



HOMEOWNER ASSOCIATION HAS NO DUTY TO DISCLOSE TO PROSPECTIVE PURCHASER

IMPORTANT INFORMATION

FOR ASSOCIATIONS AND MANAGERS WHO ARE PESTERED BY PROSPECTIVE PURCHASERS AND THEIR AGENTS FOR INFORMATION!

On January 4, 1996 a California appellate court ruled that an Association has no duty to provide information to prospective purchasers, even if there is ongoing construction defect litigation. The Association's duties are to the members (including the seller) and it is the seller that has the duty to disclose material information.

The case is *Kovich V. Paseo Del Mar Homeowners' Association* (1996) 41 CA 4th 863. Kovich bought a townhouse in a common interest development governed by the Paseo Del Mar Homeowners' Association. After escrow closed Kovich (as a new owner) discovered that the townhouses had cracked walls and slabs.

Kovich sued the seller and the association for negligence, fraudulent concealment, and intentional misrepresentation. Kovich alleged that the Association knew about the construction defects, had filed a construction defect lawsuit against the developer and was continuing to prosecute that action. Kovich also alleged that the Association kept the information secret and breached a duty to disclose the information to prospective purchasers so that those purchasers "could assess the proper value of the units." Kovich

argued that a homeowner's association performs quasi-governmental functions and owes a duty to disclose information to interested members of the public. The court rejected these arguments as without merit.

The court went on to say that Civil Code sections 1365, 1365.5, and 1368 do not impose a duty on homeowner's associations to disclose construction defects to prospective purchasers. A homeowner's association has a fiduciary relationship with its members, and must keep the members informed. The Civil Code sections do not extend this duty to anyone else.

The court did note, however, that in this case, there was no allegation that the information provided within the Civil Code section 1368 documentation was misleading or false. It also noted that the Association had not assumed any special relationship to the prospective purchaser and had not volunteered information which turned out to be misleading or false.

The Court held that no public policy would be served by requiring a homeowner's association to disclose construction defects to a prospective purchaser. Such a disclosure requirement would

impose an unreasonable burden on the association and require it to incur substantial costs to assemble the information, make a timely disclosure, and monitor all potential sales in the common interest development. The insurance costs would be enormous and subject it to a host of claims by disgruntled purchasers. Those costs would be passed onto the association's members, undermine the fiduciary duties owed by the association's board of directors, and subject the association to new theories of liability. The case against the Association was thrown out.

Practice Pointers:

1) *Do* provide seller/owners with proper CC§1368 documentation in a timely fashion. *Beware of overbroad forms!*

2) *Do not* respond to inquiries from prospective purchasers or their agents. Refer them back to the seller.

3) *Do* keep your members generally informed about Association business.

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