

## **Falling Between the Cracks**

by Hubble Smith, Las Vegas Review Journal

### **New-home owners face plethora of worries, but builders say exaggerated claims strangling industry**

**February 2, 2003** - For Tony Ayres, the construction defect trial that's expected to go to deliberation this week at the Clark County Complex Litigation Center has all the importance of a murder trial.

He feels like he was shot down by Beazer Homes in 1996 when he purchased a \$125,000 home plus upgrades at Village at Craig Ranch in North Las Vegas.

Ayres testified in court that the expansive soil condition that caused quarter-inch and half-inch cracks in his walls, ceilings and foundation never was disclosed at the time of purchase.

He's part of a \$25 million class-action construction defect lawsuit pitting 200 Craig Ranch homeowners against Beazer. The trial began in early November and closing arguments are expected to be heard Tuesday or Wednesday.

"I've almost lost my job because of this," said Ayres, a commission salesman. "I've missed work for construction repairs. I've missed work for the trial. I've had to change vacations. I've had to cancel company. I've been here when nobody showed (for repairs).

"People say, 'You're overexaggerating.' Since 1996, I've lost all the enjoyment in life I should have had. Now what's the price for that?"

Construction defect litigation is being called the ticking time bomb in the home-building industry, an explosive issue that has caused heartaches for homeowners, headaches for builders and blackholes for insurance companies that end up paying million-dollar settlements.

With seven new construction defect lawsuits being filed on average each month, the number of cases pending in Clark County's 8th Judicial District Court has grown to more than 200, creating a system overload.

"Construction defect litigation is a cancer growing on the construction industry, and it is slowly killing all of its victims," said Steve Bottfeld, owner of Marketing Solutions, a Las Vegas research and marketing firm.

He said those who are most negatively affected are those the litigation was designed to protect: the home buyers.

"The lawyers may argue that construction defect litigation gives consumers a great deal of

money for pain and suffering over minor cracks from (ground) settling or similar problems," Bottfeld said.

"But, somehow, consumers are never told that a notice can be attached to the titles of any home involved in construction defect litigation. So those homes are harder to sell and generally don't get full value when sold."

It seems no builder is immune to getting sued, regardless of their reputation, competence or past performance.

Defendants in pending cases include Del Webb, Pardee, Peccole Ranch, American West Homes, Kimball Homes, Nevada Homes, Stanpark and Richmond American.

"Over the past two years, Las Vegas has lost about 60 home builders because profit margins have become thin as a result of rising costs, including costs from construction defect litigation," said Irene Porter, executive director of the Southern Nevada Home Builders Association.

Only a handful of companies are building attached housing such as condominiums and townhomes, a critical product for many entry-level home buyers, because those projects are a lawsuit waiting to happen. Several builders have said they must factor the cost of litigation into every project.

Thomas Miller, a California attorney who has formed a partnership with the Jimmerson Hansen law firm in Las Vegas to handle construction defect cases here, said the solution is simple: Build better houses.

"It costs three times more to repair and fix these homes than if they'd done it right in the first place," Miller said.

With nearly 23,000 new homes sold last year in Las Vegas and about the same projected for this year, builders are being pressed to meet the strong demand.

"In that process, quality takes a back seat," he said. "Trying to keep up with supply and demand, production mistakes come along the way."

Miller, who has recovered \$450 million in construction defect settlements, said the problem starts in the planning stage, with builders giving just enough details to get their permits approved.

"Once they're in the field, it's really a lack of supervision. Nobody's doing a good job of coordinating in the field," he said. "Pardee did a better job in-house to see that internal checklists were being followed in the field."

"And the quality of the building inspection process in Las Vegas suffers because inspectors are just so overworked the builders feel like they can get away with murder. There's no

legal liability."

Home builders might have to stick with their projects for 10 years to prevent construction defect litigation and other problems, said state Sen. Mike Schneider, D-Las Vegas.

The backlog of lawsuits has led the District Court to come up with a fast-track approach to resolution, said Michael Sommermeyer, information officer for the court.

The Clark County Complex Litigation Center, which recently opened at 333 S. Sixth St., allows judges to hear status checks on lawsuits sometimes involving hundreds of homeowners, dozens of contractors and a horde of lawyers.

The center has the county's largest trial courtroom and can seat as many as 40 attorneys at once. It is large enough to allow more participation in the judicial system.

"The court is working hard in the best interests of homeowners and contractors to move cases to trial or settlement as quickly as possible," Sommermeyer said.

A satchel full of motions is filed before a case reaches trial, and once a trial begins, it can last for months, as happened with the Beazer trial.

Judges Nancy Saitta, Allan Earl and Michael Cherry presided over a week of status checks in November to determine which cases are ready for trial, close to settlement or need more preparation.

"These cases are new and unique litigation for Clark County," Saitta said. "As a result, we have had to think outside the box, effectively inventing a process to handle them."

Also, by requiring all of the attorneys to be present at these hearings, everyone involved quickly can learn where they stand in the process and determine if a particular case is ready for trial or close to a settlement, the judge said.

Steve Hackney, president of the Southern Nevada Home Builders Association, said the Legislature needs to reform laws in this year's session to curb runaway defect litigation.

To that end, the home builders joined forces with the Nevada Subcontractors Association, the Associated Builders and Contractors and the Associated General Contractors to form the Coalition for Fairness in Construction.

Representatives from the coalition will be lobbying politicians in Carson City to give home builders and subcontractors the "right to repair" construction problems before being slapped with lawsuits, said Steve Hill, chairman of the group.

Ayres said he gave Beazer many chances to fix his home.

"We went to Beazer multiple times and they fixed it multiple times. That's the problem," he

said. "The cracks are still recurring. I think it's important for people to know what's going on in our community. They should be aware of potential problems with expansive soils in North Las Vegas."

Kent Lay, senior division president of Beazer, said he couldn't comment in detail about the nature of the Craig Ranch situation because of its active legal status.

"However, what I can say is that Beazer Homes remains dedicated to our mission of providing quality homes at reasonable prices," Lay said in a prepared statement.

"We recognize the concerns of the impacted homeowners in the Village at Craig Ranch. To that end, we have engaged leading engineers, architects and design professionals to evaluate the reported problems.

"Based on their analysis, we are convinced that the plaintiffs' claims grossly exaggerate both the number of homes that require significant work and the type of remedy needed. This case is not about whether Beazer is prepared to address legitimate issues, but about determining the appropriate nature and scope of the corrective measures for each of the affected homes."

Miller said it's not just Las Vegas and Clark County that have these problems, and it's not just trial lawyers creating a new revenue pool for themselves, as some builders claim, after legal reform dried up litigation in California.

"These insurance companies, they have their own lawyers and experts," he said. "They go out and see these problems firsthand. When they go out and see these are not trumped-up charges, they start laying out millions because they know if they go to trial, they're going to lose nine times out of 10.

"Insurance companies are not in the business of handing out millions of dollars. If these (charges) were trumped up, they would take a stand. These juries are coming in with large settlements. This is not just the lawyers."

Defect litigation has left many insurance companies skittish about covering Southern Nevada home builders and trade subcontractors, making it difficult for them to find insurers. When they do, it's at premiums that have tripled and quadrupled in the past couple of years.

"The skyrocketing cost of liability insurance and the availability of insurance for builders, subcontractors and suppliers may be the single largest threat to the future of home ownership in our community," Hackney said.

A California lawyer who represents builders and their subcontractors for a major insurance company said she's concerned about large payouts in construction defect cases driving up the cost of insurance and causing insurers to cancel or stop writing liability policies.

"I am skeptical of the insurers' position that they have to stop writing policies due to the high cost of these claims," said the attorney, who requested anonymity. "But I am told this is a legitimate problem, although I note most carriers continue to turn a healthy profit.

"As for railing on the construction industry, most of the problems occur in housing tracts, not surprisingly. There are some developers who routinely build them as quickly and as cheaply as possible, don't coordinate the subcontractors, and have no interest in customer service or warranty repairs after the ink has dried on the notice of completion.

"But this is the minority. Most builders try to do a good job. They just can't watch everything all the time. When problems do occur, they usually try to solve them, and few result in litigation."

She said the situation has gotten out of control in California because swarms of attorneys from Los Angeles and San Diego have blanketed entire subdivisions and, in some cases, entire towns, persuading homeowners who otherwise aren't looking for trouble to join a lawsuit with promises they will get money and not have to pay anything out of their pockets.

Once they have 300 to 400 homes in the case, the attorneys -- who use the same experts for every case, some of whom work on commission -- file a lawsuit alleging defects in every possible category, from roof and window leaks to frivolous claims such as "lack of paint on top edge of closet door" or "hot water takes too long to come out of faucet."

"They then make a sky-high demand and settle it for something less. There are no caps on settlements here," the attorney said.

"I routinely see repair estimates that exceed the cost of construction, sometimes by two or three times. My experience, however, is these cases usually settle for 30 (percent) to 40 percent of the homeowners' initial number.

"This may not sound like a lot, but when there are a hundred cases with demands that start at \$20 million, that's a lot of money."