

He Fights For Owners Of Troubled New Homes

Russ Loar, Special to The Times, Los Angeles Times / Orange County Metro

September 9, 1996 - Thomas E. Miller Will Not Buy A Newly Built Home.

As an attorney who has spent the last 15 years helping new home buyers recover damages for leaky roofs, shifting foundations and cracking plaster, he believes the odds of finding a trouble-free house or condominium aren't good.

"You've got a 50% chance or less of finding something that meets minimum building standards," said Miller, the 48-year-old author of two textbooks on California home construction defect law. "We're not talking about great craftsmanship. We're just talking about a builder who complies with the minimum building code standards."

After spending the first part of his 23-year legal career representing developers, Miller switched sides in 1981 to fight what he terms a near-epidemic of faulty home construction in Southern California. A shortage of journeyman carpenters and skilled subcontractors is only part of the problem, he said. "You've got the builders looking at the industry, not from a sense of pride, but from a business perspective. I'm not faulting them, but there used to be a nice blending of pride and profit. Now we mostly see the profit side of the equation. We see builders who are now publicly traded corporations. And we see the family home builder going out of business. They're getting squeezed out of the business by the bigger conglomerate builders."

Miller dates the decline of home-building standards in California back to the 1980's real estate boom. "The mass production of homes became a huge profit center for the builders. The demand for new homes was significant and the banks were lending a lot of money to the developers to build these projects. There were no lending limits and the builders were moving rapidly from one project to the next."

Changes in the law have given homeowners new leverage in seeking compensation for construction defects, Miller said. But some of the biggest settlements are shielded from public view.

"Developers spend tons of money building their image. If you read their sales brochures and their sales literature, all of that presents a strong image to the home buyer: They've been in business for many, mean years and they've built all these wonderful developments. If we really dig deep enough, you will find out that most of these major home builders have been sued time and again for construction defects. But they like to bury their mistakes. We are often asked to enter into a confidentiality agreement where we cannot disclose the nature of the settlement, who the builder was, or anything about the problems of that development."

Much of the legal leverage Miller uses to represent home buyers stems from the precedent-

setting 1981 Del Mar Beach Club case, a case he lost. He was representing San Diego condominium developers being sued by residents who were worried about the rapid rate of soil erosion on the bluffs near their building.

"The residents filed a motion with the court to say that buying a condominium should be no different than buying any other kind of consumer product - like a car or hair dryer - therefore the burden for any problems ought to shift back to the manufacturer, or the developer in this case."

California law had previously required proof of negligence before damages could be recovered. But a state appeals court in San Diego sided with the condominium owners.

"The court of appeals came back and said strict liability is going to be the standard henceforth in California. That was a pivotal point in my career."

Soon after the court decision, Miller stopped defending developers and began his own law firm, to represent homeowners and their associations. He has since found that the most common problem reported by new home buyers is water leakage. "That's a signal. If the builders can't get that right, what have they done with the more difficult portions of the structure?"

Home construction defects also frequently involve soil grading and the overall stability of the building. "For example, you have anchor bolts that are supposed to be tied down to the foundation. But so many times we find them either misplaced or not tied down, or not enough of them. In an earthquake, that kind of problem can cause the home to shift off its foundation."

Miller considers it cheap insurance for the prospective home buyer to hire an independent, licensed and bonded inspector to take a close look at the building and its architectural plans. And he warns new homeowners that once a problem is detected, they only have three years to bring legal action against a builder, who may try to stall them with temporary repairs.

Profile: *Thomas E. Miller*

Age: *48*

Hometown: *Pittsburgh*

Residence: *Balboa Island*

Family: *Married to Christine; two adult children*

Education: Bachelor's degree in communications from Cal State Long Beach; law degree from the UC Hastings College of Law in San Francisco

Background: An attorney with the San Diego law firm of Higgs, Fletcher & Mack for seven years, representing developers and homeowners; founded his own law firm in 1981 to exclusively represent the victims of faulty home construction; moved his law firm to Newport Beach in 1994, with satellite offices in San Diego and Los Angeles counties; a

member of the state's Legislature's task force on the future of home building

Academic: The author of two textbooks on construction defects; an instructor in courses on construction defect litigation at Cal State Long Beach and UC Irvine; Thomas E. Miller Mock Trial Room dedicated in his honor at California Western School of Law in 1995

On Home Builders: "If you really dig deep enough, you will find out that most of these major home builders have been sued time and again for construction defects. But they like to bury their mistakes. We are often asked to enter into a confidentiality agreement where we cannot disclose the nature of the settlement, who the builder was, or anything about the problems of that development."