

# California Supreme Court Confirms that Right to Repair Act Is Exclusive Remedy for Construction Defect Claims

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With single- and multi-family residential construction on the rise, there are opportunities around every corner for homebuilders. In California, one of the most significant post-construction obligations for homebuilders (and homeowners, for that matter) is the Right to Repair Act (the Act). A recent decision by the California Supreme Court put an end to a decades-old question of whether common law defect claims alleging actual property damage are governed by the Act and its prelitigation procedures.

According to the California Supreme Court, the answer is yes.

On January 18, 2018, the California Supreme Court issued its ruling in *McMillan Albany, LLC v. Superior Court of Kern County*, 4 Cal. 5th 241 (2018), affirming the Court of Appeals decision that the Act, including its prelitigation procedures, applies broadly to all residential construction defect claims whether based in common law and alleging property damage or under the statutory building standards within the Act and not alleging property damage.

## Background

The Act was enacted by the California Legislature in 2002 in order to reform residential construction defect litigation by: (1) mandating a prelitigation procedure for handling residential construction defect claims; and (2) setting forth statewide minimum building standards that a new home must satisfy.

The Act's detailed prelitigation dispute resolution process grants homebuilders an absolute right to repair construction defects before the costly litigation process can

legally commence. It further grants homeowners a right to sue for construction defects even where there is no allegation, or proof, of actual property damage or personal injury caused by the defective construction; a right previously unavailable to homeowners due to a legal doctrine known as the "Economic Loss Rule."

Prior to the Act, the Economic Loss Rule barred residential construction defect claims based in tort law, such as negligence, when the only damage caused was economic harm. The Act was passed in response to a California Supreme Court decision that, under the Economic Loss Rule, homeowners could not pursue negligence-based construction defect claims against a homebuilder where there was no allegation or proof of actual damage to property or persons – forcing homeowners to wait until actual property damage or personal injury had occurred before initiating construction defect litigation. *Aas v. Superior Court*, 24 Cal. 4th 627 (2000).

## Hotly Contested

As expected with any large-scale legal reform, the boundary-testing of the Act began almost as soon as the ink was dry. Among the most hotly contested issues was whether it applied to common law construction defect claims alleging actual property damage and whether such claims were also subject to the Act's prelitigation procedures. For years California courts grappled with how to apply the Act consistently.

In affirming this decision, the State Supreme Court analyzed the text and legislative history of the Act and found that both reflect a clear and unequivocal intent to replace common law claims of residential construction defects with a statutory claim under the Act, in addition to permitting



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homeowners to pursue claims for construction defects even if they have suffered only economic losses. And while the Act is the exclusive remedy for property damage claims, the Court noted that personal injury claims arising from residential construction defects are not covered by the Act and thus are not subject to the mandatory prelitigation procedures.

## 'Exclusive Remedy' Found

In *McMillan*, the homeowners attempted to circumvent the Act's prelitigation procedures by dismissing all causes of action under the Act and moving forward with only common law construction defect claims which alleged actual property damage. While the trial court initially allowed the homeowners to proceed with litigation despite not completing the Act's prelitigation procedures, the Court of Appeal and Supreme Court confirmed that the Act is the "... exclusive remedy not just for economic loss but also for property damage arising from construction defects."

By resolving conflicting interpretations of the Act's scope and applicability, the *McMillan* decision provides homeowners and homebuilders with much needed clarity. That will, hopefully, have the effect of meeting the legislative goal of the Act; that is, to resolve residential construction defect disputes quickly and cost-effectively. ■