

Introduced by Senator DeSaulnierFebruary 22, 2013

An act to amend Sections 910 and 944 of the Civil Code, relating to construction defect litigation.

LEGISLATIVE COUNSEL'S DIGEST

SB 652, as introduced, DeSaulnier. Residential construction defect litigation: notice requirements.

Existing law prescribes a process for determining liability in an action seeking the recovery of damages arising out of, or related to, deficiencies in residential construction, design, and related issues and sets forth specified standards in this regard. Existing law requires a claimant alleging a violation of these standards to follow a specified, prelitigation procedure, which includes providing a builder who has allegedly violated those standards a notice describing the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. Existing law limits the damages that a claimant may recover in an action in this regard.

This bill would revise the notice given to the builder to require that the notice describe the claim in reasonable, specific detail sufficient to determine the nature and location of the claimed violation, the way in which the standard was not met, and the date and time that the claimed violation was observed or determined not to meet the standard, so that a reasonable person would be able to determine the location and nature of the defect. The bill would require a homeowner who makes a claim for damages to record the claim in the chain of title for the property prior to any sale and to notify a subsequent potential purchaser of the claim and the status of the repairs. Failure to record and make this disclosure would be the basis for a cause of action by a subsequent

purchaser of the property to require the seller to make the identified repairs or pay the subsequent purchaser the amount of damages necessary to make the repairs. The bill would also require the notice provided to the builder to contain an acknowledgment of these obligations.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 910 of the Civil Code is amended to read:
2 910. Prior to filing an action against any party alleged to have
3 contributed to a violation of the standards set forth in Chapter 2
4 (commencing with Section 896), the claimant shall initiate the
5 following prelitigation procedures:
6 (a) The claimant or his or her legal representative shall provide
7 written notice via certified mail, overnight mail, or personal
8 delivery to the builder, in the manner prescribed in this section, of
9 the claimant's claim that the construction of his or her residence
10 violates any of the standards set forth in Chapter 2 (commencing
11 with Section 896). That notice shall provide the claimant's name,
12 address, and preferred method of contact, and shall state that the
13 claimant alleges a violation pursuant to this part against the builder,
14 and shall describe the claim in reasonable, *specific* detail sufficient
15 to determine the nature and location, ~~to the extent known,~~ of the
16 claimed violation, *the way in which the standard was not met, and*
17 *the date and time that the claimed violation was observed or*
18 *determined not to meet the standard, so that a reasonable person*
19 *would be able to determine the location and nature of the defect.*
20 In the case of a group of homeowners or an association, the notice
21 may identify the claimants solely by address or other description
22 sufficient to apprise the builder of the locations of the subject
23 residences. That document shall have the same force and effect as
24 a notice of commencement of a legal proceeding.
25 (b) *The notice shall contain an acknowledgment of a*
26 *homeowner's obligation to record in the chain of title for the*
27 *property an allegation of damages and to make a disclosure to a*
28 *subsequent potential purchaser as required by Section 944.*
29 (b)

1 (c) The notice requirements of this section do not preclude a
2 homeowner from seeking redress through any applicable normal
3 customer service procedure as set forth in any contractual,
4 warranty, or other builder-generated document; and, if a
5 homeowner seeks to do so, that request shall not satisfy the notice
6 requirements of this section.

7 SEC. 2. Section 944 of the Civil Code is amended to read:

8 944. (a) If a claim for damages is made under this title, the
9 homeowner is only entitled to damages for the reasonable value
10 of repairing any violation of the standards set forth in this title, the
11 reasonable cost of repairing any damages caused by the repair
12 efforts, the reasonable cost of repairing and rectifying any damages
13 resulting from the failure of the home to meet the standards, the
14 reasonable cost of removing and replacing any improper repair by
15 the builder, reasonable relocation and storage expenses, lost
16 business income if the home was used as a principal place of a
17 business licensed to be operated from the home, reasonable
18 investigative costs for each established violation, and all other
19 costs or fees recoverable by contract or statute.

20 (b) (1) *A homeowner who makes a claim for damages shall*
21 *record the claim in the chain of title for the property prior to any*
22 *sale and shall notify a subsequent potential purchaser of the*
23 *property of the amount of the claim and whether or not the claimed*
24 *violation was repaired.*

25 (2) *Failure to satisfy the requirements of paragraph (1) shall*
26 *be the basis for a cause of action by a subsequent purchaser of*
27 *the property to require the seller of the property to make the repairs*
28 *identified in the claim or pay a subsequent purchaser the amount*
29 *of damages necessary to make the repairs.*