

## **From Living Rooms to Courtrooms – Frustrated Owners Increasingly Seek Legal Redress for Problems**

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**By Loretta Kalb -- Bee Staff Writer**

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In Laguna, a couple can't stop mold from forming on a window sill. In Roseville, an owner watched in horror as workers tore apart a bathroom wall riddled with decay. In Southern California, owners cope with ground that subsides and doors that won't close. Across California, hundreds of dissatisfied homeowners each year take their frustrations out of living rooms and into courtrooms.

In the first six months of this year, awards from verdicts and settlements from construction-defect lawsuits exceeded \$75 million in California, up from \$47 million in the first half of 1995.

"This is not what a new home buyer deserves," said Laguna homeowner Derick Rojo, his daughter playing on the bare kitchen slab once covered by vinyl flooring. "It's a nightmare."

Nightmares come in many forms.

In meeting rooms, besieged builders describe an "epidemic of litigation." They say they are hammered by frivolous lawsuits that are boosting liability insurance rates and threatening construction of affordable housing.

But like winter storms striking a leaky roof, the lawsuits keep coming.

A faulty plastic drain pipe breaks and spills its hideous contents in hidden reaches of the structure. Rainwater intrudes under roofing, beneath windows and behind stucco.

Walls crack. Slabs settle. Lots flood because of poor planning or inadequate drainage. Siding buckles. Corrosion creeps through metal

fasteners. Windows and exterior stucco need replacement. Electrical and plumbing systems fail.

No public agency tracks lawsuits throughout California, where 95,000 homes are being built this year. But a check of complaints against 25 builders in Sacramento and Placer counties reveals more than a dozen cases that are active, tried or settled. Among them:

- \* Last year, a jury awarded \$4.4 million in a defects case brought by 30 homeowners in the Hillsborough at Lexington Hills subdivision in Folsom. A few months later, the judge reduced the amount by nearly \$1 million, and subsequent settlement discussions reduced the award again - to \$3.1 million.
- \* Encouraged by the initial success, owners of another 41 homes in the same Hillsborough subdivision filed suit against the developer, Sunland Communities of Northern California Inc., complaining of plumbing leaks, shifting and buckling walls, and defective exterior stucco.
- \* In Roseville, owners of the 75-unit Cirby Hills Townhomes filed suit against the builder after the end of a seven-year drought exposed myriad problems. The lawsuit cites defective wiring, landscaping, window flashing, decks and more.
- \* In Rocklin, 15 plaintiffs in the Tiara Woods subdivision of Stanford Ranch filed suit against Camray Development and Construction Co. complaining of defective stucco, windows, plumbing and electrical systems.

Lawyers for defendants said, however, that the lawsuits overstate problems and that their clients are quality builders.

Virtually anyone who purchases a new home learns that minor defects creep into any construction project and that many builders make the necessary repairs quickly.

But major defects don't creep. They hit hard, sometimes pushing owners into months of letter-writing, pleading and, finally, demands for repairs preceding a lawsuit.

"It's been my experience that people who end up filing a lawsuit don't want to file," said Wendy C. York, the Sacramento attorney representing the Rojos. "It turns people's lives completely upside down. It subjects them to probing by the defense attorney.

"They don't want that. They just want their house corrected."

City and county building inspectors cannot guarantee a house has no defects. Instead, they are charged only with making sure that a home under construction meets minimum health and safety standards.

While some examples of shoddy construction in California are undisputed, many builders say these are in the minority.

"Generally, construction today is much better than it was 10, 15, 20 years ago," said Michael Heim, president of Kaufman and Broad of Central Valley Inc.

"I think that regulations combined with a larger awareness on the part of the builders and their social responsibilities have contributed to overall better quality."

A court-appointed construction defect mediator doesn't see it that way.

In past years, apprenticeship programs and trade unions helped skilled workers dominate the work force. That changed when demand for housing fueled large-scale production and the need for workers skyrocketed.

"They took anybody they could find who could swing a hammer," said the mediator, Kevin Midlam, who last year retired as a Superior Court judge in San Diego County. "All of a sudden, a person who was in the trades for 20 years and was a journeyman was standing next to someone who just put on a utility belt."

Midlam said home construction has "never returned to the quality that existed in this country post World War II and into the 1950s."

Today, say plaintiffs' lawyers, the situation is worsened by builders' falling bottom lines, budgets that are too small, and too little field supervision.

Builders often don't give architects enough money to prepare a detailed set of drawings, said Thomas E. Miller, a Newport Beach attorney who has won \$150 million for plaintiffs in construction defect and ground subsidence cases over the last 15 years.

"They put them on a very tight budget and give them enough money to get through the . . . plan check," Miller said.

Many of the notable awards in California have involved condominiums and common-interest developments, where money for legal costs is pooled.

In these cases, builders complain that attorneys are on the prowl for hefty fees, encouraging owners to file suit. Then they overstate problems to drive up awards.

"There are always big sums involved," said building executive Mick Pattinson, who heads the litigation task force for the California Building Industry Association. "They are almost always exaggerated."

Settlement awards to homeowner associations and condominium owners are sometimes large: \$15.2 million in February for plaintiffs in a Century City condominium, and \$23 million in December for condominium owners in Orange County.

Now builders say they have had enough.

This year, the California Building Industry Association fostered bills in the Legislature to restrict how much injured consumers can claim in defect damages, diminish the standard of liability applied to developers and shorten the 10-year time period in which an owner can sue for latent defects.

These key measures were defeated with opposition from homeowner and attorney groups, including Consumer Attorneys of California, formerly the California Trial Lawyers Association, the Executive Council of Homeowners and the Community Associations Institute, in which members combined exceed 10 percent of California's 30,000 homeowner associations.

The legislation, in principle, remains on the building industry agenda. And some say the drive has grown stronger with more aggressive industry leadership.

CBIA's Pattinson became a key proponent, "and the feeling was, 'We're going to take the gloves off,' " said Robyn Boyer Stewart, legislative representative for the Executive Council of Homeowners.

Many builders, meanwhile, have increased emphasis on customer-relations programs, offering either insured or builder-backed one-year

warranties. They represent a promise that certain repairs will be made, usually within the first year.

In Washington, the National Association of Home Builders in May issued a proposed strategy for builders to improve their public image.

But more than public image is at stake.

In the living rooms where owners must cope with defects, the issues take on a highly personal cast.

Five owners in the 75-unit Cirby Hills Townhomes have formed a prayer group in their quest for winning their defects lawsuit and for repairs to their property, said Millie Beatie.

When the rains hit last winter, water poured through Beatie's downstairs bathroom window. By then, the inside of the wall had rotted.

"Everything was taken out," she said. "It was completely gutted - floors, walls, bathtub and toilet."

Owners are seeking several million dollars in the suit.

John Ball, an attorney for defendant-developer Cirby Hills Investment Group, declined comment on the case.

Stephen Pass, an attorney for the general contractor, Charter Land and Investment Corp., also wouldn't discuss the specific suit. But Pass observed that a "great majority of these cases do settle, in part simply because of the high cost of litigation. And the plaintiffs' lawyers know that, of course."

In the Rocklin suit against Camray and others, plaintiffs' homes have serious defects, said their attorney, Robert T. Haney.

"They have massive water intrusions," he said. "When you buy a home, you don't expect to have to pay thousands of dollars to get it fixed."

Attorney Bill Baker, representing Camray, said the company has been in the home-building business for years.

"They are known throughout the Sacramento Valley for producing a quality home," said Baker, adding that experts will review the lawsuit's specific complaints within the next 60 days.

In the Hillsborough at Lexington Hills subdivision suit, Sacramento attorney Ed Wright said he would be proud to live in the Folsom development built by his client, Sunland.

"These are fine-looking homes," said Wright. "Clearly some of these homeowners have experienced problems. But from what I've seen, they don't rise to the level of claims stated in the litigation."

In Laguna, on a table in the Rojo home, photographs of repairs reveal the disruption. Vinyl flooring lifted in the kitchen, and Rojo removed it. Tiles popped loose in the bathroom. Black mildew continually creeps along window sills.

Derick and Cecilia Rojo, who as newlyweds faithfully visited their Laguna home under construction in early 1993, were supposed to reap the benefits of being homeowners and participating in the American dream.

Instead, nearly four years after moving into the \$139,500 home, a gray slab exists where vinyl had been. Newly replaced bathroom tiles have begun breaking loose.

"It's embarrassing," Rojo said, his arms crossed, battle-ready with lips pressed together. "I don't have company in my house. I don't have a floor in my kitchen. The window (sills) are filled with mold."

This summer, Rojo's lawyer filed suit, naming Winncrest Homes, and complaining of water infiltration and the difficulty with flooring, bathroom tiles and mold.

Mike Winn, vice president of Winncrest, blames the Rojos' backyard landscaping for the problem and counters that company representatives did their best to appease them.

"After more than 20 customer-service visits, which included repairs which clearly went beyond normal warranty obligations, we remain unable to satisfy this one customer," the builder said.

"Winncrest Homes has always been willing to correct the flooring issue if Mr. Rojo improves the landscaping and drainage he installed in his back yard."

Deciding who is responsible for improper drainage can be pivotal in a lawsuit. Water draining under a home's foundation from a yard can create moisture in the home. But a substantive change in grading makes it difficult for an owner to prove that poor drainage was caused by the developer.

"Rojo just put down sod," said Charles C. Slater, one of Rojo's two attorneys. "He did no substantial changes to the grading. Our position is the grading was done improperly by Winncrest."

Statewide, complaints against builders run the gamut.

Data provided by Trials Digest, a legal publishing and research firm in Oakland, and by the Verdicts & Settlements supplement of the Los Angeles Daily Journal, a legal publication, show that lawsuits resolved in the first six months of this year yielded at least \$75 million in verdicts and settlements, mostly in Southern California.

The cases typically are reported by winning attorneys, mediators, arbitrators and courts - mainly in Southern California - when they are significant. But total dollar amounts paid exceeded \$75 million since not all cases are publicized and since some settlements are sealed by courts.

Now builders say the south state's wave of defect lawsuits is washing across Northern California.

"The builders are blaming litigation," said Sacramento attorney Paul P. Terry Jr., who represents plaintiffs in the Cirby Hills Townhomes lawsuit.

"In our view, they've forgotten to look in the mirror."

\* NEXT SUNDAY: A look at two men on opposite sides of the construction defect issue, and how the owners in a Roseville homeowner association are coping with their lawsuit