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Watch Your Step-If its S.B. 800 Alternative Prelitigation Procedures are not Enforceable, A Building Cannot Compel a Home Purchaser to Comply with the Statutory S.B. 800 Prelitigation Procedures

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SB 800, referred to by some as the "Right to Repair" Act, sets forth detailed non-adversarial notice and right to repair procedures a homeowner subject to the Act must follow prior to filing a construction defect lawsuit. Significantly, Civil Code §914, subd. (a) authorizes the home builder to choose to use *alternative* non-adversarial contractual provisions in lieu of the statutory procedures. However, the builder must notify the homeowner that alternative procedures will be utilized in the event a dispute arises at the time the sale agreement is executed. The recent court of appeal decision in *Anders v. Superior Court (Meritage Homes of California, Inc.)*, construes the language of the section as providing that a home builder who attempts to enforce its own contractual notice and right to repair procedures relating to construction defects after the sale of a new home that do not resolve the construction defect dispute or are found to be unenforceable, cannot also require the homeowner to comply with the statutory non-adversarial notice and right to repair procedures before the homeowner files a suit for construction defects. Instead, the homeowner will be free to pursue litigation without complying with the statutory procedures. In addition, the trial court's ruling in this same case reveals that trial courts will look closely at whether the builder's alternative contractual right to repair procedures set forth in the home purchase documents are similar to or better for the homeowner than the statutory non-adversarial notice and right procedures under SB 800.

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