

# **LIMITATION OF ACTIONS**



# LIMITATIONS OF ACTION

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- Statutes of Repose run from date project completed.
- 4 year: Patent Defects: from time substantially complete CCP § 337.1.
- 10 year: Latent Defects CCP § 337.15.



## Purpose of Statutes of Repose:

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- Peace and serenity in business . . . as to liability for property damage not so bodily injury.
- Latent: At time improvement finished: *Eden v. Vahtine*, 83 Cal.3d 879 (1978).
- Latent: Damage by mudslide. Defects in slope, landfill drainage. (*Stoneson Devl. v. Superior Court*, 197 Cal.3d 178 (1987); *Barnhouse v. City Pinde*, 133 Cal.3d 171 (1982).)



# Latent vs. Patent

- Patent: Discoverable for reasonable inspection.
- Latent: Need expert investigation question of fact: *Becker v. Walker & Walker Inc.*, 133 Cal.3d 746 (1982).

# California Code of Civil Procedure

## § 337.15

This section bars an action for latent defects in the development of real property, including the construction of improvements thereon, filed more than 10 years after the substantial completion of the development or improvement.



# California Code of Civil Procedure § 337.15(g)

The 10-year period commences upon the substantial completion of the improvement, but not later than:

- 1) Final inspection;
- 2) Recordation of a valid notice of completion;
- 3) Use or occupancy of the improvement; or
- 4) One year after cessation of work on the improvement.

Date of substantial completion shall relate specifically to the services performed by each profession or trade.

# Limitations of CCP § 337.15

- CCP § 337.15 does not apply to actions for personal injury, wrongful death, willful misconduct or fraudulent concealment.
- CCP § 337.15 does not extend other limitation periods.

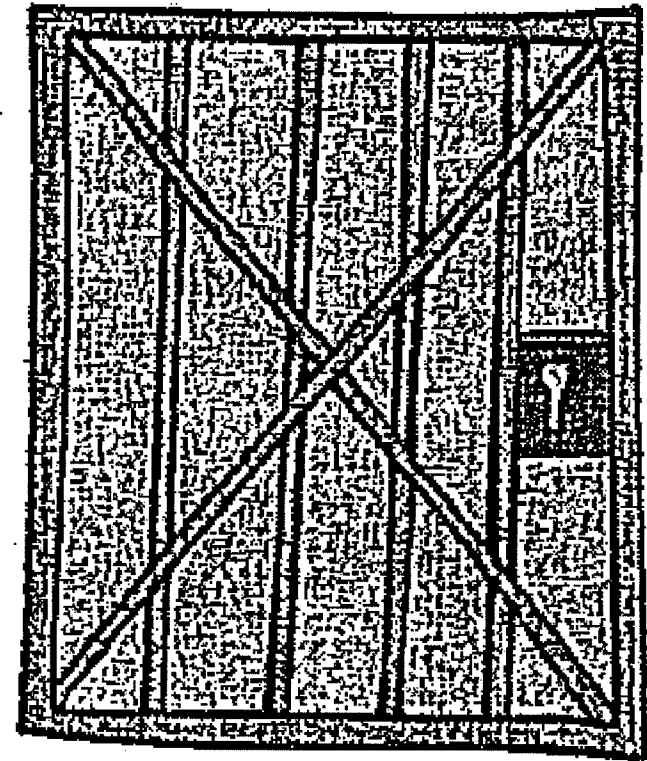


# Code of Civil Procedure

## §§ 337.1, 337.15, 338 and 340(3)

Actions may be barred by shorter limitation periods:

- 2 years for personal injury from date of injury.
- 3 years for damage to property from date of discovery (or the date the damage could reasonably have been discovered).
- 4 years for breach of contract.

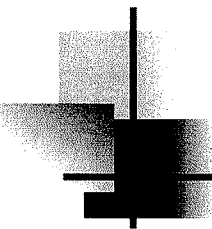




# Limitation of Actions Issues

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- The date upon which substantial completion will be deemed to have occurred for statute of limitations issues will depend upon when the trade or professional completes its work.
- The issue is not when the unrelated trades or professionals complete their work. (See *Industrial Risk Insurers v. Rust Engineering Company*, 232 Cal. App. 3d 1038 (1991)).
- The 10 year statute of limitations will be applied to a particular improvement, such as a lot, and not an entire tract. (See *Winston Square Homeowners Association v. Centex West, Inc.*, 213 Cal. App. 3d 282 (1989)).

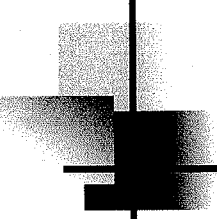
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- The Court in *FNB Mortgage Corp. v. Pacific General Group*, 76 Cal. App. 4th 1116 (1999) held that while a cross complaint for indemnity can be brought more than 10 years after substantial completion, the so called exception under Code of Civil Procedure 337.15(c) only applies if the underlying action would be timely as against the person or entity from whom indemnity has been sought.
  - The Court in *FNB Mortgage Corp.* found that there is no equitable tolling for any period of repair insofar as the 10 year limitations period is concerned.
  - The Court found that because Code of Civil Procedure § 337.15 prescribed an "outside limitations" period, case law which equitably tolled other statutes of limitations (such as with the three year limitations period discussed in earlier case law), would not apply to extend the 10 year limitations period.



# Statute of Limitation Issues

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- 10-year statute (latent defects) runs from substantial completion of settling defendant's part of the "improvement", not from completion of entire project. (*Nelson v. Gorian and Associates*, 61 Cal.App.4th at 93 (1998))
- In Nelson grader's lot work was "substantially completed" in 1985, more than 10 years prior to the time that the homeowner filed suit.
- Contractual and implied indemnity barred by 10-year statute if suit more than 10 years after substantial completion, regardless of date of discovery of defect. (See *FNB Mortgage Corp. v. Pacific General Group*, 76 Cal.App.4th 1116 (1999))

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- Indemnity action not accrue for limitations, purposes until defendant pays judgment or settlement and is then entitled to indemnity (See *FNB Mortgage Corp.*)
  - 10-year statute for design defects not subject to "equitable tolling" for repairs (*FNB, supra.*).



# IMPACT OF STATUTES OF LIMITATIONS

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- Action needs to be filed within shorter of limitations and statutes of repose. *Roger E. Smith Inc. v. SHN Consulting Engrs.*, 89 Cal.4<sup>th</sup> 637 (2001).
- Statutes of Limitations at CCP §§ 337(1) and 338 begin to run when damage is sufficiently appreciable to give reasonable person notice to pursue remedies. *North Coast Bus v. Nielson Constr.*, 17 Cal.4<sup>th</sup> 22 (1993).

# Statutes of Limitation & Equitable Tolling

Lantzy v. Centex Homes  
(2003) 31 Cal.4<sup>th</sup> 363

Acosta v. Glenfed Development Corp.  
(2005) 128 Cal. App. 4<sup>th</sup> 1278

