

Let's Get It Straight On Construction Defect Liability

Guest Opinion: Thomas E. Miller, Los Angeles Business Journal

Week of January 19-23, 1995 - In the LABJ's Dec. 19 Guest Opinion Section, an article co-authored by Jeffrey Masters and George Calkins entitled, "Penalizing homebuilders is no way to do business", the authors sound a cry for immediate reform of prevailing construction defect litigation procedures.

Specifically, the authors prophecy, "The homebuilding industry as we know it is threatened as never before by costly liability claims." The last thing California needs, say the authors, "is the threat to the profitability and survival of the homebuilders industry." They then attribute the cause of this threat to the "new" liability environment purportedly driving up the costs of housing, which, they shamelessly add, could adversely affect future investment in California residential real estate.

Finally, to properly package their contentions, they pay the obligatory lip-service to issue(s) of quality assurance. And you can bet your prospective investment dollar that lip-service is all it will amount to.

First off, the construction defect industry could hardly be called "new", a point conveniently misstated. I've been in this business for more than a decade, and the reason for this is simply that the aforementioned "quality assurance" is non-existent.

One would think that given the evolutionary rise of this "new" liability environment (yes, like ancient Rome, it wasn't built in a day) commercial developers and building contractors would take current history into account and not simply "assure" quality, but ensure that the residential units, be they condominiums or single-family dwellings, were reasonably fit for habitation.

But this is passe. What the authors are really hoping for is governmental intervention in the guise of tort reforms, which will yield a real estate market that guarantees and "assures" the profit margins upon which they financed their business enterprise.

In short, what they are advocating undermines the freemarket mechanisms reflected in the supply-demand-price equilibrium. But this is precisely the function of "quality" in the free marketplace. Not more government.

In fact, the only real strategy to the reckless disregard of the risks entailed in sub-standard homebuilding is enforcement of quality assurance, not lip-service.

The future health of the so-called homebuilders "industry" remains the responsibility of the developers and contractors. It should be recalled that the fundamental premise of California construction defect law is that the developer/contractor will not be allowed to unilaterally dictate the terms of their legal responsibility.

As is the case with any market or "industry", only the quality survives, at least in the real work of prospective buyers, for what they bargain for is a corresponding dwelling unit reasonably fit and habitable. They didn't sign on to guarantee a market.