

ASSEMBLY BILL 662
Cedar Fire Construction Legislation for Volunteer Services

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As most of us recall, a large wild fire called the “Cedar Fire” struck San Diego County in October of 2003. The Cedar Fire was one of the most devastating wild land/urban interface fire disasters in the history of Southern California. According to the California Department of Forestry and Fire Protection, 3,631 homes were destroyed and most of these were situated in the County of San Diego. As a result of the fire, it was anticipated that a huge rebuilding effort would soon follow, and that many of the people rebuilding might have insufficient funds from insurance and other sources to completely restore their properties to pre-fire condition. Given this, the California State Legislature decided to enact legislation in an effort to encourage contractors and others to volunteer their services to help rebuild the numerous damaged and destroyed homes.

Assembly Bill 662 was introduced in February of 2005. The Bill was introduced by Assemblyman Jay LaSuer of the 77th Assembly District, which serves El Cajon, La Mesa, Santee and parts of San Diego. The Bill was unique in that it was fast-tracked through the Legislature because of the “urgency” of the post-Cedar Fire situation, and the Bill was also unique in that it was only made applicable to San Diego County. The Bill came into effect on July 11, 2005, and will sunset on January 1, 2008. The Bill is officially codified as California Civil Code Section 945.6.

As a preliminary matter, it should be noted that the Bill only applies to “contractors” as that term is specifically defined by the Bill. “Contractor” is defined to include subcontractors, design professionals or general contractors who, after the effective date of the Bill and on or before January 1, 2008, provide their services without compensation to victims of the Cedar Fire. The Bill permits the contractor and homeowner to voluntarily incorporate into their contract the rights and remedies of what is commonly referred to as “SB 800” or any part of SB 800 (commencing with California Civil Code Section 895). In addition to the services being provided for free, the Bill also specifically requires that the contract only be for the reconstruction of a “dwelling unit” or “common area” of a residence lost during the October, 2003, Cedar Fire in the County of San Diego.

By way of background, SB 800 is oftentimes referred to as the “Home Builders Right to Repair Law” or the “Fix-It Bill.” SB 800 applies only to original construction intended to be sold as an individual dwelling unit under a purchase agreement with the buyer, signed by the seller, on or after January 1, 2003. SB 800 was drafted and adopted by the Legislature in an effort to strike some balance between the interests of home builders and consumers with regard to the issue of construction defects. The idea being that past construction defect litigation had not yielded an efficient and fair means for resolving construction defect disputes, and a new system should be put in place in an effort to streamline the process and attempt to facilitate the more efficient resolution of construction disputes. Ultimately, it was hoped that SB 800 would provide some measure of relief to builders from construction defect lawsuits and some ability for

homeowners to have a mechanism by which to seek meaningful redress for most types of construction defects. The appeal to builders and contractors being that they would be more insulated from past construction defect litigation.

By making the protections of SB800 available to both contractors and homeowners doing reconstruction following the Cedar Fire, it was believed that it would facilitate volunteer efforts by subcontractors, design professionals or general contractors, while at the same time offering them some measure of protection from possible construction defect claims after the fact. As the saying goes, “no good deed goes unpunished,” but it was hoped that AB 662 would prevent volunteers from being “punished.” At this point, it is unclear as to how many contracting parties have taken advantage of AB662, but it is likely to have facilitated volunteer efforts by some.

With regard to common interest developments, there is really no direct impact on the operations of common interest developments as the Bill contemplates contracts between individual owners and contractors. Nonetheless, members of community associations impacted by the Cedar Fire can certainly take advantage of AB662 and use it as a means of encouraging persons in the building industry to volunteer their expertise to the rebuilding process. As indicated above, the Bill was only enacted to meet a perceived short-term need and will sunset on January 1, 2008, so it behooves any homeowner or contractor currently contemplating any volunteer construction services to consider taking advantage of the potential protections offered by AB662.