

SB 800 – CA Builders Right to Repair



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Pete Fowler
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INTRODUCTION

Senate Bill (SB) 800, the 'Builders Right to Repair' bill was signed into law September 20, 2002, and took effect for every living unit sold in California after January 1, 2003. The bill specifies the rights and requirements of a homeowner to bring a construction defect action, contains building standards and functionality requirements for new residential units, and gives a detailed pre-litigation procedure.

SB 800 was developed as a compromise of various factions of the building and legal communities to address the problems of the home building industry. The text of the bill states the intent of the legislature is to improve the procedure for the administration of civil justice in construction defect cases.

PROGRAM OUTLINE

1. Introduction
2. Traditional Construction Defect Litigation
3. SB 800 Summary
4. Actionable Defects
5. SB 800 Procedure
6. Offer to Repair
7. Conclusion

LEARNING OBJECTIVES

- Overview of SB 800
- Understand the basic contents of the law
- Discuss the importance of the builder and contractors
- Review Actionable Defects defined by SB 800
- Study the SB 800 pre-litigation procedure
- Contrast SB 800 with Traditional CD Litigation
- Review example Offer to Repair documents

BACK-UP MATERIALS

1. SB 800 Introduction and Summary by PFCS
2. Sample SB 800 Notice Letter from Owners to Builder
3. Offer To Repair an individual residence in a community of SFRs (Case Study 1)
4. Offer to Repair a multi-family condominium project (Case Study 2)
5. PFCS Solving Building Problems. A whitepaper describing our method for analyzing construction defects
6. CA Civil Code 895 (SB 800): Full text

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 - C. Hot Buttons & Deep Thoughts
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 - B. Program Outline
 - C. Webinar Materials
 - D. CE Certificates
 - E. Feedback

We know buildings

EXPERTISE

PROJECT MANAGEMENT

TECHNOLOGY

STANDARDS

RESULTS

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SB800 – CA Builders Right to Repair



Pete Fowler
CONSTRUCTION
Services, Inc.

April 14th, 2016 at 10:00 a.m. PST

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1. INTRODUCTION

PFCS: We Know Buildings



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1. INTRODUCTION

PFCS: Who We Are

SOLUTIONS

We specialize in creating **REAL PRACTICAL SOLUTIONS** that help our clients spend the right amount, on the right work, at the right time.



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1. INTRODUCTION

PFCS: We Know Buildings



CLIENTS

- Property Owners & Managers
- Builders & Developers
- Contractors
- Product Manufacturers
- Insurers
- Lawyers


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1. INTRODUCTION

The PFCS Way: SOLUTIONS

- **EXPERTISE:** Technical experts who are focused on real practical solutions is surprisingly hard to find. We found them. And we work to keep that focus.
- **PROJECT MANAGEMENT:** To deliver valuable work with measurable return on investment (ROI), we have to manage the Scope, Budget and Schedule of our work.
- **TECHNOLOGY:** We use proprietary technology to create valuable work faster, better and cheaper, to make the information available to all applicable stakeholders, and to create a permanent digital record at no extra cost.
- **STANDARDS:** To help clients manage building lifecycle performance and costs, we compare each project to industry standards and best practices, then apply professional judgment to develop strategies and step-by-step plans for maximizing ROI for maintenance and repair expenditures.


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PFCS Services

CLAIMS & LITIGATION

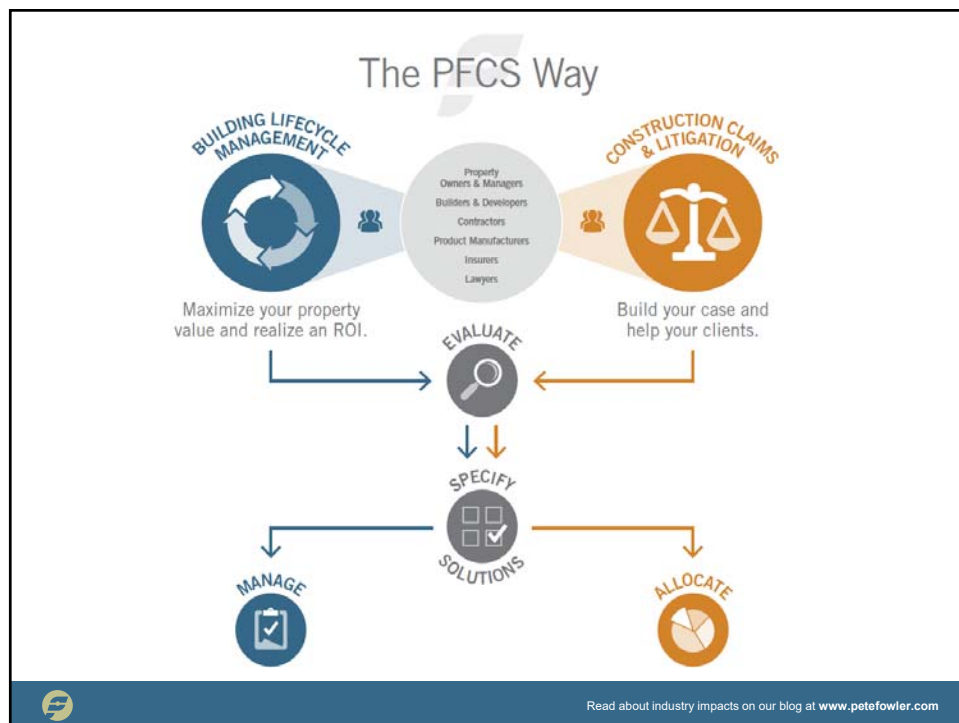
- Construction Defect Litigation (Also see BLM)
- General (Property) Liability Claims
- Construction Accidents
- Traditional Claims related to contracts, payments, performance, change orders and delays

BUILDING LIFECYCLE

- Building Inspection, Testing and Property Assessment
- Specifications for Building Maintenance and Repairs
- Construction Budgets and Cost Estimating
- Construction Management
- Quality Assurance Plans and Inspections



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The PFCS Way

ON ALL PROJECTS

Building Information Management: We pick up where Zillow and Google leave off. We use technology to collect, organize, structure and store documents and building info forever.

Evaluate Performance: We perform structured building inspection and testing evaluations, exceeding the highest standards.

Specify Solutions: We analyze, report, make recommendations and compose specifications and estimates for construction, maintenance & repairs.

BLM OR LITIGATION?

Manage Quality: We apply professional construction management discipline to get work done, and create and execute construction quality assurance plans.

Allocate Responsibility: For insurance and legal clients we use our expertise in evaluating, specifying and managing construction to compare what happened in problem projects to what should have. We apply professional judgment to allocate responsibility.



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Program Outline

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1. INTRODUCTION



1. INTRODUCTION

Introduction

- Presenter Information
- Webinar Materials/CE Certificates
- Feedback
- Learning Objectives
- Case Studies
- Program Introduction
- Back-Up Materials



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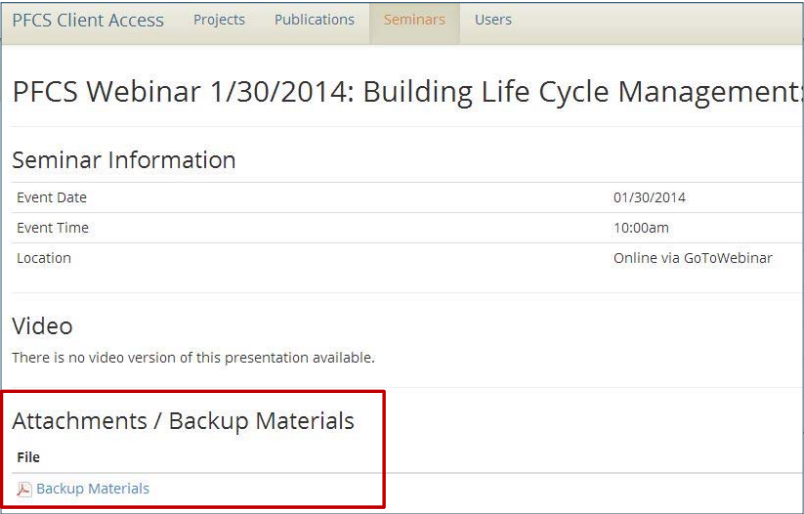
Find him on [LinkedIn!](#)



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1. INTRODUCTION

Webinar Materials



PFCS Client Access Projects Publications Seminars Users

PFCS Webinar 1/30/2014: Building Life Cycle Management


Seminar Information


Event Date	01/30/2014
Event Time	10:00am
Location	Online via GoToWebinar

Video

There is no video version of this presentation available.

Attachments / Backup Materials

File
 Backup Materials

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1. INTRODUCTION

CE CERTIFICATES WILL BE SENT OUT WITHIN 3 BUSINESS DAYS

(There is no need to contact us, Certificates of Attendance are sent to all who logged in for the seminar).

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1. INTRODUCTION

Your Feedback is Important

SURVEY SAYS!



You will receive a survey link immediately following the webinar. We put a lot of effort into providing these programs free of charge, we just ask that you take a few seconds to leave your feedback on today's presentation



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1. INTRODUCTION

Learning Objectives

- Overview of SB 800
- Understand the basic contents of the law
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1. INTRODUCTION

Case Study (1 of 2)

ONE HOME IN A MULTI-HOME DEVELOPMENT



This Project involved 106 single family residences built by a large builder from 2003-2006. The homes are located in four different projects, but are all part of the same master planned development. 36 homes were dismissed during SB 800 at the request of the Owners.



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1. INTRODUCTION

Case Study (2 of 2)

ATTACHED MULTI-UNIT CONDOMINIUM PROJECT

This project consists of two six-story buildings with a total of 96 one story units built in 2008.



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1. INTRODUCTION

Program Introduction

WHAT IS CALIFORNIA SB 800?

Senate Bill (SB) 800, the 'Builders Right To Repair' bill was signed into law September 20, 2002, and took effect for every living unit sold in California after January 1, 2003. The bill specifies the rights and requirements of a homeowner to bring a construction defect action, contains building standards and functionality requirements for new residential units, and gives a detailed pre-litigation procedure.



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1. INTRODUCTION

Program Introduction

WHAT IS CALIFORNIA SB 800?

SB 800 was developed as a compromise of various factions of the building and legal communities to address the problems of the home building industry. The text of the bill states the intent of the legislature is to improve the procedure for the administration of civil justice in construction defect cases.



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1. INTRODUCTION

Back-Up Materials

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6. CA Civil Code 895 (SB 800): Full text



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Date:	December 2, 2011
To:	PFCS Clients and Fans
From:	Pete Fowler Construction Services, Inc.
Regarding:	SB 800 Introduction and Summary: CA Builders Right To Repair Law
Pages:	Lots
Note:	Copyright 2011 Pete Fowler Construction Services, Inc.

Introduction

Senate Bill (SB) 800, the 'Builders Right To Repair' bill was signed into law September 20, 2002, and took effect for every living unit sold in California after January 1, 2003. Printed the bill is 12 pages and specifies the rights and requirements of a homeowner to bring a construction defect action, contains building standards and functionality requirements for new residential units, and gives a detailed pre-litigation procedure. SB 800 was developed as a compromise of various factions of the building and legal communities to address the problems of the home building industry. The 9,000 word bill states the intent of the legislature is to improve the procedure for the administration of civil justice in construction defect cases.

Problems that led to the development and passage of the bill into law include:

- Issues of quality in home building and consumer protection
- Pervasive construction defect litigation
- A lack of insurance coverage for builders, subcontractors, and suppliers

Important components of SB 800:

- Pre-litigation procedure requires the owner to notify and allows 'Builders Right To Repair' before being sued
- Immunity for 'qualified' third party quality inspectors. This is meant to encourage the practice of third-party quality control.
- Allows recovery for damages previously excluded under *Aas*
- Builders must notify owners of maintenance requirements and SB 800 protections at time of sale
- Builders now have a document retention requirement, by statute
- Specific statute of limitations, less than the blanket 10 years, for many components in residential construction
- Builders cannot demand a 'release' for performing repairs. Builders can get a full release if they offer cash or upgrades in return for release.
- The pre-litigation process does toll the statute of limitations
- Conduct during the pre-litigation procedure is admissible in a subsequent suit. Bill does apply to subcontractors, suppliers, manufacturers and designers, except pre-litigation procedure

Actionable Defects

Water Issues

- (1) A door shall not allow unintended water to pass beyond moisture barriers.
- (2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond moisture barriers.
- (3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation.
- (4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water beyond moisture barriers.
- (5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure.
- (6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage.
- (7) Foundations and slabs shall not allow water or vapor to enter into the structure so as to cause damage.
- (8) Foundations and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials.
- (9) Hardscape, irrigation systems, landscaping systems, and drainage systems, shall not cause water or soil erosion or come in contact with the structure so as to cause damage to another building component.
- (10) Stucco, siding, exterior walls, exterior framing, exterior wall finishes and fixtures, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or beyond moisture barriers.
- (11) Stucco, siding, and exterior walls shall not allow excessive condensation to cause damage to another component.
- (12) Retaining and site walls and their drainage systems shall not allow unintended water to pass beyond moisture barriers so as to cause damage.
- (13) Retaining walls and site walls, and their drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.
- (14) The plumbing system, sewer system, and utility systems shall not leak.
- (15) Plumbing, sewer, and utility lines shall not corrode so as to impede the useful life of the systems.
- (16) Sewer systems shall allow the designated amount of sewage to flow through the system.
- (17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.
- (18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

Structural Issues

- (1) Foundations shall not contain significant cracks or vertical displacement.
- (2) Foundations shall not cause the structure to be structurally unsafe.
- (3) Foundations and soils shall comply with the design criteria for chemical deterioration or corrosion resistance in effect at the time of construction.
- (4) A structure shall comply with the design criteria for earthquake and wind load resistance.

Soil Issues

- (1) Soils and retaining walls shall not cause damage to the structure.
- (2) Soils and retaining walls shall not cause the structure to be unsafe.
- (3) Soils shall not cause the land upon which no structure is built to become unusable.

Fire Protection

- (1) A structure shall comply with the design criteria and codes.
- (2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall not cause unreasonable risk of fire.
- (3) Electrical and mechanical systems shall not cause unreasonable risk of fire.

Plumbing and Sewer Issues

Plumbing and sewer systems shall operate properly and not impair use of the structure. Four year statute.

Electrical System Issues

Electrical systems shall operate properly and not impair the use of the structure. Four-year statute.

Other Areas of Construction

- (1) Exterior hardscape (driveways, sidewalls, etc.) shall not have excessive cracks or vertical displacement. Four-year statute.
- (2) Stucco, siding, and exterior wall finishes shall not contain significant cracks or separations.
- (3) (A) To the extent not otherwise covered by these standards, manufactured products, shall be installed so as not to interfere with the products' useful life.
- (3) (B) "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.
- (3) (C) "manufactured product" is completely manufactured offsite.
- (3) (D) If no useful life representation is made, the period shall be no less than one year. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.
- (3) (E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.
- (4) Heating, shall be capable of maintaining a temperature of 70 degrees Fahrenheit three feet above the floor in any living space.
- (5) Air-conditioning, shall be consistent with the size and efficiency design criteria in Title 24 of the California Code of Regulations.
- (6) Attached structures shall comply with interunit noise transmission standards. One-year statute.
- (7) Irrigation and drainage shall operate properly. One-year statute.
- (8) Wood posts shall not be installed so as to cause decay. Two year statute.
- (9) Steel fences shall be installed so as to prevent corrosion. Four year statute.
- (10) Paint and stains shall be applied so as not to cause deterioration of the building. Five year statute.
- (11) Roofing materials shall be installed so as to avoid materials falling from the roof.
- (12) Landscaping shall be installed so as to survive for not less than one year. Two year statute.
- (13) Ceramic tile and backing shall be installed so it does not detach.
- (14) Dryer ducts shall be installed pursuant to manufacturer requirements. Two year statute.
- (15) Structures shall be constructed so as not to impair the occupants' safety.

The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

‘Builders Right to Repair’ Calendar

[illegible]

‘Builders Right to Repair’ Calendar

	Activity	Mediate	Cash	Repair Short	Repair Medium	Repair Medium	Repair Longest
1	Homeowner Notice	0	0	0	0	0	0
2	Builder acknowledges Homeowner notice w/ in 14 days	14	14	14	14	14	14
3	Notify subcontractor(s) of inspection 1 w/ "adequate" notice						
4	Builder complete inspection 1	14	14	14	14	14	14
5	Builder restore home within 2 days of inspection 1						
6	Builder request for second inspection within 3 days of inspection 1						
7	Builder sends documents to owner 30 days of request						
8	Notify subcontractor(s) of inspection 2 w/ "adequate" notice						
9	Builder complete inspection 2 w/ in 40 days of inspection 1						40
10	Builder restore home within 2 days of inspection 2						
11	Builder Offer to Repair [or Cash], and offer to mediate, w/ in 30 days of inspection 2	30	30	30	30	30	30
12	Mediation w/ in 15 days of request to mediate	15		15	15		
13	Homeowner authorize repairs or request alternate contractors, or accepts cash offer w/ in 30 days of offer		30			30	30
14	Inspection 3 w/ in 20 days of request for alternate contractors						
15	Builder presents choice of 3 alternate contractors w/ in 35 days of request for alternate contractors				35	35	35
16	Homeowner authorizes repair w/ in 20 days of alternate contractor choices				20	20	20
17	Permit acquisition - no defined time						
18	Commence Repairs w/ in 14 days of authorization of repair, or 7 days of mediation, or 5 days after permit acquisition			7	14	14	14
19	Total Pre-Repair (in days)	73	88	80	142	157	197
20	Repairs (in days)	0	0	120	120	120	120
21	Total Process (in days)	73	88	200	262	277	317
22	Total Process (in months)	2.4	2.9	6.7	8.7	9.2	10.6
23							
24	This timeline is simplified for a general understanding.						
25	Refer to exact language of the bill for claims.						

2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Traditional Construction Defect Litigation

- Construction Defect Litigation
- Construction Defects: Defined
- Construction Defect Life-Cycle
- Typical Activities in CD Litigation

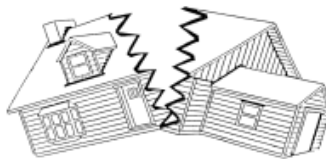


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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defect Litigation

The 23rd Anniversary
West Coast Casualty's



Construction Defect Seminar

May 12th and 13th, 2016
The Disneyland Resort Hotel
Anaheim, California, USA



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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defects: Defined

- Construction: 1. (Noun) To make or form by combining or arranging parts or elements. 2. To draw (a geometrical figure) with suitable instruments and under specified conditions. 3. To set in logical order.
- Defect: 1. (Noun) An imperfection that impairs worth or utility: shortcoming <the grave defects in our foreign policy>. 2: An imperfection (as a vacancy or an unlike atom) in a crystal lattice. 3. Latin defectus: A lack of something necessary for completeness, adequacy, or perfection: deficiency <a hearing defect>.
- Construction Defect: ??

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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defects: Defined

From Page 1 of a Google Search

- Texas Property Code: (1) the failure of the design, construction, or repair... to meet the applicable warranty and building and performance standards during the applicable warranty period; and (2) any physical damage... that is proximately caused by that failure.
- CA AB 2959 would have defined a construction defect as that which makes a project dangerous, unsafe or causes real damage to the consumer. According to AB 2959, a construction defect would result from: (1.) Defective building materials or components. (2.) A violation of Building Codes at the time of construction. (3.) Failure to meet professional standards for design at the time plans were approved. (4.) Failure to build according to accepted trade standards for good and workmanlike construction

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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defects: Defined

From Page 1 of a Google Search (cont'd)

- A construction defect—work performed that falls below the standard promised or expected by the purchaser of the work or services. - Robert J. Prah, PCU
- Colorado statutes do not define the term “construction defect.” However, “construction defect” typically includes any failure to construct a home or building in a reasonably workmanlike manner, including errors in the construction, design, planning, supervision, inspection, or observation which result in physical damage or an inability to perform in the manner reasonably expected by the buyer. Common examples include concrete cracking and heaving from poor drainage and expansive soils, water intrusion, mold, and omitted firestopping. - Benson & Associates PC, Colorado Construction Defect Attorneys



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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defects: Defined

NOTE: In December, 2000 a California Supreme Court ruling (Aas V Superior Court) severely limited homeowner claims to only those defects which have resulted in “actual damage.” New California legislation, in the form of SB 800, reversed some of the effects of the Aas ruling, however the new rules apply to homes built after January, 2003.



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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defects: Defined

The questions should be:

- Was it constructed consistent with some reasonable standard?
- Is it performing well in service?
- Is the cure worse than the disease?



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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Construction Defects: Defined

PFCS (First Draft):

- The failure of a building assembly to be constructed in a reasonably workmanlike manner AND a failure to perform in a manner that should be reasonably expected by the buyer, owner or user.
- A condition which makes the property unsuitable for its intended use, or causes damage such that the expected service life is shortened unreasonably or an unreasonable maintenance burden is caused.

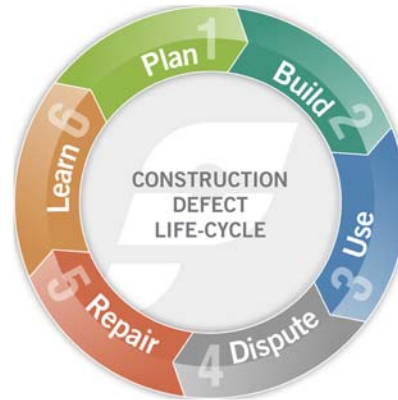


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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

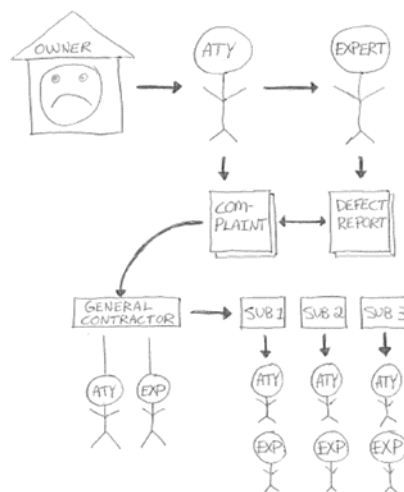
Construction Defect Life-Cycle

1. Plan
2. Build
3. Use
4. Dispute
5. Repair
6. Learn

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2. TRADITIONAL CONSTRUCTION DEFECT LITIGATION

Typical Activities in CD Litigation

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RE: Notice of Claim Pursuant to California Civil Code Section 895 et sec.

As you are aware this firm represents the owners of one hundred six (106) single-family homes built by [REDACTED] in [REDACTED] Valley, CA.





Additionally, pursuant to California Civil Code §912 (a)(b) &(d) claimants request that you make available for a review and/or copying for all of the subjected homes listed below, any and all plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate Public reports, and available engineering calculations that pertain to each of the aforementioned properties. Said request is made relative to structural, fire safety and soils provisions of Title 7 of the Civil Code. See Civ. Code §912(a).

Very truly yours,



Enclosure

Notice of Claim Pursuant to California Civil Code Section 895, et seq.

		<i>Standard</i>
<i>Cabinets - Useful Life Reduction</i>	<i>2nd Bath</i>	<i>896 g 3a</i>
<i>Ceramic Tile / Countertop Leaks</i>	<i>Kitchen</i>	<i>896 a 18</i>
<i>Ceramic Tile / Countertop Leaks</i>	<i>Master Bath</i>	<i>896 a 18</i>
<i>Ceramic Tile Detached</i>	<i>2nd Bath</i>	<i>896 g 13</i>
		<i>896 a 18</i>
<i>Ceramic Tile Detached</i>	<i>Master Bath</i>	<i>896 g 13</i>
		<i>896 a 18</i>
<i>Countertops - Useful Life Reduction</i>	<i>Kitchen</i>	<i>896 g 3</i>
<i>Countertops - Useful Life Reduction</i>	<i>Master Bath</i>	<i>896 g 3</i>
<i>Doors - Useful Life Reduction</i>	<i>Front of House</i>	<i>896 a 1</i>
		<i>896 a 2</i>
		<i>896 g 3a</i>
<i>Drywall Cracks</i>	<i>Den</i>	<i>896 b 4</i>
		<i>896 c 1</i>
		<i>896 b 1</i>
		<i>896 b 2</i>
		<i>896 b 3</i>
		<i>896 c 2</i>
		<i>896 c 3</i>
<i>Electrical defects/deficiencies - Circuits and circuit breakers</i>		<i>896 f</i>
		<i>896 d 3</i>
<i>Electrical defects/deficiencies - Plugs</i>		<i>896 g 3a</i>
		<i>896 f</i>
		<i>896 d 3</i>
		<i>896 g 3a</i>
<i>Exterior Column Cracks / Separations</i>	<i>Front of House</i>	<i>896 g 2</i>
		<i>896 c 1</i>
		<i>896 c 2</i>
		<i>896 c 3</i>
		<i>896 a 10</i>
		<i>896 g 2</i>
<i>Exterior Column Cracks / Separations</i>	<i>Left Side of House</i>	<i>896 g 2</i>
		<i>896 c 1</i>
		<i>896 c 2</i>
		<i>896 c 3</i>
		<i>896 a 10</i>
		<i>896 g 2</i>
<i>Exterior Column Cracks / Separations</i>	<i>Rear of House</i>	<i>896 g 2</i>
		<i>896 c 1</i>
		<i>896 c 2</i>
		<i>896 c 3</i>
		<i>896 a 10</i>

Notice of Claim Pursuant to California Civil Code Section 895, et seq.

		<i>Standard</i>
<i>Exterior Column Cracks / Separations</i>	<i>Right Side of House</i>	896 g 2 896 g 2 896 c 1 896 c 2 896 c 3 896 a 10 896 g 2
<i>Exterior Crack / Displacements - Driveway</i>		896 b 1 896 c 1 896 c 2 896 c 3
<i>Exterior Crack / Displacements - Exterior Flatwork</i>	<i>Front of House</i>	896 b 1 896 b 2 896 b 3 896 b 4 896 c 1 896 c 2 896 c 3 896 g 1 896 g 2 896 a 10
<i>Exterior Crack / Displacements - Exterior Pathway</i>		896 g 1
<i>Fence Deterioration</i>	<i>Left Side of House</i>	896 g 9 896 c 1 896 c 2 896 c 3
<i>Fence Deterioration</i>	<i>Right Side of House</i>	896 g 9 896 c 1 896 c 2 896 c 3
<i>Foundation Systems/Slabs Water/vapor intrusion through slab</i>	<i>Den</i>	896 a 7 896 a 8 896 b 1 896 b 2 896 b 3 896 b 4 896 a 8 896 c 1 896 c 2 896 c 3
<i>Foundation Systems/Slabs Water/vapor intrusion through slab</i>	<i>Entry</i>	896 a 7 896 a 8

Notice of Claim Pursuant to California Civil Code Section 895, et seq.

		Standard
		896 b 1
		896 b 2
		896 b 3
		896 b 4
		896 a 8
		896 c 1
		896 c 2
Foundation Systems/Slabs Water/vapor intrusion through slab	Family Room	896 c 3
		896 a 7
		896 a 8
		896 b 1
		896 b 2
		896 b 3
		896 b 4
		896 a 8
		896 c 1
		896 c 2
Foundation Systems/Slabs Water/vapor intrusion through slab	Living Room	896 c 3
		896 a 7
		896 a 8
		896 b 1
		896 b 2
		896 b 3
		896 b 4
		896 a 8
		896 c 1
		896 c 2
Foundation Systems/Slabs Water/vapor intrusion through slab	Master Bedroom	896 c 3
		896 a 7
		896 a 8
		896 b 1
		896 b 2
		896 b 3
		896 b 4
		896 a 8
		896 c 1
		896 c 2
Heating / Cooling Deficiencies		896 c 3
		896 g 4
HVAC system - Useful Life Reduction		896 g 5
		896 g 5
		896 g 3a

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Item(s) 21-15567		Standard
Interior Paint Deterioration	2nd Bath	896 g 10
Interior Paint Deterioration	2nd Bedroom	896 g 10
Interior Paint Deterioration	3rd Bath	896 g 10
Interior Paint Deterioration	3rd Bedroom	896 g 10
Interior Paint Deterioration	4th Bedroom	896 g 10
Interior Paint Deterioration	Den	896 g 10
Interior Paint Deterioration	Entry	896 g 10
Interior Paint Deterioration	Family Room	896 g 10
Interior Paint Deterioration	Kitchen	896 g 10
Interior Paint Deterioration	Living Room	896 g 10
Interior Paint Deterioration	Master Bath	896 g 10
Interior Paint Deterioration	Master Bedroom	896 g 10
Irrigation System Problems		896 a 9
		896 g 7
Paint - Useful Life Reduction	2nd Bath	896 g 3a
Paint - Useful Life Reduction	2nd Bedroom	896 g 3a
Paint - Useful Life Reduction	3rd Bath	896 g 3a
Paint - Useful Life Reduction	3rd Bedroom	896 g 3a
Paint - Useful Life Reduction	4th Bedroom	896 g 3a
Paint - Useful Life Reduction	Den	896 g 3a
Paint - Useful Life Reduction	Entry	896 g 3a
Paint - Useful Life Reduction	Family Room	896 g 3a
Paint - Useful Life Reduction	Front of House	896 g 3a
Paint - Useful Life Reduction	Garage	896 g 3a
Paint - Useful Life Reduction	Kitchen	896 g 3a
Paint - Useful Life Reduction	Laundry Room	896 g 3a
Paint - Useful Life Reduction	Left Side of House	896 g 3a
Paint - Useful Life Reduction	Living Room	896 g 3a
Paint - Useful Life Reduction	Master Bath	896 g 3a
Paint - Useful Life Reduction	Master Bedroom	896 g 3a
Paint - Useful Life Reduction	Rear of House	896 g 3a
Paint - Useful Life Reduction	Right Side of House	896 g 3a
Plumbing defects / deficiencies - Other	2nd Bath	896 g 3
		896 a 14
		896 e
		896 g 3a
Plumbing defects / deficiencies - Other	Garage	896 g 3
		896 a 14
		896 e
		896 g 3a
Plumbing defects / deficiencies - Showers		896 g 3
		896 a 14

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		<i>Standard</i>
		896 e
		896 g 3a
<i>Plumbing defects / deficiencies - Sinks</i>		896 g 3
		896 a 14
		896 e
		896 g 3a
<i>Plumbing defects / deficiencies - Toilets</i>		896 g 3
		896 e
		896 a 14
		896 g 3a
<i>Plumbing defects / deficiencies - Tubs</i>		896 g 3
		896 e
		896 a 14
<i>Plumbing leaks</i>	<i>Laundry Room</i>	896 a 14
		896 e
		896 g 3a
<i>Roof - Useful Life Reduction</i>		896 a 4
<i>(Improper tile fastening, improper valley sheet metal installation, overexposed field tiles, loose field tiles over pan metal, broken field tiles, missing pipe collars, no drip edge eave metal)</i>		
		896 g 11
		896 g 3a
<i>Roof leaks - Roof Replacement due to Reduction in Useful Life</i>		896 a 4
		896 g 3a
<i>Shower / shower door leaks</i>	<i>2nd Bath</i>	896 a 17
		896 c 1
		896 c 2
		896 c 3
		896 e
<i>Shower / shower door leaks</i>	<i>Master Bath</i>	896 a 17
		896 c 1
		896 c 2
		896 c 3
		896 e
<i>Siding deterioration/separations/rotting</i>	<i>Front of House</i>	896 g 2
<i>Siding deterioration/separations/rotting</i>	<i>Left Side of House</i>	896 g 2
<i>Siding deterioration/separations/rotting</i>	<i>Rear of House</i>	896 g 2
<i>Siding deterioration/separations/rotting</i>	<i>Right Side of House</i>	896 g 2
<i>Slab / foundation cracks / displacement</i>		896 b 2
		896 b 1
		896 b 3
		896 b 4
		896 c 1

Notice of Claim Pursuant to California Civil Code Section 895, et seq.

		<i>Standard</i>
		896 c 2
		896 c 3
<i>Slab efflorescence / peeling / chafing</i>		896 b 3
<i>Soil / Drainage Problems</i>		896 c 1
		896 c 2
		896 c 3
<i>Structural / framing defects / deficiencies</i>		896 a 10
<i>(Defective holdown installation, incorrect nail sizes, incorrect nail lengths, damage to sill plates, omission of nail fasteners and improper installation including overdriving and underdriving of nails with respect to surfaces of shear panel sheathing, improper installation of nail fasteners in strap holdowns, noncompliant nailing of shear panels.)</i>		
		896 a 11
		896 b 04
		896 d 01
		896 g 15
		896 b 1
		896 b 2
		896 b 3
<i>Stucco Cracking</i>	<i>Front of House</i>	896 g 2
		896 b 1
		896 a 10
		896 c 1
		896 c 2
		896 c 3
<i>Stucco Cracking</i>	<i>Left Side of House</i>	896 g 2
		896 b 1
		896 a 10
		896 c 1
		896 c 2
		896 c 3
<i>Stucco Cracking</i>	<i>Rear of House</i>	896 g 2
		896 b 1
		896 a 10
		896 c 1
		896 c 2
		896 c 3
<i>Stucco Cracking</i>	<i>Right Side of House</i>	896 g 2
		896 b 1
		896 a 10
		896 c 1
		896 c 2
		896 c 3

Notice of Claim Pursuant to California Civil Code Section 895, et seq.

		<i>Standard</i>
<i>Stucco Discoloration/peeling/flaking</i>	<i>Front of House</i>	896 a 10 896 b 3
<i>Stucco Discoloration/peeling/flaking</i>	<i>Left Side of House</i>	896 a 10 896 b 3
<i>Stucco Discoloration/peeling/flaking</i>	<i>Rear of House</i>	896 a 10 896 b 3
<i>Stucco Discoloration/peeling/flaking</i>	<i>Right Side of House</i>	896 a 10 896 b 3
<i>Tub leaks</i>	<i>2nd Bath</i>	896 a 17 896 a 14 896 a 5 896 e
<i>Tub leaks</i>	<i>3rd Bath</i>	896 a 17 896 a 14 896 a 5 896 e
<i>Tub leaks</i>	<i>Master Bath</i>	896 a 17 896 a 14 896 a 5 896 e
<i>Window Condensation</i>	<i>Multiple Locations</i>	896 a 3 896 g 3a
<i>Window Leaks</i>	<i>Multiple Locations</i>	896 a 2 896 g 3a
<i>Windows - Useful Life Reduction</i>	<i>2nd Bath</i>	896 a 2 896 g 3a

3. SB 800 SUMMARY

3. SB 800 SUMMARY

SB 800 Summary

- Contents of CA Senate Bill 800
- Important Components
- Hot Buttons & Deep Thoughts

Read about industry impacts on our blog at www.petefowler.com

3. SB 800 SUMMARY

Contents of the Bill

Section	Description	Pages
1.	Why	1
2.	Independent Quality Review	2
3.	Definitions	1
4.	Actionable Defects	5
5.	Obligations	2
6.	Pre-litigation Procedure	10
7.	Procedure	3
	Total	24

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3. SB 800 SUMMARY

Important Components

- Pre-litigation procedure requires the owner to notify
- Immunity for 'qualified' third party quality inspectors
- Allows recovery for damages previously excluded under Aas
- Builders must notify owners of maintenance requirements
- Builders now have a document retention requirement
- Statute of limitations less than 10 years for some components
- Builders can't demand a release for repairs but can for cash
- The pre-litigation process does toll the statute of limitations
- Conduct during pre-litigation is admissible in a subsequent suit.

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3. SB 800 SUMMARY

Hot Buttons & Deep Thoughts

1. Is the builder a viable entity?
2. Does the builder care about it's reputation?
3. Can the Owner's be talked into repairs, or do they just want money?
4. Is the Owner's lawyer an A-Player or a bottom-feeder?
5. How can this case impact others?
6. Is insurance paying for the defense?
7. We could go on and on here...

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Response to California Civil Code Section 895 Claim

		4			
PFCS		1234 Main Street			
#	Code	Description	Owner's Expert Loc.	PFCS Observations & Analysis	PFCS Repair Recommendations
1	A	SUBSTRUCTURE			
2	A1030	Slab On Grade Foundations			
3		1. Water/Vapor Intrusion Through Slab	x Den, Entry, Family Room, Living Room, Master Bedroom	The allegation was investigated and there is no indication of vapor transmission through the concrete slab on grade. More information might cause us to investigate further. No defects were observed. No repairs required at this time.	
4		2. Slab/Foundation Cracks/Displacement	x	This allegation was investigated. PFCS observed minimal concrete cracks in the garage slab. The cracks at this residence are insignificant with no vertical displacement. The garage slab is functioning in a satisfactory manner. No repair required.	
5		3. Slab Efflorescence/Peeling/Chafing	x	The Owner's expert did not specify a location at this residence. The allegation was investigated. No defects were observed. No repairs required.	
6					
7	B	SUPERSTRUCTURE			
8	B1010	Wood Framing & Hardware			
9		1. Structural/Framing Defect/Deficiencies	x	PFCS believes that no destructive investigation was performed by the Owner's experts. The issues being alleged in this category are concealed conditions that would require invasive investigation to observe. We do not understand how the Owner's experts drew these conclusions. The interior and exterior finishes of this residence (including the garage walls which are sheathed in drywall) are performing in a manner consistent with a well constructed building of this type.	
10		2. Defective Holdown Installation	x	See item 1.	
11		3. Incorrect Nail Sizes	x	See item 1.	
12		4. Incorrect Nail Lengths	x	See item 1.	
13		5. Damage to Sill Plates	x	See item 1.	
14		6. Omission of Nail Fasteners	x	See item 1.	
15		7. Improper Installation including Overdriving and Under driving of Nails with respect to Surfaces of Shear Panel Sheathing.	x	See item 1.	
16		8. Improper Installation of Nail Fasteners in Strap Holdowns	x	See item 1.	
17		9. Non-Compliant Nailing of Shear Panels	x	See item 1.	
18	B1011	Balcony Construction			
19		1. Deck/Balcony Surface Exhibiting Deterioration		Not alleged at this residence.	
20	B2011	Exterior Walls: Siding			
21		1. Siding Deterioration/Separations/Rotting	x F-ELEV, L-ELEV, B-ELEV, R-ELEV	The allegation was investigated. No defects were observed. No repairs required.	
22	B2012	Exterior Walls: Stucco			
23		1. Stucco Cracking	x F-ELEV, L-ELEV, B-ELEV, R-ELEV	PFCS investigated this issue and observed a total of 15 lineal feet of stucco cracks at all elevations, all less than 1/64" wide. This is well within reasonable tolerances. PFCS observed that portions of the exterior of the house has been painted. No	

Jones v. Big Builder
Response to California Civil Code Section 895 Claim

		4			
		PFCS	Address	1234 Main Street	
#	Code	Description	Owner's Expert Loc.	PFCS Observations & Analysis	PFCS Repair Recommendations
24	2.	Stucco Discoloration/Peeling/Flaking	x F-ELEV, L-ELEV, B-ELEV, R-ELEV	The allegation was investigated. PFCS observed a small spot of color coat scraped off at the built-up window trim at the front elevation. The Owner's experts have referenced CA Civil Codes sections that do not apply. No repair required.	
25	3.	Potshelf/Plant-on Cracks/Separations		Not alleged at this residence.	
26	4.	Exterior Columns Cracks/Separations	x F-ELEV, L-ELEV, B-ELEV, R-ELEV	The allegation was investigated. No defects were observed. No repairs required.	
27	B2013	Exterior Coatings (Paint)			
28	1.	Paint - Useful Life Reduction	x F-ELEV, R-ELEV, B-ELEV, L-ELEV	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. The allegation was investigated. There is a 5 year statute of limitations related to paint and stain in the CA Civil Code. No defects were observed. No repairs required.	
29	B2020	Windows (Exterior)			
30	1.	Window Leaks	x Multiple locations	The allegation was investigated and all windows were inspected. No defects or damage were observed. No repairs required.	
31	2.	Window Condensation	x Multiple locations	The allegation was investigated and all windows were inspected but found none with a condensation problem. No repairs required.	
32	3.	Window- Useful Life Reduction	x 2nd Bath	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. All windows were inspected and all accessible operable sashes were operated. The only issues we found were at Bath 3 where one single hung windows was difficult to operate.	Adjust window operation at 1 single hung window at Bath 3.
33	B2030	Doors (Exterior)			
34	1.	Patio Door/Deck Door Leaks		Not alleged at this residence.	
35	2.	Doors - Useful Life Reduction	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. The allegation was investigated. All doors were inspected and all were operated. No defects were observed. No repairs required.	
36	3.	Patio Door/Deck Door Condensation		Not alleged at this residence.	
37					
38	B3010	Roof Coverings		PFCS conducted a roof inspection at this residence.	
39	1.	Improper Tile Fastening	x	The allegation was investigated and no slipped tiles were observed. No repair required.	
40	2.	Improper Valley Sheet Metal Installation	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. The allegation was investigated. No defects were observed. No repair required.	
41	3.	Overexposed Field Tile	x	The allegation was investigated and no over-exposed tiles were observed. No defects were observed. No repair recommended.	
42	4.	Loose Field Tiles over Pan Metal	x	The allegation was investigated and no loose field tiles over pan metal were observed. No repair required.	
43	5.	Broken Field Tiles	x	The allegation was investigated and no broken field tiles were observed. No repair required.	
44	6.	Missing Pipe Collars	x	This allegation was investigated. PFCS observed no missing B-vents missing pipe collars.	

Response to California Civil Code Section 895 Claim

		4			
		1234 Main Street			
#	PFCS Code	Description	Owner's Expert Loc.	PFCS Observations & Analysis	PFCS Repair Recommendations
45	7.	No Drip Edge Eave Metal	x	Based on our investigation all eaves have drip edge metal/anti-ponding metal. No repair unless further information is supplied.	
46	8.	Roof leaks - Roof Replacement	x	The interior of the residence was inspected. No signs of water intrusion were observed. No repair is necessary unless further information is supplied.	
47					
48	C	INTERIORS			
49	C1020	Interior Doors			
50	1.	Doors- Useful Life Reduction		Not alleged at this residence.	
51	C1031	Toilet & Bath Accessories (incl. Shower Doors)			
52	1.	Shower/Shower door leaks	x Master Bath	The allegation was investigated. No defects were observed. No repairs required.	
53	C1032	Counters (Incl. Tile, Stone, Laminate, Etc.)			
54	1.	Ceramic Tile/Countertop Leaks	x Kitchen, Master Bath	The allegation was investigated. No defects were observed. No repairs required.	
55	2.	Countertops - Useful Life Reduction	x Kitchen, Master Bath	The allegation was investigated. No defects were observed. No repairs required.	
56	3.	Ceramic Tile Detached	x 2nd Bath, Master Bath	The allegation was investigated. No defects were observed. No repairs required.	
57	C1033	Cabinets			
58	1.	Cabinets- Useful Life Reduction	x 2nd Bath	The allegation was investigated. No defects were observed. There is a 5 year statute of limitations related to paint and stain in the CA Civil Code. No repairs required.	
59	C3010	Gypsum Wallboard Finishes			
60	1.	Drywall Cracks	x Den	The allegation was investigated. No defects were observed. No repairs required.	
61	C3011	Painting (Interior)			
62	1.	Interior Paint Deterioration	x 2nd Bath, 2nd Bedroom, 3rd Bath, 3rd Bedroom, 4th Bedroom, Den, Entry, Family Room, Kitchen, Living Room, Master Bath, Master Bedroom	The allegation was investigated. No defects were observed. There is a 5 year statute of limitations related to paint and stain in the CA Civil Code. No repairs required.	
63	2.	Paint-Useful Life Reduction	x 2nd Bath, 2nd Bedroom, 3rd Bath, 3rd Bedroom, 4th Bedroom, Den, Entry, Family Room, Kitchen, Laundry Room, Living Room, Master Bath, Master Bedroom	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. The allegation was investigated. No defects were observed. No repairs required.	

Jones v. Big Builder
Response to California Civil Code Section 895 Claim

		4			
		PFCS	Address	1234 Main Street	
#	Code	Description	Owner's Expert Loc.	PFCS Observations & Analysis	PFCS Repair Recommendations
64	C3020	Floor Finishes			
65		1. Ceramic Tile Detached	Den, Entry, Family Room, Living Room, Master Bedroom	The allegation was investigated. The Entry and Kitchen floors are tile. The Family Room, Living Room and Master Bedroom floors are carpet. No defects were observed. No repair required.	
66					
67	D	SERVICES			
68	D2000	Plumbing			
69		1. Plumbing Leaks	x Laundry Room	The allegation was investigated. No defects were observed. No repairs required.	
70		2. Plumbing Defects/Deficiencies - Sinks	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. This allegation was investigated. No defects were observed. No repairs required.	
71		3. Plumbing Defects/Deficiencies - Toilets	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. This allegation was investigated. No defects were observed. No repairs required.	
72		4. Plumbing Defects/Deficiencies - Tub/Shower	x Tub leaks - 2nd Bath, 3rd Bath, Master Bath	The allegation was investigated. PFCS observed surface imperfections at the tub shower in Bath 2 and at the Master bath shower and oval tub sidewall. There is a 4 year statute of limitations per CA Civil Code 896. No repair required.	Big Builder will spot finish the surface imperfections at the Master Bathroom shower and oval tub sidewall and the tub shower at Bath 2.
73		5. Plumbing Defects/Deficiencies - Other	x 2nd Bath, Garage	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. This allegation was investigated. PFCS observed a gypsum wallboard patch in the ceiling of the Family room below Bath 2. There is a 4 year statute of limitations per CA Civil Code 896. No repair required	Although no repair is required, as a courtesy, Big Builder will verify that the source of leakage has been corrected. Repair ceiling in the Family Room below Bath 2 as necessary.
74		6. Sewer System Back Up		Not alleged at this residence.	
75		7. Plumbing Line Corrosion		Not alleged at this residence.	
76	D3000	HVAC			
77		1. Heating/Cooling Deficiencies	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. During our visual inspection the issue was investigated to the extent possible and there was no visual indication of a problem. More information might cause us to investigate further. No defects were observed. No repairs required at this time.	
78		2. HVAC system - Useful Life Reduction	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. During our visual inspection the issue was investigated to the extent possible and there was no visual indication of a problem. More information might cause us to investigate further. No defects were observed. No repairs required at this time.	
79	D3020	Heat Generating Systems (Incl. Fireplaces)			
80		1. Fireplaces- Useful Life Reduction		Not alleged at this residence.	
81	D5000	Electrical			
82		1. Electrical Defects/Deficiencies - Interior Lights		Not alleged at this residence.	

Jones v. Big Builder
Response to California Civil Code Section 895 Claim

		4			
		1234 Main Street			
#	PFCS Code	Address Description	Owner's Expert Loc.	PFCS Observations & Analysis	PFCS Repair Recommendations
83	2.	Electrical Defects/Deficiencies - Circuit & Breakers	x	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. During our visual inspection the issue was investigated to the extent possible and there was no visual indication of a problem. More information might cause us to investigate further. No defects were observed. There is a 4 year statute of limitations per CA Civil Code Section 896. No repairs required at this time.	
84	3.	Electrical Defects/Deficiencies - Plugs	x	This allegation was investigated. PFCS observed a broken light switch cover at the Master Bathroom. There is a 4 year statute of limitations per CA Civil Code Section 896. This is a homeowner maintenance issue. No repair required.	
85	4.	Electrical Defects/Deficiencies - Smoke Detector		Not alleged at this residence.	
86	5.	Electrical Defects- Moisture Intrusion-Exterior Light		Not alleged at this residence.	
87	6.	Electrical Defects/Deficiencies - Location		Not alleged at this residence.	
88					
89	E	EQUIPMENT & FURNISHINGS		No Issues in this category.	
90					
91	F	SPECIAL CONSTRUCTION & DEMOLITION		No Issues in this category.	
92					
93	G	BUILDING SITEWORK			
94	G1031	Fine Grading & Site Drainage			
95	1.	Soil/Drainage Problems	x Irrigation System Problems	PFCS is unclear as to what this allegation by the Owner's experts is related to specifically. PFCS investigated the conditions at the site. The front yard landscaping is in good condition. We did not operate the irrigation system. In the absence of further information, no repairs are required at the front yard. There is an Owner installed patio and trellis at the back elevation and concrete patio at the right and left elevation. This allegation was investigated. No defects were observed. There is a 1 year statute of limitations related to this issue in the CA Civil Code. No repairs required.	
96	2.	Exterior Crack/Displacement-Driveway	x	This allegation was investigated. PFCS observed three concrete cracks totaling 3 lineal feet less than 1/64" wide. The cracks at this residence are insignificant with no vertical displacement. The driveway slab is functioning in a satisfactory manner. There is a 4 year statute of limitations related to this issue in the CA Civil Code. No repairs required.	
97	3.	Exterior Crack/Displacement-Exterior Flatwork	x F-ELEV	This allegation was investigated. No defects were observed. There is a 4 year statute of limitations related to this issue in the CA Civil Code. No repairs required.	
98	4.	Exterior Crack/Displacement-Exterior Pathway	x	This allegation was investigated. No defects were observed. There is a 4 year	
99	5.	Exterior Crack/Displacement-Patio		Not alleged at this residence.	
100	6.	Exterior Crack/Displacement-Sidewalls		Not alleged at this residence.	
101	7.	Exterior Crack/Displacement-Sidewalks		Not alleged at this residence.	
102	G 2041	Fences & Gates			

Jones v. Big Builder
Response to California Civil Code Section 895 Claim

			4		
	PFCS	Address	1234 Main Street		
#	Code	Description	Owner's Expert Loc.	PFCS Observations & Analysis	PFCS Repair Recommendations
103	1.	Fence Deterioration	x F-ELEV, R-ELEV	The allegations was investigated. PFCS observed some twisted top rails at the back and right fences which is painted white. There is a 2 year statute of limitations per CA Civil Code Section 896. This is a homeowner maintenance issue. No repair required. NOTE: Maintenance instructions are attached to the gate at most residences.	
104	2.	Retaining/site wall leaks/drainage problems		Not alleged at this residence.	
105					
106	H	OTHER			
107	1.	Appliances- Useful Life Reduction		Not alleged at this residence.	
108	2.	Utility Line Leaks/Corrosion		Not alleged at this residence.	

4. ACTIONABLE CONSTRUCTION DEFECTS

4. ACTIONABLE CONSTRUCTION DEFECTS

Actionable Construction Defects

- Building Code – Actionable Defects
- Another PFCS Acronym: IIACC
- Analyzing Construction Defects



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4. ACTIONABLE CONSTRUCTION DEFECTS

Building Code – Actionable Defects

The building code that lawyers wrote.

- A. Water Issues
- B. Structural Issues
- C. Soil Issues
- D. Fire Protection
- E. Plumbing and Sewer Issues
- F. Electrical System Issues
- G. Other Areas of Construction

See Back-Up
Document: SB 800
Introduction and
Summary of Contents
by PFCS for the 2-page
detailed listing of all
Actionable Defects.



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4. ACTIONABLE CONSTRUCTION DEFECTS

Building Code – Actionable Defects

The building code that lawyers wrote.

Easy Ones:

- The plumbing system, sewer system, and utility systems shall not leak.
- Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.
- Electrical systems shall operate properly and not impair the use of the structure. Four-year statute.
- Landscaping shall be installed so as to survive for not less than one year. Two year statute.

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4. ACTIONABLE CONSTRUCTION DEFECTS

Building Code – Actionable Defects

The building code that lawyers wrote.

Not As Easy:

- Foundations shall not contain significant cracks or vertical displacement.
- Fireplaces, chimneys, chimney structures, and chimney termination caps shall not cause unreasonable risk of fire.
- Stucco, siding, and exterior wall finishes shall not contain significant cracks or separations.

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4. ACTIONABLE CONSTRUCTION DEFECTS

Building Code – Actionable Defects

“I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it...**”

- Justice Potter Stewart, concurring opinion in
Jacobellis v Ohio 378 U.S. 184 (1964)



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4. ACTIONABLE CONSTRUCTION DEFECTS

Another PFCS Acronym: IIACC

Issue: Describe the allegation. What? Where? How big? How many?

Investigation: What did we do to assess the Issue?

Analysis: What are the applicable standards that existing construction assemblies should be compared to? How is the work performing? What do we think?

Conclusion(s): Does the assembly require a repair? Yes or No. What? Where? How big? How many?

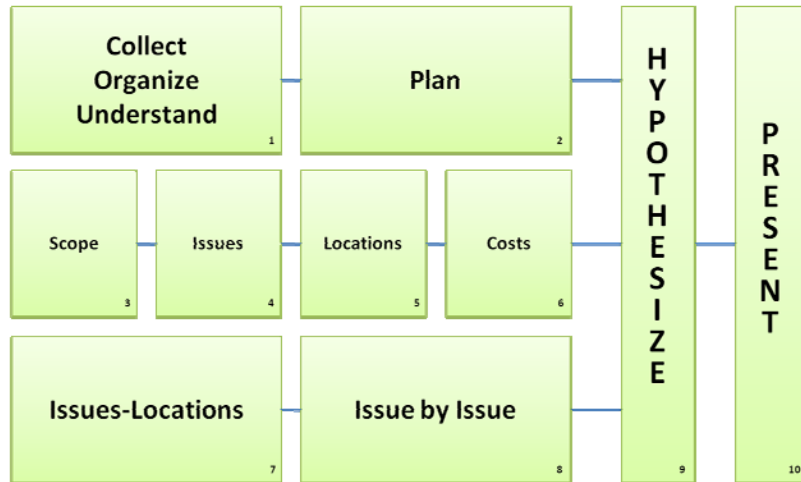
Cost(s): How much? Not always analyzed.



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4. ACTIONABLE CONSTRUCTION DEFECTS

Analyzing Construction Defects

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4. ACTIONABLE CONSTRUCTION DEFECTS

Analyzing Construction Defects

Issue by Issue Analysis: The 14 Questions

1. What is the allegation?
2. How does it relate to the party we are working with?
3. Where and how many times is it alleged to be an issue?
4. What do all the parties say about the issue, including costs?
5. Did we see the issue?
6. Is the assembly performing as the owner might hope?
7. Is the assembly performing as we should expect?
8. Is it a defect?
9. Is it causing damage?
10. Is a repair required?
11. What are the applicable standards?
12. What is a reasonable repair?
13. How much will the repair cost?
14. Who is responsible?

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Smith v Big Builder

12/2/2011

Offer to Repair

PFCS			Owner			
#	Code ¹	Item	Category/Allegation	Item ²	Analysis/Response	Repair
1	A1010		Foundations: Concrete & Reinforcing			
2		A1	Unsealed and improperly sealed penetrations in ceilings in the garages at 1 and 2.	5	PFCS observed what appears to be exposed mineral wool fire barrier at the ceiling penetrations. Penetrations in the floor slabs have sealant present. Exposed fire wool appears in many 3M Fire Protection Product details as a source of fire protection. More information might cause us to investigate further. No defects were observed. No repairs required.	
3		A2	Leaking drains in the ceilings of parking levels 1 and 2 in the garages at 1 and 2.	6	PFCS observed no evidence of leaks at drains. It is our understanding that this "leakage" issue is related only to moisture introduced into the enclosed garage during cleaning (power washing). In general, water introduced during cleaning of an area not generally subjected to weather would not be considered leakage for the purposes of building performance analysis. No repair required.	
4	B2011		Exterior Enclosure: Stucco/Plaster			
5		B1	(A.) Deteriorating stucco and excessive cracks in stucco throughout the project and (B.) specifically on the east side of 1 adjacent to the sidewalk, (C.) on the north side of 1, (D.) and near Units 1111, (E.) 1402 and (F.) 1403; (G.) lack of stucco control joints and interior courtyards; and (H.) lack of expansion joints at building to site wall junctures. (Numbering by PFCS)	10	PFCS observed (A.) that Building 1 has some inconsistent finish, average workmanship, with some cracking observed in the ceiling of the walkways, some areas of patch and blend, dissimilar color and needing paint. (B.) The stucco at 1 East elevation is in good condition, no damage observed. (C.) The stucco on the North side of 1 is in good condition, no damage observed. (D.) At Unit 1111, no stucco damage was observed in the surrounding area. (E.) Unit 1402 has some minor discoloration of the stucco surrounding, but no damage was observed. (F.) At Unit 1403 no stucco damage was observed in the surrounding area. (G) In the interior courtyards, stucco control joints were observed at multiple locations. (H.) Expansion joints were observed at building to site wall junctions. Building 2 is in good condition, no repair required.	As a courtesy, Big Builder will paint stucco to blend patch work around unit at 1402 (approx. 150 sq. ft.).
6		B2	Water leaks through stucco soffit by elevator at third floor of 1.	13	PFCS investigated the issue to the extent possible with visual inspection. There is insufficient data to conclude a violation of CA Civil Code Section 896.	
7		B3	Stained stucco soffits beneath the balconies at various locations at 1 and 2.	14	PFCS observed that 1 has some staining coming off of the balconies which appears to be from dirt being washed off of balconies. No damage observed. No repair required. 2 also has stains on the face of balconies at front/north and right/west elevations only, which also appears to be from dirt being washed off the decks. No damage observed. No repair required.	
8		B4	Weep screed buried in concrete sidewalk east of 1.	18	PFCS observed that the weep screed has minimal to no clearance at the sidewalk east of building 1. No damage observed. The assembly is performing well. There is no evidence to suggest the assembly will not perform well in the future. No repair required.	
9		B5	Wet and deteriorating stucco below the dryer vent near Unit 1416.	20	There is no unit 1416. Big Builder requested further clarification from the HOA. However, none was provided.	
10		B6	Stucco discoloration and exposed metal lath near Unit 1405.	21	PFCS observed multiple locations of discoloration at patches at Unit 1405. There is also one location where the corner aid is exposed.	As a courtesy, Big Builder will paint stucco to blend patch work around Unit 1405 (approx. 120 sq. ft.). Repair corner aid and paint patches to match.
11		B7	Rusted and deteriorated weep screed on the stucco walls above third floor courtyards by 1 and 2.	24	PFCS observed limited, isolated areas of corrosion at the base of the wall outside Units 1110 and 1111 (Building 1). PFCS observed no areas with corrosion at Building 2. Coordinate with issue B10.	Wire brush and paint areas of corrosion at the base of the wall outside Units 1110 and 1111 (Building 1).

Smith v Big Builder

12/2/2011

Offer to Repair

PFCS				Owner		
#	Code ¹	Item	Category/Allegation	Item ²	Analysis/Response	Repair
12	B2020		Windows			
13		B8	Broken glass window at Unit 1407.	19	Unit 1407 is located in building 1 on the fourth floor. There is a large window on the East/Left Elevation with a fixed panel in the center and operable sashes on both sides. Each of the 3 sections has 2 independent IGUs (Insulated Glass Units). The top IGU of the fixed panel is cracked. The Owner informed PFCS that this is the second time an IGU has broken at this location	Coordinate with window manufacturer (Milgard). Replace Insulated Glass Unit.
14	B2030		Exterior Doors			
15		B9	Peeling paint on various exterior doors and especially on the front door of Unit 1409.	22	PFCS visually inspected all entry doors and observed peeling/deteriorated paint at only Unit 1409. The entry door to Unit 1409 is the only door fully exposed to the weather. This is a HOA maintenance item. No repair required.	
16	B2040		Exterior Wall Flashing & Sheet Metal			
17		B10	Extensive corrosion on the sheet metal where the exterior walls meet the pavers on the first residential floor building at 1, especially at the south side of the building.	33	See item B7.	See Repair at item B7.
18	B2060		Exterior Coatings (Paint)			
19		B11	Deteriorating paint and rusting metal garages at 1 and 2.	4	PFCS observed that building 1 and 2 have minor salt build up on garage gates, and some rust on the hardware, no major rust or damage was observed. This is a HOA maintenance item. No repair required.	
20		B12	Discolored exterior paint and inadequate paint coverage throughout the project and especially on the south side of 1.	23	PFCS visually investigated the performance of exterior paint on 1, specifically on the South side (we believe the Owners are referring to the West Elevation per the plans, near the pool). There was no major damage or stucco discoloration observed. It is our understanding (from a conversation with the Owner's attorney) that 1 was painted after construction, for esthetic reasons. Considering the age of the structure and the proximity to the coastline, we believe the stucco system and paint are performing adequately. The stucco system and paint at building 2 are performing well. No repair required.	
21	B3000		Roofs			
22		B13	Rusting and improperly sloped sheet metal platforms for air conditioning compressors on the roof at 2.	15	PFCS inspected all 14 sheet metal HVAC platform covers on the roof of building 2. PFCS observed that the condensers have compressed the sheet metal covers causing a reverse slope, ponding of water on the sheet metal cover and corrosion at the base of the condensers.	Remove and replace 12 of 14 sheet metal platform covers. Ensure proper slope at framing, secure covers, reset condensers. Reuse 2 of 14 sheet metal platform covers.
23		B14	Reverse-slope at flat roof areas (south side of 1 near pool).	30	PFCS investigated the roof area on the South side of 1 near the pool (which is the West Elevation per the plans). The area slopes to drain and appears to be performing well in service. PFCS has not been informed of any leaks. No repair required.	
24		B15	Inadequate leader heads at roof drainage scuppers -- inability to capture roof drainage.	32	PFCS visually investigated the issue. There is no indication of a performance problem related to the leader heads or the adjacent overflow drains from the roof side or from the exterior wall side. More information might cause us to investigate further. No defects were observed. No repairs required.	
25	B3007		Waterproof Decks (Horizontal Waterproofing)			
26		B16	Concave surface on exterior balcony at Unit 2410 that does not drain water.	35	PFCS observed a small amount of dirt at the deck coating adjacent to the drain. There is no indication of poor performance. The balcony slopes towards the drains. No repair required.	
27	C3015		Tile & Stone Assemblies (Incl. Showers)			
28		C1	Deteriorating grout and tile in the exterior showers north of the pool between 1 and 2.	17	PFCS observed that the exterior showers were sealed with a solid grout which is cracked / separated at the inside corners and base of the shower walls; where adjacent wall planes meet. Some standards recommend flexible sealant at these transition locations to address this issue.	Replace solid grout with flexible sealant at inside corners and wall to floor transitions.

Smith v Big Builder

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Offer to Repair

PFCS			Owner			
#	Code ¹	Item	Category/Allegation	Item ²	Analysis/Response	Repair
29	D1010		Elevators and Lifts			
30		D1	Malfunctioning elevators at 1 and 2.	1	This issue was addressed in a separate Offer to Repair.	
31	D2030		Plumbing: Sanitary Waste			
32		D2	Malfunctioning sewage pump and broken sewer line west of 2.	2	PFCS received limited information related to the broken sewer line on 11/11/2011, including 8 photographs, 3 pages of invoicing and an inspection card. We are evaluating the information and will respond promptly.	Big Builder will reimburse the HOA for the costs incurred (\$15,098) to repair the broken sewer line upon proof of payment of same by the HOA within the statutorily mandated timeframe.
33		D3	Rusted cast iron waste pipes suspended from the ceilings of the garages at 1 and 2.	29	PFCS observed that the cast iron pipes suspended from the ceilings in both garages have some rust. Surface rust is a normal condition for exposed cast iron pipe. No repair required.	
34	D3000		HVAC: Heating, Ventilating & Air Conditioning			
35		D4	Improper design and installation of the boilers in the garages at 1 and 2.	25	PFCS observed and documented the conditions in the boiler rooms of 1 and 2. During the inspection there was no indication of a construction defect. Further clarification from the Owner's attorney state that there should have been an area drain within the boiler rooms so that the boilers can be drained periodically rather than the drain being 30 feet away. PFCS knows of no known construction code or standard violations at this time. No repairs at this time.	
36	D5020		Electrical: Lighting and Branch Wiring			
37		D5	Exterior hallway lights are always on.	26	PFCS observed that most exterior/partially enclosed corridor lights were on during time of inspection. Generally light fixtures under cover (shaded areas) are on, and lights exposed to sunlight during inspection were off. PFCS knows of no known construction code or standard violations at this time. No repair required.	
38		D6	Deteriorated entry light fixtures throughout the project.	31	PFCS observed most entry light fixtures throughout the property. The light fixtures were in good condition overall. Some of the light fixtures on the fourth floor of building 1 were faded due to direct exposure to the sun and elements. Only two deteriorated fixtures were observed: Units 1409 and 1109 and these fixtures were a different style than the remainder of the project. These units are somewhat unique (2-stories) and the fixtures are on the private patios. The fixtures appear to be operating properly and installed in a way that does not interfere with the products useful life (896 g3A). No repair required.	
39	G2030		Pedestrian Paving			
40		G1	Settlement of concrete sidewalk and concrete deck east of the waterfall between 1 and 2 and around swimming pool.	7	PFCS observed a concrete pool deck location with excessive vertical offset at the trench drain located near the gate. PFCS also observed concrete flatwork location with excessive vertical offset at the trench drain located on the north end of the patio above the waterfall feature (near 1). See separate document "Pool-Fountain Issues Diagram 2011-11-10" for locations.	Remove areas of hardscape sections with excessive vertical offset. Test and correct adjacent drainage system components. Replace removed hardscape to blend.
41		G2	Extensive efflorescence on the pavers on the first floor at 1.	34	PFCS observed that the pavers on the first living level had no growth or heavy efflorescence. No repair required.	

Smith v Big Builder

12/2/2011

Offer to Repair

PFCS			Owner			
#	Code ¹	Item	Category/Allegation	Item ²	Analysis/Response	Repair
42	G2041		Fences, Gates and Walls			
43		G3	Deteriorating paint and rusting metal fences and gates throughout the project.	3	PFCS observed some rust on the fourth floor of 1 at Unit 1409 which is fully exposed to the elements. All other guardrails and fences are in good condition. This is a HOA maintenance item. No repair required.	
44		G4	Deteriorating stucco on the planters around the pool between 1 and 2.	16	PFCS observed that the planters are in good condition with no discoloration or deteriorating stucco. No damage observed. No repair required.	
45		G5	Water damage and efflorescence coming through planter walls in the front of the project near the fountain.	36	PFCS observed some discoloration on the front stucco wall adjacent to waterfall planters. The discoloration appears to be surface related. No repair required.	
46	G2043		Fountains & Swimming Pools			
47		G6	Dissimilar height of ledges on waterfalls between 1 and 2.	8	PFCS visually inspected the waterfall feature at the front of the property. There appears to be a larger flow of water coming from the right side of the waterfall. HOA representative claims right side of waterfall is 3/4" lower thereby allowing a larger flow of water. This condition is not a violation of any applicable building code or standard currently known to PFCS. The waterfalls are esthetically pleasing and performing consistent with their design intent. No repair required.	
48		G7	Leaks in the fountain and waterfalls between 1 and 2.	9	(A.) PFCS observed surface build up of minerals on the lower round fountain exterior stucco wall. (B.) PFCS also observed a tile crack and efflorescence at the upper wall of the main fountain in one location. NOTE: This repair will likely include draining the fountain. If the HOA wanted to adjust the height of the spillway (Issue G6), this would be a good time.	(A.) If Owners wish to avoid this build up they can consider decreasing the water flow at the lower fountain to reduce splash out and balance water ph. (B.) Repair the vertical crack in the upper fountain that appears to be a leak.
49		G8	Incorrectly sized motor and/or incorrectly plumbed spa between 1 and 2.	27	PFCS visually inspected the spa and the pool equipment room. Clarification from the Owner's attorney states that the water looks extremely unpleasant by the end of the day indicating improper filtration. The spa water looked clean at the time of inspection. More information might cause us to investigate further. No repairs required at this time.	
50	G2055		Fine Grading & Drainage			
51		G9	Poor drainage on the sidewalk along the east side of 1.	11	PFCS observed no evidence of drain issues along walkway. No repair required.	
52		G10	Improper drainage from planters especially at planters on the deck around the pool between 1 and 2.	28	PFCS observed that large pots / planters that sit on the pool deck drain onto the pool deck where pool deck drains are present, causing discoloration. This is an HOA maintenance issue. No repair required.	
53	H9000		Odor			
54		H1	Obnoxious odor in common wall adjacent to Unit 1111.	12	PFCS inspected Unit 1111 and at that time the Owner informed us that previous investigations by others have been conducted. None of the investigations to date have uncovered any violation of applicable building standards. As a courtesy, Big Builder will continue working with the HOA and the unit owner to determine the source of the odor and make repairs necessary if there are violations of applicable building standards.	
55			¹ PFCS Uniformat Codes			
56			2 Owners Assoc.'s 7/5/2011 Notice to Builder of Commencement of Legal Proceedings, Exhibit 2, Plaintiff's Preliminary List of Deficiencies			

5. SB 800 PROCEDURE

5. SB 800 PROCEDURE

Pre-Litigation Procedure

Calendar

1. Homeowner Notice
2. Builder acknowledges Homeowner notice within 14 days
3. Notify subcontractor(s) of inspection 1 with "adequate" notice
4. Builder complete inspection #1
5. Builder restore home within 2 days of inspection #1
6. Builder request for second inspection within 3 days of inspection #1
7. Builder sends documents to owner 30 days of request
8. Notify subcontractor(s) of inspection #2 with "adequate" notice
9. Builder complete inspection #2 within 40 days of inspection #1
10. Builder restore home within 2 days of inspection #2
11. Builder Offer to Repair [or Cash], and offer to mediate, within 30 days of inspection #2

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5. SB 800 PROCEDURE

Pre-Litigation Procedure

Calendar

12. Mediation within 15 days of request to mediate
13. Homeowner authorize repairs or request alternate contractors, or accepts cash offer w/ in 30 days of offer
14. Inspection #3 within 20 days of request for alternate contractors
15. Builder presents choice of 3 alternate contractors within 35 days of request for alternate contractors
16. Homeowner authorizes repair within 20 days of alternate contractor choices
17. Permit acquisition - no defined time
18. Commence Repairs within 14 days of authorization of repair, or 7 days of mediation, or 5 days after permit acquisition

This timeline is simplified for a general understanding.

Refer to exact language of the bill for claims.

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5. SB 800 PROCEDURE

Procedure

Key Points

- No action may be brought to recover more than 10 years after substantial completion of the improvement.
- If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation.
- The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest.

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5. SB 800 PROCEDURE

Hot Buttons & Deep Thoughts

1. The calendar is too tight to actually do anything complex or large.
2. Can Owners be encouraged to drop the suit during this "Right to Repair" period? That was the point of the legislation!
3. Is this just a required formality?
4. Be SURE to think about the total cost of litigation! Don't just make this another added expense.

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Introduction

Building problems are quite common – and are becoming more so. Construction accounts for almost 10% of the US economy, consumers are increasingly litigious, and buildings are more complex and less fault tolerant due to tighter construction and new materials; therefore, it should be no surprise to anyone that construction claims and litigation are becoming a part of life in construction.

BUILDING PROBLEMS COME IN VARIOUS FLAVORS:

- Traditional Construction Claims: process, change order and scheduling problems
- Construction Defect Claims: quality, performance, code and safety problems
- Catastrophic Events: soil or structural failures, leaks, flooding, earthquakes
- Personal Injuries: Job site accidents, injuries related to property (usually falls)

We are Construction Consultants who assist attorneys, insurance companies, adjusters, property owners & managers, and construction professionals faced with buildings or projects in distress or litigation. Our job is to create solutions that get clients to the end of their situations as quickly and as inexpensively as possible, while maintaining unwavering integrity. We are hired to identify problems, establish objectives, create plans, communicate and deliver solutions. We share our analysis, recommendations and opinions in reports, and strive to make the issues clear, even for non-technical parties.

The primary complexity in our work is in collecting and organizing the “what and where” data (Issues and Locations), and turning it into usable information. Then we answer the 7 W’s

(who, what, when, where, why, how and how much), in a structured way, issue-by-issue.

With our Construction Claim Consulting Method, we systematically create and present the fastest and most cost effective solutions for building problems.

The Solving Building Problems Method

Big Picture

- A. Collect and organize the data
- B. Analyze the data to create information
- C. Present solutions

The Solving Building Problems Method: Step-By-Step

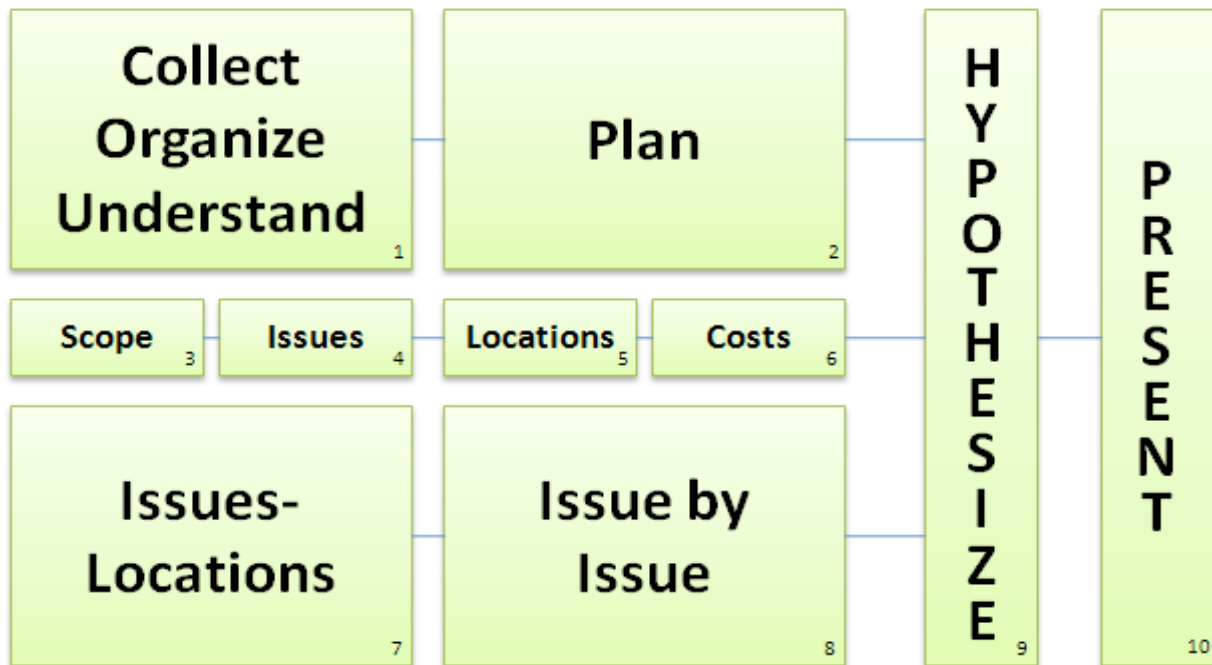
1. Collect, organize, summarize and understand all pertinent data
2. Plan: Identify scope, budget & schedule
3. Analyze and summarize the Scope of Work of applicable parties
4. Create an Issues List (problems, allegations, defects, punch-list)
5. Identify all Locations where issues occur
6. Identify or estimate all Costs
7. Associate Issues & Locations
8. Conduct a detailed Issue-By-Issue Analysis
9. Reflect, hypothesize, scrutinize, repeat and refine steps 1-8 as necessary
10. Present the solution

To execute our work, our team requires:

- Construction Experience
- Project Management and Organizing Skills
- Courage
- Critical Thinking Skills
- Communication Skills

These skills are the 80; others are the 20.

The Solving Building Problems Method



1. Collect, Organize, Summarize and Understand All Pertinent Data

Do you have 3, 30, 300, 3,000 or 30,000 documents? Regardless of the number, they should be organized and retrievable. If you have more than 10 or 20, there should be a Document Index, and key documents should be summarized.

There are lots of good ways to organize information and almost any system is OK. Typically, construction documents are sorted first by party, then chronologically. Sometimes, in just organizing the data, the solution appears; I cannot over emphasize this. First organize and summarize the data, then look back over it to gain a much deeper understanding. This is the foundation of a successful analysis. Information emerges from structured data.

A summary of Project Players makes understanding the big picture easier. A

Timeline that summarizes important events and is keyed to documents can be a valuable tool. Often, combining the documents from various parties into a single timeline makes issues clear, telling the real story of a project.

Always write a One Minute Project Summary so you can explain (1.) the big picture of the project, (2.) the key players, and (3.) the key issues ("Why are we here?"), in less than 250 words.

2. Plan: Identify the Assignment Scope and Budget

Before spending much time or money on the analysis, answer "What is the objective?" Be sure the answer is a single sentence or paragraph. Our generic objective goes like this: "We will organize all project information, identify and list all issues regarding the situation, create and communicate a plan to address all issues to get our client to the end of the situation as quickly and inexpensively as possible, and work the plan professionally and efficiently."

Since each project is unique, abstract problem solving is involved in solution development. Since such problem solving is best done in teams, we host Project Planning Sessions where multiple team members use Project Planning Forms (figure 1), this 10 step Construction Claim Consulting Method and the Menu of Deliverables (Figure 2) to refine the objective of the assignment, identify the Deliverables that will be required, plan the activities necessary to create and present the deliverables, and estimate the time and cost.

Once we have figured out the activities we believe should be performed, we need to communicate this, including estimated costs, to applicable stakeholders.

3. Analyze and Summarize the Scope of Work of Applicable Parties

Create a concise summary of the roles played by the key players. Sometimes the Project Players data is supplemented with summary scope-of-work information. In this way, we can gain understanding of exactly “who did what”.

If the contract for the main party being analyzed is more than a few pages, then create a Contract Summary that identifies the applicable aspects of work and the important terms of the agreement. We may revisit this summary after composing the Issues List, to make sure we have command of how the scope-of-work relates to the issues.

4. Create an Issues List (Problems, Allegations, Defects, Punch-List)

Making a complete list of the issues is either the easiest or the hardest part of this Method. The Issues List is a “logic structure” that

creates a place for all of the information that will be addressed.

If we took all of the information related to a construction problem and put each discrete piece of data on a note card, we could organize the cards into piles. The names we would give to those piles would be our categories or issues.

In a well developed claim or litigation the list comes from the party making the claim, in the form of a punch list, report, defect list or legal complaint. The best Issue Lists are numbered and have some logical organization, such as by location, trade or construction assembly (i.e. CSI code like a specification manual), or importance. In some projects, we are not lucky enough to have the allegations clearly articulated and we must compile the Issues List from various sources; this is hard.

“We use a machete before a scalpel”; that is, we identify the major issues and categories before we drill into the details. In my experience, the issues or categories should number between 5 and 15; but there are exceptions to every rule. If there are more than 15, consider making primary categories with individual issues below each of the categories. Make sure the primary list can fit onto one page. This way, decision makers can get their mind around key issues.

5. Identify All Locations Where Issues Occur

Location identification begins with a Room Schedule or Location Matrix on individual properties or a Unit Matrix on a multi-unit project. This is the physical corollary to the Issues List. It is important to know the areas that DON'T need to be addressed, as well as those that do.

Example of the items on a residential Room Schedule: Front, Left, Right and Back Yard, Front, Left, Right and Back Elevation, Entry, Living Room, Dining Room, Kitchen, Nook,

Family Room, Office, Garage, Master Bedroom, Master Bath, Bedroom 2, Bedroom 3, Bath 2 and Bath 3.

An example of locations for a 3 house (multi-unit) project: 123 Main Street, 234 Main Street, and 345 Main Street.

6. Identify or Estimate All Costs

Costs are always an issue in solving building problems. But, it is my experience that cost is often not the primary issue, even if it appears to be.

To figure out project costs, we need to identify the steps between “where we are” and “where we want to be” and estimate the cost of the steps; it is not as hard as most people make it out to be. This is the heart of solving building problems. Like the Issues List, we can usually identify 5 to 15 steps that will move the situation to conclusion.

Sometimes we can connect the steps toward resolution to the Issues List, sometimes not. In either case, we eventually need to associate the total costs with the Issues List so that an allocation of responsibilities and costs can be performed.

There are different levels of construction cost estimating, based on more and more detailed plans and estimating work, which get us closer and closer to real costs: Order of Magnitude (least detail), Conceptual, Preliminary, and Construction Ready (most detail). Remember, “Total Cost” of claims may need to be considered, including construction costs, attorney fees, consultant costs, relocation, loss of use, etc.

Here is the part that makes some participants crazy: How much justice can you afford? We always have to decide if a situation is worth the time and expense? Sometimes, it is best to not

pursue a claim, or to pay “Nuisance Value”, or to pay a premium on what we think is fair, to quickly get rid of a claim. If the situation costs more to argue about than to fix, just fix it. This analysis involves evaluating the risks. Ask: What is the value of the whole problem, how much of the problem did we cause, and how much more than our fair share are we willing to pay to get out? Usually, everyone pays at least a little more than what they deem “their fair share” – make peace with this.

We have to balance the cold reality of “paying more to avoid spending too much”, with the fact that some people are unreasonable and making a habit of getting pushed around is bad business. The answer to this is the Kindness and Strength Model. If we don’t have the professionalism (strength) to stand up to bullies, we will get run over and it will cost more in the long run.

7. Associate Issues & Locations

As the analysis of a building problem progresses, we need to identify each location where each issue occurs. If there are lots of issues and locations, this can require tremendous effort. In a 20 issue, 5 location project, there are 100 issue-locations.

This work is commonly laid out in a spreadsheet called an Issues-Locations Matrix. When we create one, we combine the Issues and Locations by putting the more-lengthy list down the left-most column and the shorter list across the top. For example: If there are 20 issues and 5 houses, we list the issues in the left column, and the units, across the top, with a notation in the body of the matrix in the cell associated with the corresponding row (issue) and column (location).

8. Conduct a Detailed Issue-By-Issue Analysis

This is the nitty-gritty of the analysis. For each issue, we compile all of the important points that

support our argument. This is where the connection to traditional “logic and critical thinking” gets tightened. The correctness of an argument is either supported or unraveled.

The easiest way to do this is to list all the issues as a “Table of Contents”, then list the issues again (copy & paste). Under each of the issues in the second Issues List we add bullet points where we document every point applicable to our argument.

This is an iterative process. First we make the Issues List, then we support each with the most important, most obvious points. We get into the details in subsequent passes. One or more of the points under each Issue might address the Locations.

9. Reflect, Hypothesize, Scrutinize, Repeat and Refine Steps 1-8 As Necessary

The entire Construction Claim Analysis Method is an iterative process. We first work on understanding “the big picture”. Further, deeper, more detailed passes across the data and our analysis creates a more complete, better, and better supported analysis. Don’t try to start at the beginning and work straight through to the end. It is more effective and efficient to make many passes. As we make more passes, the sections will develop, build upon and support one another.

Always Remember

- The cost of analysis is an important issue and more analysis is more expensive.
- When the analysis is large or detailed, this might be the phase when we create an Executive Summary (covering the entire story of the project and analysis: 1 to 3 pages / 500 to 1,250 words).
- Peer review is a critical activity that is done, at the latest, in this section.

10. Present the Solution

We need to be able to tell the entire story in less than 5 minutes; the written version of this is the Executive Summary. Really. Of course, we may be working on a project that is complex, so not all of the details will get covered in 5 minutes, but all of the key issues and arguments, from A to Z, need to be addressed in that time. We also need to make sure the final analysis is understandable by non-technical people, since it is normally non-technical folks who will have to make the decisions.

Another critical issue is to make the client feel that their building problem is safe in our hands. Building problems are expensive and scary. When delivering our solutions we demonstrate mastery by communicating the process we have worked through in the analysis, by communicating the key points, and by showing that we are not lost in the details.

Consider a unique strategy that often works well for me: Develop a “complete solution” to the building problem, even if it is not your job. Often, the parties involved in a building problem get so locked into “it’s not my fault” arguments, that the best (cheapest and fastest) solution fails to emerge. Sometimes doing the work that others are supposed to do but have not, is the best service for our client. Figuring out the best solution to a problem is not an admission of guilt. Often, the damaged party believes the building problem they are facing is a bigger problem than it really is; if we can defuse a big perception problem by offering a complete solution at a more reasonable cost, it goes a long way to resolving problems.

WRITTEN REPORTS: When delivering solutions in writing, it will usually be one of the following formats (see Figure 3 for details): Memo (shortest format), Project Summary, Opinion Letter, Issues List, Issues with Recommendations, Summary of Testing, Issues Summary, Testimony Outline, Testing Report,

Detailed Issue Analysis, or Detailed Issue Response (longest format). Remember: Form follows function: Our report formats come from experience and they are the starting point of an excellent, cost effective, timely analysis.

MEETINGS: Meetings are a common forum for the delivery of solutions (even if you have written a report). Make peace with the fact that few will read what you write, especially if it is more than three pages. When you explain your solution, you will also be learning new information and making promises for future actions. This requires you take good Meeting Notes, which should contain the date, attendees, discussion points and next actions. Meetings run smoother, faster and better when there is an Agenda; I recommend using them.

MEDIATION: Mediation is a common venue for resolution of building problems, and this is a good thing. It is better to decide your own fate through negotiation than to put it into the hands of a judge or jury. Remember: At the end of a successful mediation, everyone feels like they gave too much.

Mediation is an opportunity to exercise kindness and strength. Working through the Solving Building Problems Method creates a well rounded perspective that few otherwise achieve, including most who worked on the project, and we will know the situation better than most. This Method puts us in a powerful position and if we present professionally, others will gravitate in toward our solution. They will also know who they are dealing with, and “bullies” will focus elsewhere.

DEPOSITIONS: Depositions are common in building disputes. Applying this Model and presenting solutions with kindness and strength are keys to success. Never give a deposition without a handful of “talking points” (no more than 10). These should come straight from your “5 minute solution”. Even if an attorney is smarter than you (always the case for me) and

is verbally slapping you around, you can return to your talking points to ensure that you are communicating your argument.

ARBITRATION: Arbitration is an abbreviated proceeding with a “private judge.” My experience is that the results are unpredictable unless there is a multiple-arbitrator panel, but this is more expensive. Therefore, I have taken the arbitration agreements out of my own contracts.

TRIAL: Sometimes a trial is necessary. If so, there are usually extenuating circumstances; Crazy people, parties looking for “justice” rather than a solution, lack of funds to settle or some peculiarity. There are two common trial types: (1.) Bench trials where a judge decides and (2.) jury trials, where 12 people debate the result. In my experience juries make good decisions and bench-verdicts unpredictable.

Summary

Be systematic in Solving Building Problems. Collect and organize all of the project data in a logical and consistent way. Analyze the data to create actionable information that all of the stakeholders can understand. When presenting your solution, be sure you can explain the big picture of your story in one minute or less, and communicate your complete solution in less than five minutes; if you can’t do it, then your solution is probably too complex and you are likely to fail in your efforts to convince all the parties that you are right.

Use kindness and strength; if you work through this Construction Claim Consulting Model professionally, your solution is likely to be the best one offered, and you can feel confident and powerful in presenting and defending it.

DPS Method

Project Planning Form - CC

Objective

Generic Objective: Organize all information available, identify and list all issues regarding the situation, create and communicate a plan to address all issues to get our client to the end of the situation as quickly and inexpensively as possible, and work the plan professionally and efficiently.

Method

Description		
1	Organize Data	
2	Assignment	
3	Scope	
4	Issues	
5	Locations	
6	Costs	
7	Issues-LOC	
8	Issue-by-Issue	
9	Repeat 1-8	
10	Present	

Deliverables

Description		Priority	Who	When
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Actions / Tasks / Work Breakdown Structure

Description		Priority	Who	When	Time	\$
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
					-	\$ -

Menu of Deliverables

Construction Consulting

Line	Category	Item	Category / Document	Description
1	1		Collect, organize, summarize and understand all pertinent data	
2		A	Document Index	List of documents in our possession, after having been organized. This list serves as a Table of Contents for our project file. The documents residing in our paper and e-files should be in the same order as the Document Index listing.
3		B	One Minute Summary	Approximately 250 words with one sentence to one paragraph for each of the five items: (1.) Big picture of the project (2.) Client's role in the big picture (3.) Why are we here? Issues. (4.) What have we done? (5.) What should we do?
4		C	Timeline	A spreadsheet that lists and summarizes selected documents and events in chronological order. This is often compiled from the documents of various parties and often tells the story of the project more clearly than it has ever been told before.
5		D	Document Summary	A document that first lists all the documents to be summarized, including very basic information like the title, author and number of approximate pages in the summary, which is like level 1 of a [[Work Breakdown Structure]]. Then, in the body of the document, each of the documents listed summarizes the contents of the document including the who, what, when, where, why, how, how many and how much of the document, like a level 2 or 3 of a [[Work Breakdown Structure]], so that the reviewer of the document can understand generally the contents of the documents being summarized.
6		E	Deposition Summary	Multiple formats including (1.) a page-line summary or (2.) paragraph format narrative (a more abbreviated format than the page-line summary).
7		F	Meeting Notes (Minutes)	Notes that memorialize the discussion, agreements and commitments made during project meetings. Makes following up and tracking follow-through for the commitments made by attendees. Sections include Meeting Information, Agenda (Old Business, New Business, Recurring Business), Meeting Minutes (Notes), and Next Actions.
8		G	Inspection Documentation	Standardized PFCS format for electronic processing that combines the field documentation including hand-written field notes, diagrams and digital photographs.
9		H	Inspection Summary	Like a Project Summary, and sometimes imbedded in a Project Summary. A brief narrative that explains what we saw upon inspecting, observing or conducting testing. Never more than 3 pages, and often only 1 to 3 paragraphs in length. Some may have photograph references and even selected photographs attached for clarity; if so, general orientation photos always come before detailed photos (working from large to small).
10	2		Plan: Identify scope, budget & schedule	
11		A	Project Plan	A document that defines the project Objective, Method, Milestones, and Actions; contains a list of documents that define 100% of the Scope, Budget and Schedule.
12		B	Proposals and Retainer Agreements	An itemized list of expected actions for a project or specified Scope, often based on a Work Break-Down Structure or the Deliverables in a consulting project. A contract. The document that memorializes what is being bought and sold when PFCS works on a project as a consultant. .
13		C	Inspection Dispatch	A document containing all the information necessary for a professional inspector to conduct a complete investigation, including check-lists, equipment needs, meetings on-site, etc.
14		D	Investigation Recommendations or Investigation Proposal	A document that communicates a program of recommendations for conducting an investigation of a building or project. Often refers to standards that will be conformed with in the course of the investigation, deliverables, and budget.
15		E	Budget for CC Project	An itemized list of expected costs or available funds for a project or specified Scope, often based on the Work Break-Down Structure. A control mechanism to compare to actual expenses.
16	3		Analyze and summarize the Scope of Work of applicable parties	
17		A	Contract Summary	Summary of all obligations under the contract, including the Scope of Work.
18		B	Project Players List	List of people and companies that played important roles in the project. If there are more than 10 then they can be grouped logically by their role in the situation, or alphabetically, or both.
19		C	Scope of Work Summary	Level 1, Level 2 or Level 3 Work Breakdown Structure summarizing the work required by the contract documents.
20		D	Scope of Work Matrix	When the scope of work and change orders for multiple parties needs to be summarized, like when we represent a developer or general contractor, this format is applicable. Each party has a worksheet of it's own in an Excel workbook.

Menu of Deliverables

Construction Consulting

Line	Category	Item	Category / Document	Description
21		E	Scope of Work Hypothesis Memo	For complicated situations it is sometimes necessary to write an Opinion Letter specifically related to who did what, where and when.
22	4		Create an Issues List (problems, allegations, defects, punch-list)	
23		A	Plaintiff Issues Summary	Summary of issues, allegations, defects, complaints, etc...
24		B	Issues List with or without Locations	Others call this a "defect list". Generally 1-3 portrait spreadsheet pages normally delivered after or with an Opinion Letter. Sections (columns) might be: Line, Code, Item, Issue/Description, Location, and Photograph References.
25	5		Identify all Locations where issues occur	
26		A	Locations Matrix or Unit Matrix (w- Inspection Locations)	Usually composed in a spreadsheet with one row for each location and columns that include Line, Description (of the location), Details (like street, address, and owner or occupant if it is a list of homes or units, or size and finishes if it is a "room schedule" for single building), inspection location, testing location, "In-Scope" (to note locations where work by specific contractors took place), and many other possibilities.
27		B	Room Schedule	Locations Matrix for a single building.
28		C	Site Map	Graphical depiction of an area of land, usually drawn to scale.
29		D	Floor Plan (with or without annotation)	Graphical depiction of a single level of a building or a portion thereof, usually drawn to scale.
30		E	Aerial Images	Photographic images taken from air craft or a satellite.
31		F	Elevations with Annotation	Photographs or construction drawings marked up with notes.
32	6		Identify or estimate all Costs	
33		A	Cost Summary	A spreadsheet or document that briefly describes the costs, budget or estimated costs for a project.
34		B	Plaintiff Estimate Summary	A Cost Summary specifically for used in litigation projects where we are representing a defendant or cross defendant.
35		C	Construction Cost Estimate	A break-down of project costs that can be performed at various levels of depth. PFCS has 4 levels. L1: Order of Magnitude. L2: Preliminary. L3: Detailed. L4: Complete.
36	7		Associate Issues & Locations	
37		A	Issues-Locations Matrix	A matrix (spreadsheet) with the issues listed in one direction and the locations the other.
38		B	Summary of Testing	Like the Issues with Recommendations but includes sections (columns): Test Number, Location, Description, Observations Before Finishes Removed, Cavity Observations, Test Observations, Damage, Comments.
39	8		Conduct a detailed Issue-By-Issue Analysis	
40		A	Issues-Discussion Matrix	An abbreviated reporting format to concisely deal with each issue or category, generally 1-4 spreadsheet pages formatted landscape with columns including Line, Issue Number, Description, Cost, PFCS Discussion, and might have PFCS Allocation, PFCS Cost, or others as necessary. See 06-377 CA Lutheran High School v Testa-CONC TILT-UP for a good example. Each item should be a discrete and actionable point. All of the Issues (Items) shall cover EVERY issue that PFCS is obliged to address.
41		B	Allocation Matrix	A spreadsheet analysis with all of the issues and costs listed in the left columns and all of the potentially responsible parties listed in columns to the right, with corresponding amounts or percentages of responsibility for each issue-cost applied in each of the party-columns. The columns are summed to calculate total liability by party.
42		C	Issues Summary report	An abbreviated report to concisely deal with large or complex projects, generally 3-10 pages (no photos), previously called Summary of Issues. Sections might include: Project Summary, Information We Have, Issues Summary (numbered list, usually on one page, serves as a Table of Contents / discussion framework), and Issues Discussion (detailed discussion of each numbered issue). Issue Discussion points might include: summary points, allegations, locations, photo references, document/plan references, code/standard references, opinions, talking points.
43		D	Issues with Recommendations	An Issues List formatted to deliver detailed information in a concise format, generally 2-10 landscape spreadsheet pages delivered after or with an Opinion Letter. Sections (columns) often include: See Issues List, plus Recommendations.
44		E	Memo (single issue)	Single issue discussion. Generally 1-2 pages. Sections or information that might be included: (1.) the answer to "why we are here", (2.) "the question" we are answering, and (3.) support for opinions including references to other materials, codes or standards.

Menu of Deliverables

Construction Consulting

Line	Category	Item	Category / Document	Description
45		F	Testing Report	Like a Testimony Outline, and generally 3-10 pages. Sections might include: Project Summary (Parties, Timeline), Investigation (Visual Investigation, Testing Locations and Methods, Observations (Visual Observations, Testing Observations), Conclusions, Recommendations, Attachments (plans, details, standards, photos)
46		G	Detailed Issue Analysis	A traditional report previously Issue Analysis or (Residential or Commercial) Property Assessment. Sections might include: Executive Summary, Table of Contents, Project Information, Summary of Issues, Discussion of Issues, Recommendations. Discussion of Issues includes pictures for each issue, placed before the written analysis that includes Description, Location, Information, Analysis and possibly Photographs.
47		H	Detailed Issue Response	Like a Detailed Issue Analysis, but is in response to issues by others. Same sections as Detailed Issue Analysis plus summary of opinions, issue by issue, of others. These reports used to be common but are now rare because they are expensive.
48	9		Reflect, Hypothesize, Scrutinize & Repeat	
49		A	Opinion (s)	A discrete list of supportable points, allegations, responses or arguments.
50		B	Talking Points	A short list of key ideas, usually no more than 10, and are typically committed to memory.
51		C	Exposure Analysis	A list of issues, costs and potential liability based on various depths of analysis. Often performed with multiple columns to the right of the list of issues-costs, where "best, likely and worst case" are analyzed.
52	10		Present the solution	
53		A	One Minute Summary	See Section 1 above.
54		B	Project Summary memo	Opinion Letter with no opinions. Really: No opinions. Generally 1-3 pages written, 2-4 pages of landscape oriented photos. Sections might included: Project Summary, Information We Have, Documents We Prepared, Issues, Observations, Photographs.
55		C	Correspondence	Memo, Letter, E-Mail, Transmittal.
56		D	Opinion Letter with or without with Recommendations	Project Summary with Opinions. Generally 1-3 pages written, 2-4 pages of landscape oriented photos. Sections might include: Project Summary plus Conclusions and Recommendations. See Opinion Letter Generation.
57		E	Testimony Outline	This is specific for Expert Witness work and testimony in Federal Court. This is similar to the Issue Summary, but has a complete table of contents. Sections, outline or information that might be included: Expert Qualifications, Overview of PFCS Services, General Project Information, Timeline of Events, Discussion Points and Analysis.
58		F	Presentation	A structured delivery of information, including graphics, photographs, video, hand-outs or other visual aids, especially Power Point.
59		G	Deposition Preparation	A structured preparation for delivery of opinions or facts in sworn testimony.
60		H	Trial / Arbitration Preparation	A structured preparation for delivery of opinions or facts in sworn testimony.
61		I	Executive Summary	A 1 paragraph to 3 page summary. See One Minute Summary, Project Summary and Opinion Letter.
62		J	Mediation Agenda	An outline or check-list of topics to be covered in a meeting of 2 or more people. See Project Planning Meeting: Agenda and Use Article and Project Status Meeting: Agenda and Use Article.

6. OFFER TO REPAIR

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Offer to Repair

- Case Studies
- Building Standards
- Hot Buttons & Deep Thoughts

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6. OFFER TO REPAIR

Case Study (1 of 2)

ONE HOME IN A MULTI-HOME DEVELOPMENT



This Project involved 106 single family residences built by a large builder from 2003-2006. The homes are located in four different projects, but are all part of the same master planned development. 36 homes were dismissed during SB 800 at the request of the Owners.

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Case Study (2 of 2)

ATTACHED MULTI-UNIT CONDOMINIUM PROJECT

This project consists of two six-story buildings with a total of 96 one story units built in 2008.



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Case Study



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Case Study

1. Elevators were not working reliably.
2. Owner's mechanical engineering expert was told by the elevator company there was condensation problem in the elevator closets causing the problems, and assumed it was true.
3. Owner's engineer specified a \$100,000 solution to prevent condensation.
4. PFCS found no evidence of an on-going condensation problem, and lots of evidence of other potential causes for the failures.
5. PFCS tested by measuring the temperature and humidity in the closets over many months and found no opportunity for condensation.
6. The PFCS solution saved the builder more than \$50,000 and saved the owners the maintenance of mechanical equipment over the life of the project.
7. The matter settled during SB 800 and DID NOT litigate.

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6. OFFER TO REPAIR

Building Standards

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**New homeowners rights and builder
responsibility, California Civil Code
Sections 895 to 945**

CALIFORNIA CIVIL CODE SECTIONS 895 to 945.5

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

(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 subdivision (a) of Section 1351, "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, any association as defined in subdivision (a) of Section 1351.

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

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

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

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

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.

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

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

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

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

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

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself.

For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, 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) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

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

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

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

(d) With respect to fire protection issues:

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

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

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

(e) With respect to plumbing and sewer issues:

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

(f) With respect to electrical system issues:

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

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

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

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

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

(B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance.

If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

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

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

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

(4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

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

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

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

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

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

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

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

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

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

897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.

901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."

902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.

903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).

905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any nonoriginal homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the nonoriginal homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims.

906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.

907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

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

911.(a) For purposes of this title, except as provided in subdivision (b), "builder" means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim.

(b) For the purposes of this title, "builder" does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner's claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide, with the original sales documentation, a written copy of this title, which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable. At the time the sales agreement is executed, the builder

shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

916.(a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefore in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.

924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929.(a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a general

contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

941.(a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure do not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivision (a) or (b) of Section 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivision (a) or (b) of Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section.

942. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

943.(a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

(b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.

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

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5. A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.

(c) To the extent it is caused by the homeowner or his or her agent, employee, general contractor, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

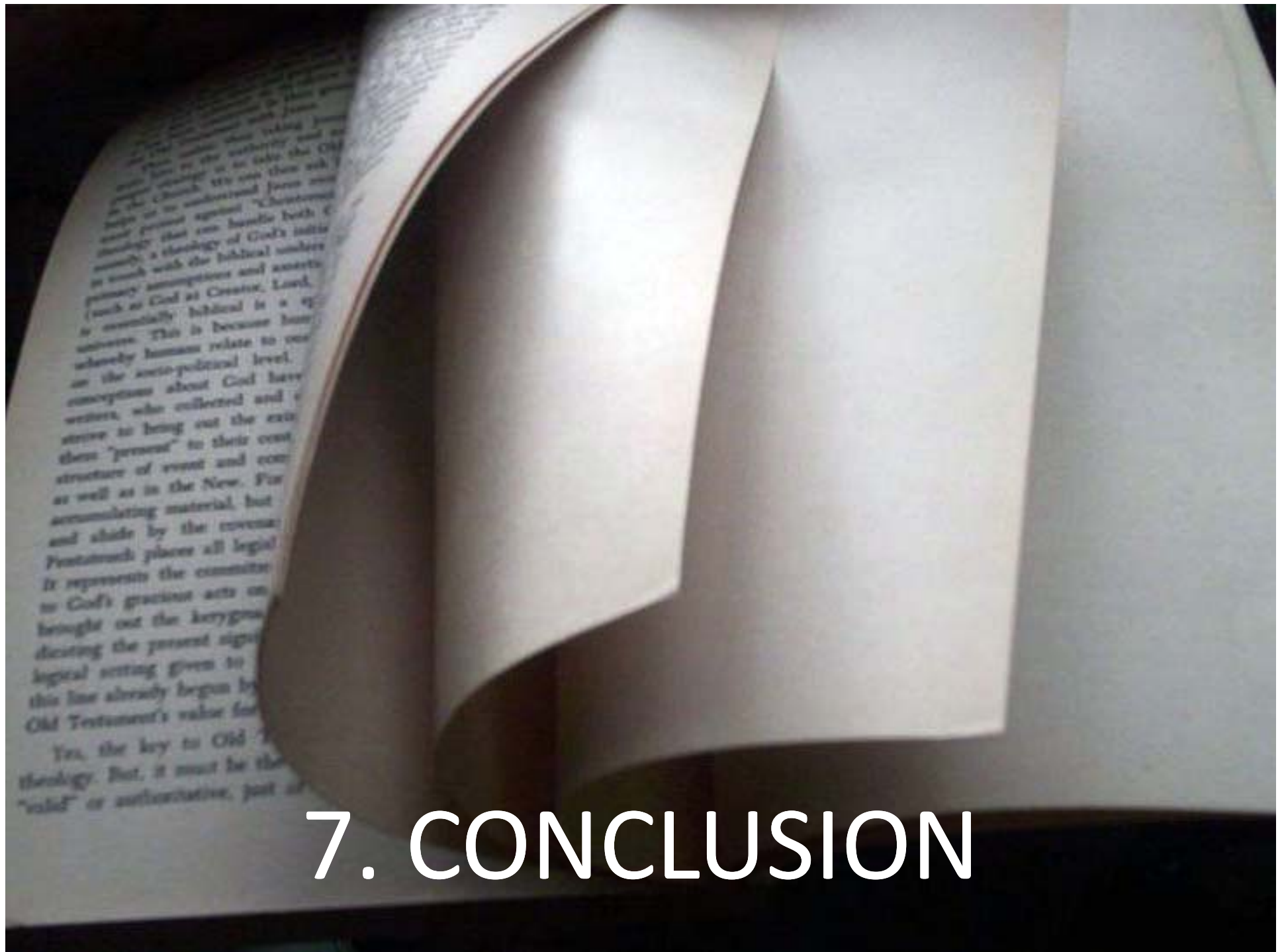
(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.

(e) To the extent that the time period for filing actions bars the claimed violation.

(f) As to a particular violation for which the builder has obtained a valid release.

(g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.

(h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.



7. CONCLUSION

7. CONCLUSION

Conclusion

- Learning Objectives
- Program Outline
- Back-Up Materials
- Webinar Materials/CE Certificates
- Feedback



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7. CONCLUSION

Learning Objectives

- Overview of SB 800
- Understand the basic contents of the law
- Discuss the importance of the builder and contractors
- Review Actionable Defects defined by SB 800
- Study the SB 800 pre-litigation procedure
- Contrast SB 800 with Traditional CD Litigation
- Review example Offer to Repair documents



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7. CONCLUSION

Program Outline

1. Introduction
2. Traditional Construction Defect Litigation
3. SB 800 Summary
4. Actionable Defects
5. SB 800 Procedure
6. Offer to Repair
7. Conclusion



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7. CONCLUSION

Back-Up Materials


1. SB 800 Introduction and Summary by PFCS
2. Sample SB 800 Notice Letter from Owners to Builder
3. Offer To Repair an individual residence in a community of SFRs (Case Study 1)
4. Offer to Repair a multi-family condominium project (Case Study 2)
5. PFCS Solving Building Problems. A whitepaper describing our method for analyzing construction defects
6. CA Civil Code 895 (SB 800): Full text



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7. CONCLUSION

Webinar Materials

PFCS Client Access Projects Publications Seminars Users	
PFCS Webinar 1/30/2014: Building Life Cycle Management	
Seminar Information	
Event Date	01/30/2014
Event Time	10:00am
Location	Online via GoToWebinar
Video	
There is no video version of this presentation available.	
Attachments / Backup Materials	
File	
 Backup Materials	

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CE CERTIFICATES WILL BE SENT OUT WITHIN 3 BUSINESS DAYS

(There is no need to contact us, Certificates of Attendance are sent to all who logged in for the seminar).

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7. CONCLUSION

Your Feedback is Important

SURVEY SAYS!



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