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PRACTICE GUIDE · REAL PROPERTY

Construction Defect Litigation

Grand Park Law Group · 2026



A. The Right to Repair Act (Civ. Code § 895 et seq.)

The Right to Repair Act ("SB 800"), enacted in 2002 and codified at Civil Code §§ 895–945.5, applies to **new residential construction sold on or after January 1, 2003**. It does three things:

1. Establishes **functionality standards** (Civ. Code § 896) — a detailed list of construction outcomes (water intrusion, structural soundness, soils, fire protection, plumbing, electrical, etc.) — that supplant the common law in covered cases.
2. Sets **statutes of limitations** specific to each standard, ranging from one year (irrigation/drainage) to ten years (structural). § 896(e)–(g).
3. Imposes a **mandatory pre-litigation procedure** (§§ 910–938) requiring the homeowner to give notice and the builder to inspect, test, and offer to repair before suit.

B. *Aas v. Superior Court* and the Economic-Loss Rule

Aas v. Superior Court (2000) 24 Cal.4th 627, 635–36, held that homeowners cannot recover in **negligence** for construction defects that have not yet caused property damage or personal injury — the so-called economic-loss rule. *Aas* foreclosed a wide swath of pre-2003 litigation and was the political catalyst for SB 800, which legislatively restored a right of action for purely economic damage from defects (subject to the Act's procedural strictures).

For pre-2003 housing, *Aas* still governs: no actual damage, no negligence claim. Breach of contract or warranty remains available where privity exists.

C. *McMillin Albany* — Exclusivity for Covered Defects

For a decade after SB 800's enactment, courts split on whether the Act provided the **exclusive** remedy for residential construction defects or merely an additional one. The split was resolved in *McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241, 247–49, which held the Act is the **sole** remedy for defects in covered residential construction — including economic-loss-only claims and claims for property damage caused by a defect. Common-law negligence and strict liability claims against builders for covered defects are abolished within the Act's scope.

McMillin Albany makes the pre-litigation process unavoidable. A homeowner who files suit without complying with §§ 910–938 will face a stay (or, in some courts, dismissal) until the process is exhausted.

D. Pre-Litigation Notice and Right to Cure

The notice (§ 910) must describe the claim "in reasonable detail sufficient to determine the nature and location, to the extent known," of the alleged violation. The builder then has 14 days to acknowledge, 14 more to inspect, and additional periods to test, offer repair, or pay cash in lieu. The total pre-litigation window can stretch to **120+ days**.

Pitfalls:

- **Sale of the home** during the process does not automatically terminate the claim, but standing transfers complications.
- **Class actions** are permitted but the notice must be given on a unit-by-unit basis; a single class notice does not satisfy the statute.
- **Insurance tender** to the builder's CGL carrier should be made early; SB 800 claims often implicate "your work" exclusions and Type 1 vs. Type 2 distinctions.

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