



MFC NEWS

“Building Understanding”

MFC will find out the truth about buildings and answer the hard questions.

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About MFC News

Myles F. Corcoran and his Team would like to share the best of what we’ve learned over the years about well constructed buildings and resolving construction disputes.

Please help us make this a “Construction Community” endeavor by sending us your feedback, comments, wisdom, and tips for future issues. Call 831-476-4502 or email us at: mfcnews@mfcbuild.com.

MFC is Celebrating 17 Years!

Wisdom Corner

Santa Cruz Small Claims Court believes so strongly in using mediation to resolve disputes that they mandate ALL matters be screened for mediation prior to being heard by a judge. Some of the benefits they site for encouraging mediation is the higher rate of compliance and collection, as well as the fact that disputants know more than a judge ever will about their matter and are better able to come up with a fair resolution. Many contractors and homeowners are not aware that they have the option of mediation to resolve their construction dispute. For more information about the mediation process, its benefits, and if it is appropriate for your situation, please call our office or visit our website.

MFC Staff

Quote of the Day

“Read and understand Title 7 (SB-800).”

(see feature article on page 2)

-Myles F. Corcoran

Product Tip

HurriQuake Nails can double a typical home’s resistance to high winds and add up to 50% more resistance to earthquakes, independent studies have confirmed. Ed Sutt developed the nails after his research showed that the major source of failure during hurricanes and earthquakes is not the wood, but rather the fasteners, especially the nails that hold the roof and wall sheathing to the frame.

When nails fail, it’s for one of three reasons. Either the nail rips its head through the sheathing, its shank pulls out of the frame, or its midsection snaps under the lateral loads that rock a house during high winds or earthquakes. HurriQuake Nails were designed and tested to resist all three.

HurriQuake Nails are made by Bostitch, fit into standard nail guns, and typically add only \$15.00 to the cost of a 2000 sq ft home. Homeowners and insurance companies are going to love these nails, but contractors are going to have to be more careful. When they make mistakes, it’s not a trivial thing to remove them.

MFC Staff, based on article by T. Clynes,
Popular Science, December 2006

FEATURED ARTICLE

Title 7 (SB-800) - A Consultant's Overview

by Myles F. Corcoran

This is the first of a short series of articles on Title 7 in the California Civil Code. Title 7 is also known as SB-800 and sometimes called the "Contractors Right to Fix" law. The SB-800 name, commonly used, is left over from when it was a State Senate Bill. It was incorporated into California Law and placed into Title 7 at California Civil Codes 895 through 945.5. I think we should come up with a more neutral name, maybe the "Fast Resolution Construction Dispute" law? I will refer to it here as SB-800 because most who have heard of it call it that. The law applies to new residences, including single family homes and condominiums, which closed escrow 1/1/2003 and onward.

As I begin this discussion I must emphasize that I am not an attorney and make no claim to any legal expertise beyond that expected of any average citizen. In this first article I want to cover a simple overview of the SB-800 Law. In upcoming articles I will discuss the Functionality Standards and the Process.

Background and Overview:

The laws governing construction dispute resolution in California have evolved dramatically since the 1960's. During recent years there have been some significant legislative and judicial efforts that affect the construction industry. Aas, AB-758 and SB-800 are among the most far reaching in California.

In the Aas case, the California Supreme Court found that the owner, Aas, had no right to sue for construction deficiencies that had not yet led to damage or personal injury. AB 758 became law on January 1 2006. In it Civil Code Section 2782 is amended so that builders are no longer permitted to require subcontractors to defend and indemnify them against all claims. The stated legislative intent of SB-800 is to afford homeowners and builders the opportunity for quick and fair resolution of construction disputes. This article focuses on SB-800 since it will probably become a larger and larger factor to resolving construction disputes in California in the next few years.

SB-800 is a legislative experiment in response to the continued tensions between the California Builders Industry Association and Consumer Protection Agencies on the broad scale, and individual home builders and owners on the local scale. In an attempt to lessen

the tension between home builders and owners, limit the rising costs of construction (including rising insurance costs), and provide strict guidelines for dispute resolutions SB-800 was developed. Many consider it a compromise.

Possibly the most important aspect of the law is that it provides a list of 45 “Functionality Standards.” It includes specific statute limitations for specific assemblies with the default being ten years where not stated.

The law provides for an action time line that an attorney I work with aptly called “Byzantine.” The tightly set “time to do” requirements are ill suited to the real world, in my view, but will definitely get the dispute over quickly if everyone stays in step and it all works out. And this is what the authors were trying to accomplish. I look forward to covering this time line issue in more depth in an upcoming article.

This bill defines specific rights and responsibilities for both the owner and the builder, as well as laying out specific time lines for action and responses for both parties. The bill further defines what are “actionable defects,” some “affirmative defenses,” and functionality standards.

It should be noted here that the “right to repair” is not an “obligation to repair.” The builder may offer a cash settlement in lieu of repairs at any time in the process. A release may be negotiated as a part of any cash offer. A release is not mandated, nor is it a waiver of any kind, in exchange for performing repair work under the new rules. At the conclusion of the repair, the home owner may file an action for violation of the construction standards or for an inadequate repair.

Basic Provisions:

1. The Law pertains to residential construction only.
2. Applies to new homes including condominiums whose escrow closed on or after January 1, 2003.
3. The right to repair pertains to the general contractor and/or developer - NOT to the subcontractors.

4. Allows home builders the right to negotiate cash payments (with liability releases) in lieu of repair for breaches of functionality standards (without a release of liability).
5. Imposes specific duties on the home buyers to properly notify builders of “defects,” perform maintenance, and provide permission to repair.
6. Limits home builder/subcontractor liability to each functionality standard.
7. Affirms the home builder's right to establish alternate terms of dispute resolution in contracts.
8. If the builder fails to follow the new law, when requested to by the owner/buyer, the home owner/buyer is free to file an action without allowing a repair effort.
9. Requires a one year warranty on “fit and finish” items, specific time lengths for others, and ten years for everything else. An “Enhanced Protection Agreement” *may* be offered, *but is not required*. This must be done prior to the close of escrow, and must be equal or exceed the legislated standards of care. It will be interesting to see how this balances against the four years patent and ten years latent we have been told is the law for many years. It is my understanding that all other warranties, with shorter time lines, are not enforceable.
10. Establishes procedures and time lines governing how to arrive at an initial mediation between the builder and owner.

For the complete text of the code you can go directly to the State Law. Go to <http://www.leginfo.ca.gov/calaw.html>, check the Civil Code box and search on 895, 896-897, 900-907, 910-938, and 941-945.5. For your convenience MFC has created a pdf with the entire code. You can download that pdf file at www.mfcbuild.com/resources.html

When this law came into being we anticipated it becoming the typical format for most construction defect disputes. In our experience this has not been the case. We have had a few cases where the rules have been followed, but they have been rare.

Since the law only applies to homes whose escrow closed after 1/1/2003, these buildings may not yet have evidenced any failures. Another issue is the lack of knowledge generally

about the law, among owners, as well as attorneys. In addition, the complexity of the required time line may also have deterred some people from choosing to use SB-800, which I will discuss further in an upcoming article

This information is intended to provide you with an understanding of some of the Basic Provisions of SB-800. Owners and builders should consult with legal professionals for advice and interpretation of their specific duties and responsibilities established by this legislation.

We invite and appreciate any comments or suggestions you may have regarding this summary. Please direct comments to our web site at www.mfcbuild.com/contactus.html

-Myles F. Corcoran

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