

The Morrison Law Journal  
August 2009  
Volume IV, Edition 8

So Who Has the Burden Anyway? Court of Appeal Rules That  
Homeowner Plaintiff Has Burden Of Proving That It Has Either Complied  
With SB 800 Or Is Excused From Doing So

By: Edward F. Morrison, Jr., Esq.  
Brett C. Drouet, Esq.

In a curious decision which will answer a procedural question involving California's "Fix It Law" -- often known as SB 800 or the Homebuilder's Right to Repair Act, the Court of Appeal, Fourth Appellate District, ruled that a homeowner plaintiff which is subject to the Fix it Law has the burden of proving that he or she has complied with the requirements of the statute which apply to claimants and that the builder defendant has not complied with the requirements which apply to builders.

Enacted in 2002, California's Homebuilder's Right to Repair Act found in California Civil Code sections 895 to 945.5, enacted as part of Assembly Bill 800 (herein, the "Fix It Law") applies to residences where the purchase agreement was signed after January 1, 2003. The Fix It Law requires that, prior to filing an action, the homeowner claimant must provide written notice of a claim for defective construction. See, Civil Code section 910. Thereafter, a builder will have 30 days to provide a variety of documents or access to same. See, Civil Code section 912. If the builder does not comply with the information requirements under Civil Code section 912, the statute will no longer apply to the builder. If the builder does comply with the information requirements, the builder will have the right to make an offer of repairs for which the claimant shall then respond. See, Civil Code sections 917 and 918.

Needless to say, disputes between homeowners and builders can become protracted should the builder exercise its rights to offer repair.

One question which has arisen is whether the claimant or the builder has the burden of proof as to whether Civil Code section 912 has been complied with. This is a significant question as there are numerous requirements placed on the builder under Civil Code section 912, some of which are open to interpretation.

In the case of Standard Pacific Corporation v. Superior Court (2009) Westlaw 2480245 ("Standard Pacific case"), the Court was presented with a case where the claimant had not complied with Civil Code section 910 and simply averred that the builder had not complied with its obligations, either. The builder moved to stay the action based on the claimant's failure to comply with the statute. The trial court denied the motion and ruled that the action could go forward unless the builder established that it had not opted out of the right to repair scheme found in the state's Fix It Law.

In a brief ruling, the Court of Appeal reversed.

While sympathetic to the claimant's circumstances, the Court of Appeal ruled that the claimant homeowner had the burden of proving that the builder had failed to comply with the builder's information requirements under Civil Code section 912 (in addition to the claimant's notice requirements) and ordered that the litigation be stayed pending a hearing on whether the homeowner could carry his burden of proof that the builder had not complied with the statute.

The Standard Pacific case will have an immediate impact as there are many cases which come within the Fix It Law where the builder's position as to any right to repair is in substantial question. It is anticipated that the courts will now require that a hearing take place where some evidence will be required to be presented by the plaintiffs in order to satisfy their burden of proof on the builder's "compliance" or lack of "compliance" with the State's Fix it Law.

Of course, time will only tell.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Brett C. Drouet is a partner of The Morrison Law Group, a professional corporation. Their biographies can be viewed at [www.morrisonlawgroup.com](http://www.morrisonlawgroup.com).

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact James Van Dusen at The Morrison Law Group at 213 356-5504 or [vandusen@morrisonlawgroup.com](mailto:vandusen@morrisonlawgroup.com).

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.