

Avoid the lure of construction defect litigation

By Jan A. Gruen
Gruen Law

If someone told you to jump off a cliff would you? With the exception of professional cliff divers, most would say no. The same should apply to taking steps that will forever impact the value of your home.

This article exposes the dangers of falling prey to a select group of lawyers who profit from soliciting homeowners to join construction defect lawsuits. What you are not told about these claims is far more important than what you are told.

Here are the facts:

1. There are enormous downsides to joining these suits.

Construction defect lawsuits decrease the value of your home and your community and may make your home unmarketable while litigation is pending. Let's face it, prospective buyers would much rather buy a house in a community untarnished by litigation, and "clean" homes resell more quickly for higher prices.

Often defect conditions are not real or are less serious than claimed and come with overinflated initial repair estimates. Under California law, these initial "bargaining chips" must be fully disclosed to future purchasers. At the time of resale, be prepared to disclose the lawsuit, claimed defects, all original recommended repairs and the original projected repair costs.

Unlike the lottery, the litigation process often takes years with the typical legal contract requiring you to foot the bill of lengthy litigation. There is also a risk that after attorney and expert fees and costs are subtracted, the money you receive could be less than what is needed to fix claimed problems. As a result, you will need to come out of pocket to fix deficiencies or, at resale, disclose the fact that certain conditions were not fully corrected. The prudent interested homebuyer will ask for a list of defects and corresponding repair receipts. This spells "Further Reduction In Sales Price" for any unrepaired conditions.

Pending litigation can impact on the availability and cost of home insurance. It can also make it close to impossible to

refinance your home because lenders don't like to loan money on unrepaired defective homes. You should also take a look at your deed of trust. You may be required to tell your lender of your involvement in a construction defect claim with any settlement money to go to your lender to ensure repairs are done. Lastly, many cities and counties now require owners to submit proof that all claimed building code conditions have been fixed.

Decreasing the value of your home with questionable resulting benefits makes it appropriate to consider alternatives. There is good news on that front.

2. There are effective ways to avoid the need to file suit.

First and foremost, be proactive. Protect

your home by reviewing and following your builder's maintenance recommendations. If you notice a problem with your home, use your home warranty and your builder's customer service department to your advantage.

Promptly notify your builder, and let the willing builder inspect and make

Construction defect lawsuits decrease the value of your home and your community and may make your home unmarketable while litigation is pending.

legitimate repairs. Follow these same steps when you are solicited by attorneys claiming your home is defective. A builder fix is free and should take far less time and energy to accomplish.

3. Before joining a suit, be prepared and ask the right questions.

When your community is blanketed with fliers and solicitation letters designed to scare you into thinking something is really wrong with your home, start by asking the soliciting lawyer to show you the claimed problems. Then have your builder to take a look. Don't stop there.

Ask the soliciting attorney about the legal and expert fees you will pay, who gets paid first (you or them), and how costs will be split among participating homeowners.

Find out what per-home settlement amount the attorney expects to recover, whether each homeowner will receive the same amount regardless of defects, what part of the overall settlement will go to you when all is said and done, and whether it will be enough to fix claimed defects.

SEE **Alert**, PAGE 11

Alert: Avoid defect litigation

FROM PAGE 7

Explore your ability to dismiss your case without penalty, likely problems refinancing, and issues related to decreased property values and disclosure.

Finally, find out what happens if you decide to let your builder fix defect conditions for free instead of pursuing litigation. Will you have to pay costs or an attorney fee based on the estimated "value of the fix" or some other formula? Read any proposed contract very carefully. The

answers you receive should lead you to the better conclusion: Avoid litigation if at all possible.

4. On rare occasions lawsuits are unavoidable.

If your home suffers from observable defects, contact your homebuilder and work with them to make repairs without the need for litigation. If you are unsuccessful and continue to face serious unrepaired defects, you may have to resort to litigation.

Under such circumstances, consult a reputable attorney who can advise you of whether your home's problems

are serious enough to warrant litigation and if the time has come to file suit. Otherwise, preserve the value of your home and don't jump into litigation.

Jan A. Gruen specializes in real estate, construction and risk management and has more than 12 years of experience handling single-family and multi-unit complex construction defect litigation.

Details: jangruen@gruenlawoffice.com.