

Special points of interest:

- Unlicensed Contractor is Homeowner's Employee
- Broker's Duty to Disclose Does Not Run to Buyer's Family
- Amendments to CC&Rs Binding on Prior Purchasers
- Subsequent Owner May Sue Builder for Defects
- Prior Owner Not Liable for Injuries Resulting From Defects in Property
- Buyers Need to be Aware of Limitations in Home Inspections

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Newsletter

Unlicensed Contractor is Homeowner's Employee

The State of California requires most contractors performing work valued in excess of \$500 to be licensed. While the requirement is, at least in part, for the protection of the hiring party, it also imposes significant responsibilities on the hiring party when the contractor hired is unlicensed.

When a homeowner hires an unlicensed contractor to perform work for which a contractor's license is required, the homeowner is deemed to be the employer of the contractor. Among other things, that



means the homeowner must do the following:

- Pay the contractor minimum wage, or more, plus overtime, if worked.
- Provide two 10-minute breaks and one 30-minute meal period during each 8-hour work day.
- Provide a written pay stub showing total hours worked and the period over which they were worked, gross and net wages, name and Social Security number of the employee, name and address of the employer, hourly pay rate and all deductions required by law.

- Provide workers' compensation insurance (the homeowner's policy may provide such coverage).

- Have a written injury and illness prevention program in place.

- Provide safety and health training appropriate to the work being performed.

According to Cal/OSHA, so many workers are hurt and/or killed in home construction, it targets the industry for special enforcement.

For more information, contact Cal/OSHA at (800) 963-9424 or visit its website at www.dir.ca.gov/dosh.

Listing Broker Does Not Owe Duty to Disclose to Buyer's Children

In *Coldwell Banker Residential Brokerage Co. v. Superior Court*, 117 Cal.App.4th 158 (2004), the court held the real estate broker's duty to inspect and disclose applies only to a prospective purchaser and not to anyone else, including children of the prospective purchaser.

Plaintiff claimed he developed asthma caused by toxic mold in the home owned by his mother. He sued the seller of the house, the seller's broker and others, alleging they failed to disclose the existence of microbial contamination in the house.

After moving into her new home, plaintiff's mother noticed a moldy smell in the kitchen and downstairs bathroom. She had an environ-

mental test done, which showed a dangerous level of mycotoxins and mold spores. Plaintiff claimed they triggered his asthma.

The court recognized the duty of a real estate broker to a prospective purchaser of residential real property "to conduct a

reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective purchaser all facts materi-

ally affecting the value or desirability of the property that an investigation would reveal." It pointed out, however, that the duty runs only to the prospective purchaser, and not to anyone else, including members of his or her family.

**Post-Purchase CC&R Amendments Are Binding**

In *Villa De Las Palmas Homeowners Assn. v. Terifaj*, 33

Cal.4th 73 (2004), the court held that amendments to Covenants, Conditions & Restrictions (CC&Rs) are binding on all owners, even those who purchased prior to the amendments.

Plaintiff purchased her unit in 1995, and lived in it with her dog, which was against Association rules but not in violation of the CC&Rs. In 2000, the Association amended and restated its CC&Rs to include a no pet restriction.

Finding the CC&Rs to be enforceable, the court ruled in favor of the Association, and ordered plaintiff to pay the Association's attorneys' fees.



Subsequent Owner May Sue Builder for Defects

In recent years, the courts have delivered conflicting decisions about who may sue a builder for defects in property. In *Siegel v. Anderson Homes, Inc.*, 118 Cal. App.4th 994 (2004), the court reviewed all of those decisions and decided the current owner of a home with latent construction defects may maintain an action against the builder for any resulting damages.

Plaintiffs in that case purchased their homes and discovered the chimneys, roofs, windows and stucco siding had been installed improperly, resulting in leakage during rain storms. Because the

leakage was not obvious, the prior owners were not aware of it.

Even though the resulting damage began to occur before plaintiffs purchased their homes, they were entitled to recover from the builder. The original owners, who were unaware of the damage and no longer owned the homes, had suffered no compensable damage. Were the current owners not entitled to recover, there would, in effect, be no remedy for the defects in plaintiffs' homes.



Prior Owner Not Liable for Injury Caused by Defective Condition of Property

In *Lewis v. Chevron USA*, 119 Cal. App.4th 690 (2004), the court held that a prior owner of real property is not liable for injuries caused by a defective condition on the property after the owner has relinquished ownership and control, even if the prior owner created the condition negligently.

The employee of an electrical contractor performing work at a science laboratory was injured when a hot water pipe burst. The burst pipe released steam that burned plaintiff and caused him to fall, resulting in further injury.

Plaintiff argued the pipe rupture was a result of a poorly soldered joint. He sued the current owner of the premises as well as its former owner, contending the former owner had installed the pipe.

Based in part on the somewhat antiquated doctrine of *caveat emptor* (let the buyer beware), the court held the prior owner not liable. As another rationale for its decision, the court pointed out the prior owner "had no ability to inspect the pipe, test it or to warn workers coming onto the property about the . . . pipe. [It] could not obtain

insurance for property it did not own, or take precautions to prevent injuries after it had given up ownership and the ability to control the property."

In the *Lewis* case, the prior owner had sold the property more than eight years prior to the accident that resulted in plaintiff's injury. Had the sale been closer in time to the date of the injury, perhaps the outcome might have been different. The outcome would almost certainly have been different had the seller known of, but failed to disclose, a hidden defect in the property.



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Home Inspections: Buyer Beware

Most home buyers are aware (or are advised by their real estate professional) that they should obtain a home inspection as a condition of their purchase. This is an essential part of the transaction because it may alert the purchaser to problems with the property he might not otherwise discover. With today's home prices, it is important to have as much information about the property as possible before completing the purchase. The value of a home inspection is, however, limited not only by the expertise and thoroughness of the inspector, but also by the scope of the inspection.

A home buyer should read the inspection report carefully to determine its limits. Often excluded are items such as alarm and fire sprinkler systems, solar systems and detached decks and sheds (as well as other items not attached to the house).

In addition, a home inspector who is not licensed as an engineer, architect or structural pest control operator cannot operate in those capacities. He cannot, for example, evaluate structural calculations, such as seismic and load transfer systems, or soil issues, such as those related to expansive soils that might lead to movement of and damage to a home, both of which are exclusively within the purview of an engineer.

This publication is intended to provide accurate and authoritative information. It is not intended to render any legal or other advice about any particular transaction or circumstance. If you require legal or other professional advice, you should consult an attorney or other professional advisor.

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