

THE TIME LIMITS TO RESPOND TO A DEFECT CLAIM UNDER THE RIGHT TO REPAIR ACT ARE STRICTLY ENFORCED

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A recent case from the Court of Appeal, *Blanchette v. Superior Court*, highlights the need to strictly comply with the time limitations of the homebuilder's Right to Repair Act in order to claim that defense to a claim for construction defects.

In 2002, the Legislature adopted what is known as the Right to Repair Act, which are a series of *Civil Code* provisions pertaining to new residential construction where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003. It does not apply to remodeling projects and does not apply to homes bought before 2003. It provides that before a homeowner or a homeowners association can file suit against the builder for construction defects, they first must follow strict pre-litigation procedures which include a notice to the builder of the claim with specific notice requirements; after receipt of that notice, the builder has a strict time period of 14 days to acknowledge receipt of the claim and thereafter has another 14 days to conduct an inspection; after that inspection, the builder has exactly 30 days to make an offer to repair or pay for the defects. If these procedures are not followed by the owner before filing suit, the court can "stay" the litigation until they are followed, and it creates a defense on the part of the builder or contractor. Similarly, the builder waives his right to raise the defense if he does not promptly respond.

The notice requirements imposed on the owner include two aspects at issue in the underlying case: the first aspect is a notice that identifies the owners who are making the claim, or in this case, a list of the 28 owners who were making the claim against the builders, along with each owner's preferred method of being contacted, and a statement that they claimant alleges a violation against the builder of the statute; the second part of the notice which was at issue in this case, is that the claim must describe "in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation." The notice has the same effect as actually initiating a legal proceeding. Compliance is a prerequisite to filing suit.

In the particular case at issue, the homeowners filed the claim with the builder, identifying the homeowners; the builder responded 21 days after the notice was sent, indicating that the claims were not alleged with reasonable detail. Nonetheless, the builder offered to inspect the homes. A dispute arose between the builder and the owner regarding the sufficiency of the notice and the homeowners went ahead and filed a construction defect class action lawsuit against the builder in court. The trial judge stayed (suspended) the court action until there was compliance with the inspection and repair process of the Right to Repair Act. The owners sought a writ (an order compelling a court to take a specific action), asking the court to set aside that order because the builder did not strictly comply with the notice provisions of the statute.

Here, the Court of Appeal agreed that the notice of the defects given to the builder was insufficient and did not include the "reasonable details sufficient to determine the nature and location, to the extent known" of claimed violations. The court even indicated that the builder cannot be expected to meaningfully engage in the inspection or resolution process if they are not given specifics about the claim. However, the court also found that the strict time limitations of the statute required the builder to acknowledge the claim was received within the 14 day period and point out the deficiencies within the notice during that 14 day period.

The point of this case and the point of this article are to advise that one cannot simply assert that the notice is insufficient and not do more. If you have built a new home sold after January 1, 2003, and wish to retain your right to repair the work rather than being sued for damages, upon notice you must acknowledge receipt of the notice and arrange an inspection. If you believe that the notice did not provide enough information to do that inspection, you should indicate that within your response that is made within that 14 day period. Otherwise, you will have waived your right to repair the work and lose that valuable defense to the claim of the homeowners.



Bruce Rudman has been practicing construction law for 20 years. He has garnered a great reputation in the construction field not only as a litigator, but on licensing issues with the CSLB, particularly disciplinary proceedings. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Bruce Rudman can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at bdr@agrlaw.com, or at www.agrlaw.com

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