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What Are Construction Defects?

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Since the "Building Boom" of the 1980's and the advent of the ten year cycle (California Code of Civil Procedure, Section 337.15) for "LATENT DEFECTS" (A latent defect is one that a property owner does not know about and would not be expected to discover through the exercise of reasonable care.) construction defects claims and subsequent litigation has exploded into horrific proportions.

According to many articles that have appeared in the San Diego Union-Tribune, the La Jolla Light and the Los Angeles Times, "the proliferation of construction defects litigation has devastated the California Economy by drying up the availability of affordable attached housing, depressed the job market and driven multi-residential builders and their insurance carriers out of the State of California, or out of existence all together".

In addition, individual home owners that have been involved by their Homeowners Association bringing forward construction defect litigation have reportedly lost equity in their property. Many have reportedly "walked-away" from their mortgages and lenders have shied away from providing loans to prospective buyers of "Common Interest Developments" in California.

Recently California lawyers have been preparing to spread out of California by seeking licensing in the States of Nevada and Arizona. Nevada, in particular, has been enjoying a building boom for approximately the last ten years. With the proliferation of new Las Vegas Casinos, new Housing, Schools and allied support businesses and industry ... it looks like Nevada is next!

Imagine for a moment that we actually live in a "perfect world". A world in which everybody assumes full responsibility for all of their actions and omissions. A world where construction professionals and tradesmen, alike, do everything that they do within strict accordance with all requirements of all applicable Building Codes, Building Code Standards, adopted Standards promulgated by professional, manufacturers' and trade associations. Further imagine a world where everyone never makes a mistake and builds with absolute perfection!

Theoretically, when it comes to defects in construction, that is exactly the type of world that many plaintiff lawyers want us to believe we live in .. "a perfect world". Anything less than "absolute perfection" is considered, by many plaintiff lawyers to be "DEFECTIVE". They draw an image of incompetent and corrupt contractors and developers that can do nothing right, but can only provide the consumer with highly defective and unsafe buildings.

Think about it! Construction Defects! What are they, really?? Are they blemishes? Are they something that's less than perfect? Just what is a defect?

Webster's Dictionary defines the word defect: de-fect (de'fekt; also, and for v. always, di fekt') n. [<L.pp. of deficere, to fail < de-, from + facere, to do] 1. lack of something necessary for completeness; shortcoming 2. an imperfection; fault; blemish.

That's one definition of a defect! Well, for all practical purposes and for that matter, legal purposes the definition of a defect (and in particular a "Construction Defect") remains that as defined by Mr. Webster!

Recent attempts to address the lack of an adequate and legal definition of construction defects by legislative action have been squashed by the California Trial Lawyers Association. During the last Session of the California State Assembly, Assemblyman Scott Baugh submitted AB 2959, which would have provided the first step towards reaching some common sense and sanity in addressing defective construction, had it passed the Assembly.

AB 2959 would have defined a construction defect as that which makes a project dangerous, unsafe or causes real damage to the consumer. According to AB 2959, a construction defect would result from:

1. Defective building material or components.
2. A violation of Building Codes at the time of construction.
3. Failure to meet professional standards for design at the time plans were approved.
4. Failure to build according to accepted trade standards for good and workmanlike construction.

My hard hat goes off to Assemblyman Scott Baugh, as this marks the first real attempt to legislate practical meaning to what is tantamount to a feeding frenzy upon the Construction Industry and the few remaining Insurance Carriers that still continue to underwrite policies within the State of California.

O.K! We're not perfect! At best, we are simply people that apply our professions and trades to provide somebody else with a product ... a house ... a home ... a better place to live and hopefully, we can make a living in the process!

We usually do our best to follow all aspects of which we are responsible to provide, following all Codes and Standards of Care and Workmanship to the best of our abilities ... Usually!

When we screw up and fall below the acceptable Standards of Care and Workmanship and leave in you with "DEFECTS", most of us have a deep professional sense of pride in our work and want to make things right.

What did we do that is DEFECTIVE? " Don't "pussy-foot" around the issues by making your allegations with innuendo and insinuation. Be specific! It's hard to clearly see the facts when the issues are clouded with "smoke and mirrors"!

Did we leave you with a building that:

1. Deviated from the Approved Plans or Specifications?
2. Used materials that were other than specified?
3. Used materials that are installed wrong?
4. Is in imminent peril of collapsing?
5. Will not provide you with the function as it was designed to function?
6. Allows water to invade the inside and get moldy?
7. Caused you a loss of personal property, or in property value?

It is imperative that the homeowners of Common Interest Developments be keenly aware that the homes they live in were designed and built as "PRODUCTION HOUSING" and not necessarily "CUSTOM-BUILT HOMES". This simply means that these Condominiums were intended to provide "AFFORDABLE" housing, that they were "MASS-PRODUCED" and that some degree of blemishes and irregularities are bound to occur.

Practically speaking, construction defects are, indeed, a very real problem. In many cases, they actually do exist. When they exist, there can be no other course of action than to make the homeowner whole. Repair or replace the work that is "TRULY SUBSTANDARD", in accordance with those Standards that were applicable at the time they were originally built.

However, until the time comes when we have a REASONABLE and LEGAL DEFINITION of "WHAT A CONSTRUCTION DEFECT REALLY IS," indiscriminate and frivolous defect litigation will continue to proliferate and remain deleterious to our economy and the availability of affordable home ownership.

How would you define a CONSTRUCTION DEFECT?

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