) after the completion of construction or valid notice of completion by the City or County not close of escrow.

[910]

Prior to filing action a homeowner is required to initiate the following procedures: Write and deliver a demand letter via certified mail overnight mail or personal delivery to the Builder.

The builders and has 14 days to acknowledge receipt [913].

[915]

If the Builder fails to acknowledge receipt of the notice of a claim within the 14-day. Or elects not to go to the process set forth in the law the homeowner May proceed with filing an action with the court.

[916]

The Builder can request to do inspections at a mutually convenient date and time within 14 days after acknowledgement of the receipt of notice of the claim.

If any deconstruction is done during the builders inspection, they are required by law to put it properly back to its original pre-deconstruction condition within 48 Hours of the inspection.

A builder may request a second inspection or testing as deemed reasonable and is required to complete that within 40 days of the initial inspection date.

[926]

It is against the law for a builder to obtain a release or waiver any kind in exchange for the work performed

[917]

Within 30 days of the inspections or testing the Builder may offer in writing to repair the violation the offer to repair show also compensate the homeowner for all applicable damage under Section 944

### **California Supreme Court Ruling – January 18, 2018**

Some great news and some bad news for homeowners. The California Supreme Court decision was reached January 2018 clarifying the **California Civil Code [896-897]**. The Court ruled specifically on two of the most important parts of the law. First, they ruled that a contractor is responsible for any construction defect even if it has not caused any damage. An example would be that a builder improperly installed some exterior siding and did not install the required watershed flashing. The contractor is responsible for the defect even if the siding did not leak at the time of the claim.

The second ruling clarifies the time limits of the statute of limitations. This means that if there is a four-year time limit on a specific defect, that four years and two months or 5 years is no longer acceptable to file a claim.

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B [General Building Contractor]

C-8 [Electrical Contractor]

C-10 [Concrete Contractor]

TRI - Nationally Certified Tile Roof Installer

Certified Professional Inspector (Master) California Real Estate Inspection Association

Past President (SLO Chapter) California Real Estate Inspection Association

F.I.R.E. Certified Inspector #FP-061

NADRA Certified Deck Professional (North American Deck and Railing Association)

(PMII) Nationally Certified Mold Inspector and Remediation Specialist

American Institute of Inspectors (A.I.I.) Manufactured Home Inspector

ICC Certified Building Inspection and Plumbing Inspector (International Code Council)

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