

## **Construction Watch Lawyer Writes The Book On Building Defects**

John Hussar - Real Estate Editor, The Desert Sun Real Estate

### ***Call it the Case of the Undulating Carpet.***

**April 3, 1993** - It didn't take a Perry Mason to figure out what was causing the ropelike shape under the carpet of several homes at a Palm Desert gated community.

It was sand churned up by ants and even termites that had burrowed up through large cracks in the slab.

Attorney Thomas Miller said he's rounding up the usual culprits for this sort of malady - shoddy construction and materials.

Miller, a part-time Indian Wells resident with an office in Palm Desert, is one of a handful of attorneys in the nation specializing in construction defect law.

He said his new book, "California Construction Defect Litigation," is the first industry "bible" to give lawyers the legal foundation to investigate faulty ones.

The 735-page book, published by John Wiley & Sons of New York, is actually the second edition, updated with chapters on toxic wastes and legal changes, Miller said.

The book covers both residential and commercial litigation issues, including sample legal forms. It costs \$125 and is available from the publisher or from Miller.

Miller, who represents homeowners and homeowner associations, said the California Trial Lawyers Association decided only this year to recognize construction litigation attorneys as a specialty.

He said there are about a dozen specialists in Southern California. The CTLA estimated there are about 20 defect litigation lawyers in the state.

"Cases are coming out of construction litigation, especially since the '80s," he said. "No one in the '50s or '60s knew about defect litigation."

"We're seeing more (lawsuits) because homeowner associations are beginning to see more problems and are seeking recourse against the developer," said Miller, who spent 10 years of his career representing builders.

A tally of construction defect lawsuits in the valley was unavailable.

The San Diego-based attorney said he recently won a \$2.4 million lawsuit against a developer on behalf of 141 homeowners in Temecula. The suit alleged the developer failed to disclose the existence of a fissure that ultimately caused cracking of slabs, sink holes and other settling problems.

In what he describes as a "test case," Miller is in mediation of a suit involving a Palm Springs condominium development.

The homeowner association of the 8-year-old, 168-unit development filed suite against the developer, alleging a laundry list of defects, from roof leaks to window leaks to drain leaks from balcony patios.

He said repairs would cost as much as \$5 million, while lawyers for the developer think it would cost about \$1.2 million to fix. The attorney for the developer declined to comment.

"I'm anxious to demonstrate that these cases do work," Miller said.

The statute of limitations for filing lawsuits for construction defects is 10 years - making the Coachella Valley a fertile ground for possible suits because the desert's housing boom started about a decade ago.

Miller's staff has six suits in the mill and another six pending.

In the case of the Undulating Carpet, Miller's staff said they found significant slab cracks.

"In some instances, the cracks were there since construction," he said. "Out of 960 (units), at least 50 percent have cracks so significant that to fix it, it's going to take jackhammering out the slab and re-pouring the slab."

Faulty slabs, caused by improper mixing of materials or improper drying, are common defects in the desert, he said.

Any crack in a slab larger than a hairline could mean a defect, which could result in more cracking through time, especially from earthquakes.

Other common problems, Miller said, are cracking stucco, caused by improper stucco application, and cracked tile roofs, which often result in leaks.

"Roofs are a huge problem in the desert," he said. The problem: Basic workmanship, especially with large developments.

"They're cutting corners here, cutting corners there," Miller said. "And you end up with a roof that leaks. One big problem is building homes with tile roofs. Golfers out there hit errant shots that hit roofs and chip tiles. Water gets underneath (and leaks

into house)."

He said that's a cause for legal action because "the builder should have known that if you put a house next to a golf course, they should have used a stronger roof."

An alternative used by some builder is concrete tiles, which are stronger.

The searing desert sun also takes its toll on roofs - if they aren't properly installed, Miller said.

"What lasts 20 years on the coast may only last 10 years here," he said.