

## Selling A Home In Defect Litigation... A Negotiable Hurdle

How many times have you heard the phrase from financial advisers, insurance salesmen, brokers and even parents, "among the most important things you will ever do in your lifetime is buy a house." This particular piece of advice has one unique quality - it is absolutely true.

Unfortunately, this same group of well wishers uniformly neglect to mention a similar truth - problems can and will go wrong with "this once in a lifetime decision." Among the most critical of these well-kept secrets is the prospect that your home may be subject to litigation arising from poor workmanship in its build or design...in legal circles this is known as construction defect litigation.

Certainly, construction defect litigation impacts that third important reality in the modern age of home buying — YOU WILL SELL THE HOME AT SOME POINT IN TIME. Naturally, then, you want to protect the home, not just as a keepsake or out of loyalty and pride...but for its value. That important cash value you hope to reap is as a result of maintaining what is now commonly referred to as an "investment." It is this investment value

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that triggers concern when defect litigation is initiated. Paradoxically, often it is that same litigation that offers the best mechanism to obtain repairs which enable a property to maintain or restore its value. Construction defect lawsuits are a reality, with consequences typically less dire than a would-be home seller may fear.

A foremost concern for a would-be home seller is the impact construction defect litigation will have on the resale value of their home. In a case study of two projects which had undertaken construction defect litigation, it was determined that the impact of litigation on home values was negligible. In fact, the research illustrated that there was no discernible short or long term impact on the sale rates or values of homes within the projects studied. Additionally, as construction defect litigation has become more prevalent, California home buyers have become more knowledgeable regarding defect litigation. This increased knowledge and acceptance of defect litigation as a reality has diminished the negative stigma which, in the past, had been associated with construction defect litigation.

As professional advisers in the area of construction defect litigation, it is our role to apprise you regarding all aspects of construction defect litigation, and assist you with some simple advice and solutions on how to effectively address these issues

After all, it should come as no surprise, that to a homeowner and potential seller involved in litigation, one of your primary concerns is the uncertainty of litigation. To effectively sell a home it must be priced at market, and to successfully arrive at a market price, there must be certainty as to the condition of the home—from the time of purchase and

going forward. Owners, therefore, bear the responsibility of monitoring the status and outcome of litigation as it may affect the pricing and ultimate sale of the home.

How does the owner (involved in defect litigation) approach this issue of uncertain value? There are many simple and effective answers. First, the owner selects a real estate broker who possesses a clear picture of the litigation and its impact on the potential sale. This involves a broker that will take the time to research and work to understand the issues; a broker who remains apprised of the status of the case or investigation, in a way that allows them to persuasively and honestly articulate its impact on the sale of the home. Ideally, but not necessarily, the broker would have some background as to construction defect litigation. There are brokers who specialize in marketing communities in construction defect litigation, and who have knowledge of the prevalence of defect litigation in Southern California.

The homeowner must, in turn, work to insure that the broker remains informed as to the status of the litigation. This can be readily achieved through copying them on correspondence, e-mails, and documentation. Even a twice monthly case update call would afford enhanced dialogue on the status of the claim/case. The responsible homeowner who wants to approach the sale positively and proactively will provide the broker with as much information as possible on the status of the claim, and will also keep the broker in touch with the other professionals working on the claim such as attorneys and case experts.

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In addition, the construction defect firm involved should provide to the homeowners and association board of directors clear and definitive answers to questions that may impact the sale of the home. These questions include:

1. "What do I have to legally disclose to potential buyers regarding the purchase of the home?"
2. "What is the projected outcome and timeline for remedy to the claim?"
3. "What are the positive aspects to this case?"

As the law firm for the association, we help homeowners locate lenders who work with properties that are in litigation. James Cutri, a mortgage broker with Avalon Mortgage, has dealt with a number of clients whose homes were involved in construction defect litigation. "We have been extremely successful in obtaining financing, as well as refinancing for homes located in projects going through construction defect litigation," said Cutri. "It has been my experience, that the major obstacle to obtaining financing is gathering the pertinent litigation information required by the majority of lenders. Many times the homeowner's own attorney can cause great delays in processing a loan, due to their failure to provide us, i.e. the lender, this information. However, we have found that when a law firm responds quickly and thoroughly to all lender requests, we are generally able to successfully complete the homeowner's transaction," commented Mr. Cutri.

Referring to question number three above, often times owners involved in defect litigation fail to realize that the value of their home may have in fact improved. In some instances they are able to say, we had a problem, it has been fixed – forever – and the "fix" actually involved not only restored the home but provided added value, (i.e. in the form of a new roof or fixtures, etc.) Moreover, as a homeowner, one can back this statement up through independent parties that provided the repairs, or architects and engineers that can

attest to the improved structural quality of the home, over and above its original value.

In some instances, there may be an advantage to purchasing a home in a project that has successfully concluded a construction defect claim. You purchase knowing the exact nature of the problems which were litigated and, most importantly, that the Association received the funds to make the necessary repairs to the community. This often eliminates or minimizes the potential for special assessments for building repairs. Further, this is much more appealing than buying a home in a community which may have lost the right to bring a claim, due to statutes of limitation, and then be confronted with substantial special assessments levied by the Association to obtain the funds to make the necessary structural repairs.

All of the above advice really boils down to a simple approach – maintaining an ongoing dialogue with quality and informed professionals that are involved in the process of restoring the home's value. If you are aware, if you choose counsel wisely, and if you are diligent in your efforts to stay informed and keep others informed, you will be able to turn challenge into opportunity and make the second dream a reality – the successful sale of your home

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