Construction Defect Disputes – California Summary

By: Tamara L Boeck, Esq.

- Admitted in CA, NV, ID

Stoel Rives LLP

Construction Defect Disputes - California

- Tension between homebuyers and builders:
  - Two primary statutory schemes govern, with the goal to protect buyers from defective construction, while trying to provide some non-litigation resolutions for builders allowing repair or settlement.

- **"SB800"** – Civil Code § 895 et seq. – Homebuilder's Right to Repair effective in 2003.
- ***Calderon*** – Civil Code §6000 et. seq. - common interest development dispute resolution procedures passed 1995.

SB800 - Summary

Statute applies to new residential projects post 2003 - "individual unit for sale"

"The Legislature enacted the Right to Repair Act to "'specify the rights and requirements of a homeowner to bring an action for construction defects , including applicable standards for home construction, the statute of limitations, [warranty standards], the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.' (Legis. Counsel's Dig., Sen. Bill No. 800 (2001–2002 Reg. Sess.).)"(citations omitted).

The McCaffrey Group, Inc. v. Superior Court (2014) 224 Cal. App. 4th 1330, 1342-1343.

Calderon - Summary

- Applies to a common interest community (“HOA”) with 20 or more units, allows the HOA to sue a developer for construction defects following an alternative dispute resolution process prior to litigation.
- Generally, runs concurrently with SB800 where they overlap.

Homeowner Perspective

- “Consumer protection” is a priority in California.
- Homes are the most significant investment of most buyers.
- Many builders were not responding to defect claims by homeowners, and until the ‘defect caused resulting damages’ no insurance was available to repair.
- Claimed lack of responsiveness and responsibility by builders.
- Claimed ‘hold out’ delay as homeowners cannot afford the cost of litigation.
- Legislation provides protection, with an incentive to builders to repair or settle to avoid litigation.

Builder Perspective

- Frivolous lawsuits drove up the cost of insurance (and housing).
- No standards for ‘defects’ – different opinions by ‘hired guns’ aka “experts.”
- Goal of SB800 and *Calderon* are laudable – but not reality, plaintiff’s lawyers have no incentive to allow early resolution for repair.
- Cost of litigation results in insurers ‘caving’ to a high settlement, driving up insurance (and housing costs).

Developer Perspective

- Same as builder, but in addition:
  - Developer 'owns' all the financial risk due to LD provision limit – 3% in CA
  - Civil Code sec. 1675 provides 'standard reasonable' damage to the seller, otherwise the burden is on the seller to account in detail if buyer backs out (refund any excess), and with a risk of not recovering any LDs. *Guthman v. Moss* (1984) 150 Cal.App.3d 501, there is "little doubt that the purpose of enacting sections 1675, et. seq. was to protect buyers who fail to complete the purchase of real property and not sellers." Id. at 510.
- Not an alternative: Seller posts a "Purchase Money Bond" with the DRE ("600 Bond"). Seller can use money in advance to pay for construction, and buyer is protected. If escrow fails, the buyer makes a claim on the bond. However, if the buyer defaults, Seller must still revert to LD provision and standard 3% limitation.
- Example alternative – WA 2021 law provides 5% with some similar restrictions as CA.

Lawyer Perspective

- California is a litigious state.
- California has licensing for builders, but standards are not as ‘inspected’ as homeowners expect.
- Insurers don’t cover pure contract or warranty claims.
- No uniform standards for ‘defects’ – different opinions by ‘hired guns’ aka “experts.”
- Many builders do not have a QA/QC program.
- Plaintiff’s lawyers have no incentive to early resolution for repair.