

LAW REVIEW

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By: Jim Porter

HOW LONG IS YOUR CONTRACTOR LIABLE?

One of the questions I frequently get asked by contractors is, "How long can I be sued by an owner, when does my construction liability end?" That is a very good question. I am glad you asked.

One Year Warranty

It is commonly believed, at least in the residential construction world, that "contractors warrant their work for one year". Actually the so-called contractor's one year warranty is not a statute on the books, but is a custom in the industry; and as such, is law. A contractor should fix all legitimate problems with a house for at least one year from completion.

However, as every contractor knows, it seldom ends at one year, and in fact, contractors often fix home construction problems well after a year, at least if the problem appears to have been the result of defective construction. Good builders like to keep their customers happy.

But that's not what this column is about. This column is about what is the legal deadline to sue a contractor, when can the contractor sleep at night knowing he can't be sued. What is the so-called Statute of Limitations for

construction work? That law is in the California Code of Civil Procedure around section 337.

Legal Deadline to Sue Contractors

Actions for default of written contracts must be filed in court within four years of the default. It is two years from default of an oral contract. A suit for injury to real property must be brought within three years of when the owner discovers the defect, which is often an issue of debate. An action for fraud against a contractor must be filed in court within three years of the discovery of the fraud; again that can be a murky date.

The specific code that governs construction lawsuits specifies that suits concerning the design or construction of structures must be filed within four years after substantial completion for patent deficiencies. Lawsuits for defective plans or defective construction that are obvious must be brought within four years of when the project is completed, or when the defect is discovered by reasonable inspection, whichever comes later.

Latent defects, which are not obvious or apparent by reasonable inspection, must be sued upon within 10 years of substantial completion of the project. That is the outside Statute of Limitations, after which contractors can relax. That deadline is extended, however, if the contractor is guilty of “willful misconduct or fraudulent concealment” of defective construction, at which point the four-years-from-discovery-of-the-defect rule applies.

10 Years

Last month the Court of Appeal ruled on a construction defect case where the home was completed and a notice of completion filed in 1995. For years afterwards the contractor/seller was fixing defects but never really fixed them and finally nine years later told the buyer he would not fix anything else including some serious construction defects.

For some unknown reason, the homebuyer waited 11 years, finally got fed-up and sued the seemingly incompetent contractor who sold the home and lived in it for a year before selling. As the court wrote, “The purpose of the Statute of Limitation is to protect contractors and other professionals and trades people in the construction industry from perpetual exposure to liability for their work.” Amen. The Court appropriately found the buyer/homeowner had waited too long, beyond the 10-year deadline. Case thrown out.

These legal deadline laws apply to the construction of residences, as well as commercial and industrial buildings, including remodels. A different law applies to “spec” home builders who sell new residences after January 1, 2003.

“Spec” Homes

Residences sold after January 1, 2003, may be subject to SB 800—the homebuilder “Right to Repair Act”. “Spec” homes, including multifamily, sold after January 1, 2003, are subject to California’s Construction Defect Dispute

Resolution law—21 pages of fine print, which I call a Lawyers Full Employment Act. Residential spec builders essentially warrant certain “functionality standards” in a dwelling, and, like the owner, are bound by a complex array of warranty and repair procedures. That law starts at Civil Code section 895

Jim Porter is an attorney with Porter Simon, with offices in Truckee, South Lake Tahoe, Incline Village and Reno and a licensed California Real Estate Broker. He was the Governor's appointee to the Bipartisan McPherson Commission on political ethics and the California Fair Political Practices Commission. He may be reached at porter@portersimon.com or at the firm's web site www.portersimon.com.

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