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AB449-Further Protection from Construction Defects

Presented by
Nevada Trial Lawyers Association

April 8, 2003

ASSEMBLY JUDICIARY

DATE: 4/8/03 ROOM: 3138 EXHIBIT 0

SUBMITTED BY: SCOTT CANEPA

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AB449-Requires builder disclosures §1

- Disclosure of prior defect claims

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indication from them that the courts are awarding excessive attorneys' fees. However, the judges addressed case management issues and were not specifically asked about attorneys' fees. In addition, the minority opposes an arbitrary cap on expert fees and costs that would preclude the homeowner from hiring competent, qualified contractors to diagnose the problems with the construction in order to present the claim properly.

The Task Force recommends that a third-party review board be established to review claims before they go to court to determine whether a construction defect exists. The minority feels that screening panels, such as the recently abolished Medical-Dental Screening Panel, are inefficient and would only serve to delay the homeowner's ultimate day in court.

The Task Force recommends that a plaintiff in a construction defect case be required to submit a final list of defects before a court date is set, that the Legislature determine a time limit for the court proceeding to begin after the final defect list is submitted and that any new defects discovered after the final list is submitted must be litigated in a separate lawsuit. The minority feels that this would unnecessarily impede the court's right to manage its own docket and that it would increase insurance costs by requiring a new lawsuit whenever additional defects are discovered.

The Task Force unanimously recommends that the Legislature consider ways to make the mediation process more effective and efficient.

SUBCONTRACTOR LIABILITY: The Task Force recommends that "joint" liability be removed or limited in construction defect actions so that each party is liable only for his actions and not the actions of others. The minority feels that this is not a major cause of the insurance problems and that a homeowner who is the victim of faulty construction should not be precluded from receiving a full recovery on account of the rule of law.

CONSTRUCTION QUALITY: The Task Force unanimously recommends requiring ongoing demonstrable proficiency for licensing within the construction and building trades. This includes mandatory baseline educational requirements that demonstrate proficiency to obtain a license and mandatory continuing education to maintain a license.

The Task Force also recommends that contractors and their insurers be required to report

DISCLOSURES: The Task Force recommends that contractors be required, upon request, at the time of sale of a new home, to disclose to the buyer any closed construction defect claims.

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AB449-Requires builder disclosures §1

- Disclosure of prior defect claims
- Disclosure of prior contractor board complaints

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The Task Force also recommends that contractors and their insurers be required to report all closed construction defect claims (both settlements and judgments) to the State Contractors Board and the Division of Insurance. The minority worries that reporting closed claims to the Contractors Board would improperly cast a shadow on the contractor's license. The minority also questions whether settlements and judgments should be reported to the Contractors Board when the homeowner is made whole as a result of the settlement or judgment.

AB449-Requires builder disclosures §1

- Disclosure of prior defect claims
- Disclosure of prior contractor board complaints
- Disclosure of insurance

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contractor. A minority of the Task Force believes that if a judge determines a settlement is made in good faith, the contractual indemnity provision should be void, allowing the subcontractor out of the case. Other members of the Task Force believe that if the subcontractor is allowed out the case, the issue that involves the subcontractor should be removed from the case as well. The Task Force does not recommend this action.

DISCLOSURES: There was discussion regarding whether contractors should be required to disclose to new homebuyers whether or not they carried general liability insurance during the course of construction. A minority feels this would be important information for consumers to have when going into one of the most important transactions of their lives. Other Task Force members, however, feel that this would be a bad business practice and that the information would not be helpful to consumers.

2. The Task Force was asked about the status of legislative endeavors in surrounding states during the last year, how such legislation compares to Nevada and the status of the price and availability of insurance in those jurisdictions. Attached to this report is legislation recently enacted in Arizona, California and Washington. The NTLA believes the Arizona and Washington statutes are similar to Chapter 40 in that they all give the homeowner the right to accept or reject repairs offered by the contractor. It is not yet known what effect legislation in surrounding states will have on the price and availability of insurance there.
3. The Task Force was asked about specific builders who have been sued repeatedly and what effect they have on the price and availability of insurance. Attached is a list of construction defect cases in Clark County provided to the Task Force from the Legislative Counsel Bureau. Also attached is an informal survey from the NTLA regarding construction defect cases in which its members have been involved. The Task Force does not know the effect of these specific builders on the price and availability of insurance.
4. The Task Force was asked the median or average cost of new homes in Nevada, the history of that cost over the past five years and what percentage of that cost is attributable to the price and availability of insurance. The Task Force received information on the median cost of new homes in Nevada, but did not ascertain what percentage of that cost is attributable to the price and availability of insurance.

AB449-Requires builder disclosures §1

- Disclosure of prior defect claims
- Disclosure of prior contractor board complaints
- Disclosure of insurance
- Disclosure of subcontractors
- Disclosure of building code violations

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NRS 116.4115 Exclusion or modification of warranties of quality.

1. Except as limited by subsection 2 with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(a) May be excluded or modified by agreement of the parties; and

2. With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

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AB449-Clarifies time bar statutes

- §2 – Protection during developer control or repair-”tolling”
- §3-8 – Eliminates confusion between limitations and repose

0 10.15.22

AB449-Stops repeat offenders

- §9 and §22 – Permits appropriate disciplinary action

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Let me make sure we're on the same page. The board can still take evidence but cannot act on it. They cannot discipline a licensee for construction defect claims. Those have been, by the legislature, have been set aside for the District Court to handle, not the Nevada State Contractors' Board.

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there was no disagreement from beginning

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hearing process.

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Now, the transcript of proceedings, which is

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R-6, if you look in the transcript there are several

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comments between myself, the board chair at the time

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and Mr. Haney where we again repeat the agreement

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that the board could only take evidence, could not

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discipline the licensee for construction defects.

2/17/2003

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AB449-Stops repeat offenders

- §9 and §22 – Permits appropriate disciplinary action
- §22 – Contractor may apply for reinstatement if reversed on appeal

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AB449-Makes victims “whole”

- §10 – Permits recovery of “stigma” damages caused from disclosure
- §10 – Clarifies that builder fraud is not protected

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AB449-Quick relief from imminent harm

- §11 – Requires prompt repair of life/safety defects
- §11 – Eliminates red tape

VANNAH COSTELLO CANEPA RIEDY RUBINO & LATTIE

AN ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL CORPORATIONS

FROM THE OFFICE OF:
MICHAEL C. RUBINO

1850 EAST FLAMINGO ROAD, SUITE 236
LAS VEGAS, NEVADA 89119

TELEPHONE: (702) 369-4161
FACSIMILE: (702) 369-0553

May 24, 2001

Robert Weber, Director
Clark County Building Department
500 South Grand Central Parkway
Las Vegas, NV 89106

Re: *Canyon Willow HOA v. Torino et al.*
NRS 40.670 Defects Which Create Imminent Threat to Health or Safety

Dear Mr. Weber:

This firm in conjunction with Harrison, Kemp & Jones represents the Canyon Willow Homeowners Association in the above-referenced lawsuit, which arises out of multiple and pervasive construction defects that exist throughout the community.

Investigations by experts Linda Stetzenbach, Ph.D., and Environmental Health Services, of the deficiencies in this community, have revealed the existence of mold contamination in numerous

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NRS 40.670 provides that where a building inspector employed by the governmental body with jurisdiction certifies that there is an imminent threat to the health and safety of the inhabitants of the residents, the contractor is required to take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under law. NRS 40.670.

As to all attachments
5/25/01 9

LAW OFFICES

VANNAH COSTELLO CANEPA RIEDY RUBINO & LATTIE

Robert Weber, Director

Clark County Building Department

Re: Canyon Willow HOA v. Torino et al.

NRS 40.670 Defects Which Create Imminent Threat to Health or Safety

May 24, 2001

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as expeditious a manner as possible, given the health and safety concerns. As such, your anticipated prompt attention and assistance in this matter will be greatly appreciated. Of course, if you have any questions regarding any of the above, or the enclosed documents, please feel free to contact the undersigned. In addition, we will look forward to hearing from your office soon with respect to scheduling inspections and obtaining a determination/certification from your department concerning whether an imminent threat to the health and safety of the residents of these mold contaminated units exists.

Very truly yours,

VANNAH COSTELLO CANEPA
RIEDY RUBINO & LATTIE



MICHAEL C. RUBINO, ESQ.

MCR:rdg

Enclosures

cc: William L. Coulthard, Esq. (w/encl.)

Sherryl Baca / Community Mgmt. (w/o encl.)

Canyon Willow HOA Board of Directors (w/o encl.)

All Counsel (w/o encl.)

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OFFICE OF THE DISTRICT ATTORNEY

CIVIL DIVISION

500 S Grand Central Pkwy • PO Box 552215 • Las Vegas NV 89155-2215
(702) 455-4761 • Fax (702) 382-5178

STEWART L. BELL
District Attorney

Michael C. Rubino, Esq.
June 29, 2001
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The building department does not have the

examination constitutes an imminent
threat. This question should be directed to
stand and interpret your experts'

qualifications to determine or certify as to whether the contamination constitutes an imminent
threat to the health and safety of the inhabitants of the units. This question should be directed to

Las Vegas, Nevada 89119

Re: Canyon Willow HOA v. Torino, et al.

Dear Mr. Rubino:

This responds to your letters of May 24 and May 29, 2001, to Robert Weber, director of the Clark County Building Department. You requested that the building department investigate the mold/fungal contamination conditions at Canyon Willow and issue a determination/certification as to whether an imminent threat to the health and safety of the inhabitants of the units is created by those conditions. As support for your request, you attached reports by your experts, UNLV and Environmental Health Services, outlining the results of their microbiological investigations at the Canyon Willow-Pecos condominiums. For the following reasons, the building department cannot comply with your request.

The County is authorized to adopt building codes specifying the design, soundness and materials of structures, and may adopt regulations to enforce the building codes. See NRS 278.589. The County may provide for the inspection of structures by means of withholding building permits, and for this purpose the County may establish the position of county building inspector. See NRS 278.570. The building department is to accomplish its work through an engineering plan check of all proposed construction, granting of building permits, and inspection of construction in progress. See Clark County Code 2.02.010. The County has adopted building codes, including the building code of Clark County, the plumbing code, the mechanical code, and others. See Clark County Code 22.02.030.

The building codes that have been adopted by Clark County address the engineering aspects of building design and construction. The expertise and jurisdiction of the building department relate to the matters covered by the building codes. The building codes do not address mold and fungal contamination. The building department does not have the

CMJ:vb

cc: Robert Weber, Director, Department of Building

By:
CLIFFORD M. JEFFERS
Deputy District Attorney

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AB449-Quick relief from imminent harm

- §11 – Requires prompt repair of life/safety defects
- §11 – Eliminates red tape
- §11 – Discourages bad faith conduct
 - Limitation on damages no longer applies
 - License subject to revocation

AB449-Building homes correctly

- §13 – No C of O without lot drainage certified
- §14 – No building permit without soils/foundation design approval
- §15 – No building permit without structural design certification
- §15 – No C of O without certification of structural construction

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AB449-Building homes correctly

- §18 – Mandates practical examination
- §19-21 – Mandates continuing education

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