

LEGAL ALERT

The “Fix-it” law (fka SB 800), Civil Code § 895 *et seq.*, Prelitigation Procedures Cannot be Ignored by Homeowners

Enacted back in 2003, California’s “Fix-it” Law gives residential home builders a right to repair before a homeowner can proceed to litigation. Of late, more attorneys representing homeowners have been ignoring the pre-litigation procedures in the “Fix-it” law and have simply filed suit. However, the “Fix-it” law also expressly permits a Court to stay the action if a homeowner does not comply with the pre-litigation process.

In **Standard Pacific Corp. v. Superior Court (Garlow)** 09 C.D.O.S. 10505 (2009), several plaintiff homeowners filed suit against the builder, Standard Pacific Corp., alleging the standard causes of action for problems relating to the construction of homes by the builder. The complaint did not allege that the plaintiff homeowners had complied with the Fix-it law by giving the builder an opportunity to repair the claimed defects. As authorized by C.C. §930(b), builder moved to stay the proceedings until plaintiffs complied with their statutory obligations.

The plaintiff homeowners responded that because the builder had not complied with §912 (i.e., builder had not “opted-in” to the protections afforded by §912), plaintiffs did not have to follow the “prelitigation procedures.” Plaintiffs’ assertion was not supported by any factual showing that the builder had, in fact, breached any of its obligations. Plaintiffs position was that the builder had to affirmatively establish its compliance with §912 of the “Fix-it” law. The trial court sided with the plaintiff homeowners who denied builders motion for a stay of proceedings. The builder’s appeal followed.

On appeal, the appellate court examined the issue of who has the burden of proving compliance with the pre-litigation process: the builder or the homeowner?

The appellate court examined the legislative intent of the Fix-it law and rejected the plaintiff homeowners argument that the burden falls on the builder to prove it complied with disclosure requirements of §912.

THE DECISION: The appellate court held that the burden is on the plaintiff homeowner(s) to either comply with the “prelitigation procedures” found in §910 of the “Fix-it” law or to establish why he or she need not do so, such as a builder’s failure to comply with builder’s statutory duties under the “Fix-it” law as established in §912.

WHY THIS DECISION IS IMPORTANT:

The Garlow decision clarifies that a builder’s right to repair under the “Fix-it” law cannot be circumvented by homeowners making unsupported claims that a builder has failed to comply with the pre-litigation process.

Moreover, a homeowner who files litigation does so at great risk if they fail to factually establish that a builder did not comply with the requirements of section 912 as the builder may recover its attorney’s fees incurred to bring a motion to stay the premature action.

THIS VLA LEGAL ALERT IS **NOT** LEGAL ADVICE. YOU MUST CONSULT AN ATTORNEY IF YOU BELIEVE THIS CASE APPLIES TO YOU.

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