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Right to Repair

By Jill E. Fox

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Yesterday, California appellate court gave California homebuilders the green light to enforce contractual "right to repair" provisions with an open-ended deadline to repair defects in newly constructed homes. California's statutory process gives a builder four weeks to inspect and test alleged defects, and another month to make any needed repairs before a complaining homeowner can file suit. (Ca. Civil Code §§ 895 *et seq.*) Builders may replace that process with another method of resolving construction defect disputes if the homebuyer agrees.

In *The McCaffrey Group, Inc. v. Superior Court (Cital)* (2014) 14 C.D.O.S. 3223, the Court of Appeal considered whether a contractual process for resolving such disputes was fair and enforceable, even though it gave the builder no hard deadlines to inspect or complete any agreed-upon repairs. The contract provisions, which were part of the initial owners' purchase agreements, gave the builders 60 days to respond to a homeowner's notice of defects, but no limit on days to make repairs before the owner could file a claim.

The homeowners argued these contract provisions were unfairly one-sided because, among other things, "they state no meaningful timeline within which [the builder] must act, thereby giving [the builder] a license to delay."

The Court of Appeal disagreed, finding the provisions were enforceable and implied repairs would be completed within a reasonable time. "Although the provisions do not contain set deadlines within which McCaffrey must decide to take corrective action or complete repairs, a reasonable time to perform may be implied." (*Id.*)

In 2003, the legislature amended California's Right to Repair Act (Civil Code §§ 895 *et seq.*) to require a specific process aimed at resolving construction defect claims before parties could resort to litigation. The Act lets homebuilders vary that process if the buyer agrees to it in the purchase agreement. But a variation must be fair and reasonable; if not, the builder may forfeit the right to repair defects before being sued.



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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