

Patent and Latent Defects: How Long May a Designer be Exposed to a Lawsuit Because of Defective Design?

There are good reasons why, after the passage of some period of time, designers and others in the construction industry should "be at peace" and no longer be exposed to lawsuits for damages caused by defective construction or design.

Construction is recognized as a beneficial activity, the promotion of which is a legitimate concern of the citizens of California. That activity will be encouraged if there is a time period after which stale claims for defects may not be asserted in a lawsuit. Such limits will "promote construction and the full use and enjoyment of real property by removing the peril of remote and distant liability which would tend to deter persons from entering into the construction business."(1)

Recognizing this point, the California Legislature has passed a series of statutes establishing time limits beyond which lawsuits alleging design or construction defects are barred. Unfortunately, the statutes overlap and may be unclear and confusing about their application to a particular set of facts.(2)

When analyzing a claim based on a design or construction defect, a good starting point is to determine if the defect was "patent" or "latent". A defect is considered "patent" if it was readily discoverable or "apparent by a reasonable inspection".(3) If not, and if the defect is hidden, then it is "latent". The distinction is not always easy to make and depends on the defect's "susceptibility to detection".⁴ The distinction is of great importance because the two defects have different time limits for filing a lawsuit.

Measured from the date of substantial completion, any claim based on a "patent" defect is totally barred after a lapse of 4 years.(5) If, however, the defect was hidden and therefore "latent," the time is extended to 10 years.(6) Once these times have lapsed, a plaintiff's right to sue is forever barred.

As with many statutes, however, these general rules have several exceptions. One of the most important exceptions concerns the nature of the plaintiffs damage. If the claim is for personal injury or wrongful death and the injury was caused by a "patent" defect, the suit must be filed within 4 years of substantial completion or it is barred. (7) Curiously, however, there is no similar bar if the injury or death is the result of a "latent" defect. In that case, a designer or builder may be exposed to liability forever. (8)

Another exception to the 4-year and 10-year rules occurs if the defect (either type) is actually discovered. When that happens, the rules change. Now, a plaintiff may be faced with a shorter period of time to sue and may have their rights extinguished if they go beyond the shorter period. Thus, for example, if the defect is discovered six months after substantial completion, the plaintiff may not sit on their rights, but must initiate the suit earlier. How much earlier depends on the type of injury sustained and the legal theory of recovery.

In addition to the personal injury "exception" and the "exception" when defects are actually discovered, there are other "exceptions" which cause interesting results. Consider the following:

- The 4-year limit for "patent" defects is not applicable to owner occupied single-unit residences. (9)
- Thus, the time in which the homeowner may bring suit will be measured only from the time of discovery of the defect and could conceivably extend for years.
- The 10-year limit for "latent" defects applies to developers as well as to designers and builders. But no similar limit is given to developers for "patent" defects.
- The 10-year limit for "latent" defects also limits actions for indemnity. No similar limit applies to indemnity actions based on "patent" defects.

As stated above, the rules can be overlapping, unclear and confusing. The points made in this memorandum address only the basic applications of the statutes. Actual fact patterns produce situations too complicated or lengthy to discuss here. There is, however, one rule that almost always applies. Once the defect is discovered, the lawsuit must be filed within the shorter of the periods that may apply. (10)

The following chart shows the very basic rules that apply to lawsuits for design and construction defects. It is not intended to be all inclusive or to depict all of the results that may apply to specific factual situations. If you have any questions about these statutes or their applicability, you should contact an attorney experienced in representing design professionals.

TIME LIMITATIONS ON LAWSUITS FOR DESIGN OR CONSTRUCTION DEFECTS (11)

	Patent Defects (Readily Discoverable)	Latent Defects (Hidden)
	A lawsuit is barred unless it is filed within 4 years of substantial completion.	A lawsuit is barred unless it is filed within 10 years of substantial completion.
PROPERTY DAMAGE	A shorter time may apply once the defect is discovered.	A shorter time may apply once the defect is discovered.
	A time limit is not applicable to owner-occupied single unit residences.	
BODILY INJURY OR WRONGFUL DEATH	A lawsuit is barred unless it is filed within 4 years of substantial completion.	There is no time limit until the injury or death actually occurs. Once the defect is discovered, it

A shorter time may apply once the defect is discovered. defect is discovered.

The time limit is not applicable to owner-occupied single unit residences.

- 1) Ernest W. Hahn, Inc. v. Superior Court of Los Angeles, 108 Cal.App.3d 567, 570 (1980)
 - 2) See California Code of Civil Procedure §§ 337.1 and 337.15. Additional statutes which may limit a plaintiff's action include Code of Civil Procedure §§ 337(1), 338(2), 339, and 340.
 - 3) Code of Civil Procedure § 337.1(e).
 - 4) Renown, Inc. v. Hansel Phelps Const. Co., 154 Cal.App.3d 413, 420 (1984).
 - 5) Code of Civil Procedure § 337.1(a).
 - 6) Code of Civil Procedure § 337.15(a).
 - 7) Unless the injury occurs within the fourth year, in which case the action may be filed within one year of the incident. See Code of Civil Procedure § 337.1(b).
 - 8) Martinez v. Traubner, 32 Cal.3d 755, 759 (1982).
 - 9) Code of Civil Procedure § 337.1(f).
 - 10) The Regents of the University of California v. Hartford Accident & Indem. Co., 21 Cal.App.3d 624 (1978).
- See also North Coast Business Park v. Nielsen Construction Co., 17 Cal.App.4th 22 (1993).
- 11) This chart is not intended to be all inclusive or to depict all of the results that may apply to specific factual situations. If you have questions about the statutes, you should contact an attorney experienced in representing design professionals.