

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1152**

---

**Introduced by Assembly Member Frazier**

February 27, 2015

---

An act to amend Section ~~895~~ 896 of the Civil Code, relating to construction defects.

### LEGISLATIVE COUNSEL’S DIGEST

AB 1152, as amended, Frazier. Construction ~~defects~~: *defects: prelitigation procedures: exclusive remedy.*

Existing law regulates actions seeking recovery on construction defects, as specified, on original construction intended to be sold as an individual dwelling unit. ~~Existing law defines certain terms for these purposes: purchased new after January 1, 2003. Existing law provides that general contractors, subcontractors, material suppliers, product manufacturers, and design professionals may be liable for damages for construction defects if they caused, or contributed to, the violation of a particular standard as the result of a breach of contract or through negligence. Existing law also establishes certain prelitigation procedures for both the homeowner and defendants to engage in to attempt to resolve the claim prior to filing a lawsuit for construction defects, and also establishes the parameters of a legal action seeking recovery for construction defects.~~

~~This bill would make nonsubstantive changes to these provisions establish these provisions as the sole and exclusive remedy available for claims seeking recovery on construction defects, as specified.~~

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 896 of the Civil Code is amended to read:*

2     896. In any action seeking recovery of damages arising out of,  
3 or related to deficiencies in, the residential construction, design,  
4 specifications, surveying, planning, supervision, testing, or  
5 observation of construction, a builder, and to the extent set forth  
6 in Chapter 4 (commencing with Section 910), a general contractor,  
7 subcontractor, material supplier, individual product manufacturer,  
8 or design professional, shall, except as specifically set forth in this  
9 title, be liable for, and the claimant's claims or causes of action  
10 shall be limited to violation of, the following standards, except as  
11 specifically set forth in this title. This title applies to original  
12 construction intended to be sold as an individual dwelling-unit.  
13 *unit and shall serve as the sole and exclusive remedy for any action*  
14 *seeking recovery for damages as described in this section. As to*  
15 *condominium conversions, this title does not apply to or does not*  
16 *supersede any other statutory or common law.*

17     (a) With respect to water issues:

18     (1) A door shall not allow unintended water to pass beyond,  
19 around, or through the door or its designed or actual moisture  
20 barriers, if any.

21     (2) Windows, patio doors, deck doors, and their systems shall  
22 not allow water to pass beyond, around, or through the window,  
23 patio door, or deck door or its designed or actual moisture barriers,  
24 including, without limitation, internal barriers within the systems  
25 themselves. For purposes of this paragraph, "systems" include,  
26 without limitation, windows, window assemblies, framing,  
27 substrate, flashings, and trim, if any.

28     (3) Windows, patio doors, deck doors, and their systems shall  
29 not allow excessive condensation to enter the structure and cause  
30 damage to another component. For purposes of this paragraph,  
31 "systems" include, without limitation, windows, window  
32 assemblies, framing, substrate, flashings, and trim, if any.

33     (4) Roofs, roofing systems, chimney caps, and ventilation  
34 components shall not allow water to enter the structure or to pass  
35 beyond, around, or through the designed or actual moisture barriers,  
36 including, without limitation, internal barriers located within the  
37 systems themselves. For purposes of this paragraph, "systems"

1 include, without limitation, framing, substrate, and sheathing, if  
2 any.

3 (5) Decks, deck systems, balconies, balcony systems, exterior  
4 stairs, and stair systems shall not allow water to pass into the  
5 adjacent structure. For purposes of this paragraph, “systems”  
6 include, without limitation, framing, substrate, flashing, and  
7 sheathing, if any.

8 (6) Decks, deck systems, balconies, balcony systems, exterior  
9 stairs, and stair systems shall not allow unintended water to pass  
10 within the systems themselves and cause damage to the systems.  
11 For purposes of this paragraph, “systems” include, without  
12 limitation, framing, substrate, flashing, and sheathing, if any.

13 (7) Foundation systems and slabs shall not allow water or vapor  
14 to enter into the structure so as to cause damage to another building  
15 component.

16 (8) Foundation systems and slabs shall not allow water or vapor  
17 to enter into the structure so as to limit the installation of the type  
18 of flooring materials typically used for the particular application.

19 (9) Hardscape, including paths and patios, irrigation systems,  
20 landscaping systems, and drainage systems, that are installed as  
21 part of the original construction, shall not be installed in such a  
22 way as to cause water or soil erosion to enter into or come in  
23 contact with the structure so as to cause damage to another building  
24 component.

25 (10) Stucco, exterior siding, exterior walls, including, without  
26 limitation, exterior framing, and other exterior wall finishes and  
27 fixtures and the systems of those components and fixtures,  
28 including, but not limited to, pot shelves, horizontal surfaces,  
29 columns, and plant-ons, shall be installed in such a way so as not  
30 to allow unintended water to pass into the structure or to pass  
31 beyond, around, or through the designed or actual moisture barriers  
32 of the system, including any internal barriers located within the  
33 system itself. For purposes of this paragraph, “systems” include,  
34 without limitation, framing, substrate, flashings, trim, wall  
35 assemblies, and internal wall cavities, if any.

36 (11) Stucco, exterior siding, and exterior walls shall not allow  
37 excessive condensation to enter the structure and cause damage  
38 to another component. For purposes of this paragraph, “systems”  
39 include, without limitation, framing, substrate, flashings, trim,  
40 wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Showers, baths, and related waterproofing systems shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) The waterproofing system behind or under ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage. Ceramic tile systems shall be designed and installed so as to deflect intended water to the waterproofing system.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

1 (1) Soils and engineered retaining walls shall not cause, in whole  
2 or in part, damage to the structure built upon the soil or engineered  
3 retaining wall.

4 (2) Soils and engineered retaining walls shall not cause, in whole  
5 or in part, the structure to be structurally unsafe.

6 (3) Soils shall not cause, in whole or in part, the land upon which  
7 no structure is built to become unusable for the purpose represented  
8 at the time of original sale by the builder or for the purpose for  
9 which that land is commonly used.

10 (d) With respect to fire protection issues:

11 (1) A structure shall be constructed so as to materially comply  
12 with the design criteria of the applicable government building  
13 codes, regulations, and ordinances for fire protection of the  
14 occupants in effect at the time of the original construction.

15 (2) Fireplaces, chimneys, chimney structures, and chimney  
16 termination caps shall be constructed and installed in such a way  
17 so as not to cause an unreasonable risk of fire outside the fireplace  
18 enclosure or chimney.

19 (3) Electrical and mechanical systems shall be constructed and  
20 installed in such a way so as not to cause an unreasonable risk of  
21 fire.

22 (e) With respect to plumbing and sewer issues:

23 Plumbing and sewer systems shall be installed to operate properly  
24 and shall not materially impair the use of the structure by its  
25 inhabitants. However, no action may be brought for a violation of  
26 this subdivision more than four years after close of escrow.

27 (f) With respect to electrical system issues:

28 Electrical systems shall operate properly and shall not materially  
29 impair the use of the structure by its inhabitants. However, no  
30 action shall be brought pursuant to this subdivision more than four  
31 years from close of escrow.

32 (g) With respect to issues regarding other areas of construction:

33 (1) Exterior pathways, driveways, hardscape, sidewalls,  
34 sidewalks, and patios installed by the original builder shall not  
35 contain cracks that display significant vertical displacement or that  
36 are excessive. However, no action shall be brought upon a violation  
37 of this paragraph more than four years from close of escrow.

38 (2) Stucco, exterior siding, and other exterior wall finishes and  
39 fixtures, including, but not limited to, pot shelves, horizontal

1 surfaces, columns, and plant-ons, shall not contain significant  
2 cracks or separations.

3 (3) (A) To the extent not otherwise covered by these standards,  
4 manufactured products, including, but not limited to, windows,  
5 doors, roofs, plumbing products and fixtures, fireplaces, electrical  
6 fixtures, HVAC units, countertops, cabinets, paint, and appliances  
7 shall be installed so as not to interfere with the products' useful  
8 life, if any.

9 (B) For purposes of this paragraph, "useful life" means a  
10 representation of how long a product is warranted or represented,  
11 through its limited warranty or any written representations, to last  
12 by its manufacturer, including recommended or required  
13 maintenance. If there is no representation by a manufacturer, a  
14 builder shall install manufactured products so as not to interfere  
15 with the product's utility.

16 (C) For purposes of this paragraph, "manufactured product"  
17 means a product that is completely manufactured offsite.

18 (D) If no useful life representation is made, or if the  
19 representation is less than one year, the period shall be no less than  
20 one year. If a manufactured product is damaged as a result of a  
21 violation of these standards, damage to the product is a recoverable  
22 element of damages. This subparagraph does not limit recovery if  
23 there has been damage to another building component caused by  
24 a manufactured product during the manufactured product's useful  
25 life.

26 (E) This title does not apply in any action seeking recovery  
27 solely for a defect in a manufactured product located within or  
28 adjacent to a structure.

29 (4) Heating shall be installed so as to be capable of maintaining  
30 a room temperature of 70 degrees Fahrenheit at a point three feet  
31 above the floor in any living space if the heating was installed  
32 pursuant to a building permit application submitted prior to January  
33 1, 2008, or capable of maintaining a room temperature of 68  
34 degrees Fahrenheit at a point three feet above the floor and two  
35 feet from exterior walls in all habitable rooms at the design  
36 temperature if the heating was installed pursuant to a building  
37 permit application submitted on or before January 1, 2008.

38 (5) Living space air-conditioning, if any, shall be provided in  
39 a manner consistent with the size and efficiency design criteria

1 specified in Title 24 of the California Code of Regulations or its  
2 successor.

3 (6) Attached structures shall be constructed to comply with  
4 interunit noise transmission standards set by the applicable  
5 government building codes, ordinances, or regulations in effect at  
6 the time of the original construction. If there is no applicable code,  
7 ordinance, or regulation, this paragraph does not apply. However,  
8 no action shall be brought pursuant to this paragraph more than  
9 one year from the original occupancy of the adjacent unit.

10 (7) Irrigation systems and drainage shall operate properly so as  
11 not to damage landscaping or other external improvements.  
12 However, no action shall be brought pursuant to this paragraph  
13 more than one year from close of escrow.

14 (8) Untreated wood posts shall not be installed in contact with  
15 soil so as to cause unreasonable decay to the wood based upon the  
16 finish grade at the time of original construction. However, no action  
17 shall be brought pursuant to this paragraph more than two years  
18 from close of escrow.

19 (9) Untreated steel fences and adjacent components shall be  
20 installed so as to prevent unreasonable corrosion. However, no  
21 action shall be brought pursuant to this paragraph more than four  
22 years from close of escrow.

23 (10) Paint and stains shall be applied in such a manner so as not  
24 to cause deterioration of the building surfaces for the length of  
25 time specified by the paint or stain manufacturers' representations,  
26 if any. However, no action shall be brought pursuant to this  
27 paragraph more than five years from close of escrow.

28 (11) Roofing materials shall be installed so as to avoid materials  
29 falling from the roof.

30 (12) The landscaping systems shall be installed in such a manner  
31 so as to survive for not less than one year. However, no action  
32 shall be brought pursuant to this paragraph more than two years  
33 from close of escrow.

34 (13) Ceramic tile and tile backing shall be installed in such a  
35 manner that the tile does not detach.

36 (14) Dryer ducts shall be installed and terminated pursuant to  
37 manufacturer installation requirements. However, no action shall  
38 be brought pursuant to this paragraph more than two years from  
39 close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

~~SECTION 1. Section 895 of the Civil Code is amended to read:~~

~~895. (a) "Structure" means a residential dwelling, other building, or improvement located upon a lot or within a common area.~~

~~(b) "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.~~

~~(c) "Actual moisture barrier" means a component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as a barrier against moisture.~~

~~(d) "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.~~

~~(e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in Section 4080, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.~~

~~(f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, an association as defined in Section 4080.~~