

Father And Daughter Are A House United

By Jennifer Heiger, The Orange County Register

Lawyers Thomas and Rachel Miller specialize in suing homebuilders for construction defects

June 10, 2001 - In the past 25 years, Thomas Miller estimates he's won more than \$400 million suing homebuilders for leaky roofs and cracking stucco.

As Orange County's most prominent champion of construction-defect lawsuits, he's sometimes blamed for escalating home prices - the cost, homebuilders say, of endless and sometimes frivolous lawsuits.

Whatever his impact on the market, he is one of the industry's biggest tormentors.

And he has reinforcements. Since 1994, Miller's daughter Rachel has worked at his Newport Beach law firm.

In 1999, the father-daughter team published a book to guide lawyers through the process of filing a construction-defect suit. Now they've written a handbook for consumers titled "Home and Condo Defects: A Consumer Guide to Faulty Construction." The book is due in stores this month.

Here Thomas and Rachel Miller talk about their relationship and their practice:

Q: A few years ago, you co-wrote a book about construction defects that was geared toward other lawyers. Who had the idea to put together a book for homeowners?

Rachel: It was Tom's idea. The need was pretty clear. Over the years, I've fielded calls from all sorts of property managers and homeowners, and they asked the same questions over and over. Sometimes people called wanting to order the book we wrote earlier, for lawyers, and I'd say, "No, that's not a book for the lay person." But we kept handing them out.

Q: How many calls does your office receive in a week from people wanting to talk about a problem with their home?

Rachel: About a dozen calls a week, and five to 10 e-mails a day.

Q: How many cases do you take?

Thomas: Our Newport Beach office, which basically covers Southern California, is working on 20 cases. We settle about one a month. They each take about two years to resolve.

Q: How do you determine whether a homeowner's problem is worth further investigation?

Are you able to rule out a lot of people based just on a phone call?

Thomas: It doesn't make sense to represent just one owner. We look for multiple owners with similar problems. Say we're talking about a development with 100 homes; we'd hope to represent about half of the owners. But generally the more expensive the homes, the fewer we need.

Rachel: When people call we complete a one-page form that briefly describes the problem, who the builder was and how old the home is. Knowing the builder's identity can be particularly helpful if we've sued the company before.

Thomas: We see some builders time and again.

Q: Tom, your name is pretty well known in Orange County, particularly among homebuilders. Does that very often make for uncomfortable encounters outside the office?

Thomas: Orange County is small in some respects but large in others. It's large in that there is no one place people tend to congregate. But I occasionally have spotted builders out at restaurants. I know people in the industry talk about me. I heard about one meeting where someone held up my picture with a big line drawn through the middle of it.

As far as I'm concerned, our firm provides a valuable service. I've gotten pretty thick-skinned over time. In fact, I have a yacht called "Sea of Defects" docked in front of my home on Balboa Island. It's raised a few eyebrows.

Q: Sometimes cases drag on for years. How do you keep clients from having a nervous breakdown?

Thomas: We have a contractor who takes care of immediate problems. We also provide monthly status reports and quarterly disclosure statements, which owners need if they decide to sell or refinance. And we periodically hold meetings with the homeowners.

Rachel: I frequently field calls on the weekend. I'm basically available 24 hours a day.

Q: Do you ever wish you chose a less-demanding career, Rachel? You could have been, I don't know, a dentist.

Rachel: I never was interested in the medical profession.

Q: Tom, I understand you have a son who also is a lawyer. Does he plan to join the firm?

Thomas: Yes, Matthew. He graduated from Hastings College of the Law last year. Whether he eventually does will be up to him.

Q: It's in the blood, I guess. Is your wife a lawyer by any chance?

Thomas: No, but we were high school sweethearts. At St. Anthony's in Long Beach.

Q: And you Rachel?

Rachel: No, I'm single.

Q: Rachel, what is it like to work with your dad? After all, this is the guy who used to set your curfew.

Rachel: I basically was raised in the practice, so I have a strong sense of what he is trying to accomplish. In high school I spent summer vacations answering the phone and filing documents. Now our offices are side by side and we share a balcony. In the morning we touch base over coffee, but the rest of the time, other than when we travel (together), we usually work apart.

I think we're maybe a little more open, a little more frank, because we're father and daughter, but we never argue.

Q: Growing up, did he encourage you to become a lawyer?

Rachel: He never said, "Rachel, you ought to be a lawyer," but he did tell me that the firm could offer me a unique opportunity.

Q: Is that how you remember it, Tom? Did you look at her in the fourth grade and see a budding partner?

Thomas: Well, she was very argumentative growing up. She and her mom had some huge fights. I usually tried to stay on the sidelines.

Read this before suing your builder

Suing your homebuilder is serious business.

It can take years to resolve a case and even then there's no guarantee you'll win. Here are some common-sense questions and some tips from attorneys Thomas and Rachel Miller to think about before you get started:

How old is your house? If it was built more than 10 years ago, you've probably lost the right to sue. The statute of limitations can be extended, however, if the builder attempted to fix the problem, in which case the limit is extended by the amount of time the builder spent on the repair work.

How many neighbors are experiencing similar trouble? Lawyers want to sue on behalf of a

large group of homeowners, not two or three, so the potential pay-off is enough to make their investment of time and money worthwhile.

Are you planning to sell the house soon? A lawsuit may be necessary, but it complicates things. As a seller, you basically have two options - assigning the right to any money that is recovered to the buyer, or accepting a lower sales price.

How much, if anything, are you able to pay upfront? Lawyers don't work for free, of course. In a construction-defect case, they generally get paid in one of three ways: They either get a share - say a quarter to a third - of any award but no money upfront; an hourly fee; or some combination of the two.

Have you tried contacting the builder? In some cases the builder will attempt to fix a problem even after the one- year warranty on the house expires.