

## New to Construction Defects? A Paralegal's Perspective

**Y**ou have just been handed a case involving defects to a multimillion dollar home. Today, you might be defending the landscaper who was on the job only one day, but next week or next month, you could be representing the General Contractor who oversaw the entire project and employed 30 subcontractors, and was at the project for two years. This case may have one homeowner plaintiff and one subcontractor defendant, but many others will have numerous parties.

Easy, says you, the lawyer. I've been doing insurance defense for years.

Not so fast, says me, the paralegal. There's a few things I need to tell you.

I realize I am not allowed to give legal advice, so let's agree that's not what is happening here. What is happening is that I'm a 13-year construction defect paralegal steering you in the right direction by dropping some pointers, with the caveat that what you need to know you will find on your own by practicing the law and learning through trial and error.

One thing I know for sure is that CD Litigation is a niche culture, if you will, with its own structure, language and attitudes. It can be straight forward or mind-boggling. A CD case can involve one small area of a bathroom, or encompass every component imaginable at a huge condominium complex. Below are areas I suggest you familiarize yourself with.

**The Right to Repair Act:** The Right to Repair Act is set forth in Civil Code sections 895 through 945.5, and is called the SB 800 process due to a bill by the same name approved by the Governor on September 20, 2002. These code sections specify rights and requirements of a homeowner of a single-family dwelling to bring an action for construction defects. The SB-800 process also contains applicable standards for the construction of a home, statutes of limitations for different types of defects, burden of proof, damages which can be recovered, a detailed prelitigation procedure applicable to both claimants and builders, and the obligations of the homeowner. SB-800 applies to single-family homes with closing of escrow dates after January 1, 2003.

**The Davis-Stirling Act:** The Davis-Stirling Act, or Civil Code sections 4000 through 6140, applies to common interest developments: (a) community apartment projects, (b) condominiums, (c) planned developments, and (d) stock cooperatives (*supra*, § 4100). Sections 6000 through 6150 are dedicated to requirements for construction defect litigation for common interest developments, including prelitigation procedures, notice of settlement agreement and notice of civil action. It bears noting that these requirements were for-

merly Civil Code Sections 1375 through 1368 until the entire Davis-Sterling Act was rewritten and replaced on January 1, 2014.

**Special Master Appointment:** A special master and/or discovery referee is often appointed in complex CD cases pursuant to Code of Civil Procedure sections 638 and 187. For a case to be deemed complex under California Rule of Court 3.400(a), the case must satisfy several factors regarding intricate and time-consuming legal issues, numerous witnesses or a substantial amount of documentary evidence, management of several separately represented parties, coordination of related actions pending in one or more courts in other counties, states or federal court, or substantial judicial supervision (Cal. Rules of Court, rule 3.400(b)). The case must involve certain types of claims, including construction defect claims involving many parties or structures (Cal. Rules of Court, rule 3.400(c)(2)). If a special master is appointed to oversee the case, a pre-trial or case management order will be drafted and a discovery plan implemented. During a CD case, the special master will often draft numerous orders regarding discovery, mediations, inspections, and other hearings.

### Introducing the Newest Member of the SCBA Team: Emily Rippen



SCBA's new Bookkeeper and Office Coordinator, Emily Rippen, grew up in San Jose, California and moved to Sonoma County in 2008 to earn her Bachelor's Degree in Business Administration. After her second year at Sonoma State University, she took a leave of absence in order to spend a semester working at Walt Disney World

with the Disney College Program. After completing her degree at SSU, Emily worked as a property manager for three years in Rohnert Park while furthering her education at the Santa Rosa Junior College in Real Estate and Human Resources.

When Emily is not working or studying, she enjoys making jewelry, cooking, and spending time outdoors, camping and hiking. ☼



**In Office Procedures:** As a paralegal, I find that how well a CD case is worked up from the start determines the solidity of the foundation of the case. In reality, many CD cases will reach a global settlement at or prior to trial, or subcontractors will settle out before trial preparation begins, but the same type of in-office procedures must be followed. Below are a few pointers:

- Work up your case as soon as it comes in the door and document all your findings. Gathering all your facts early will create a foundation for your case through conferences, discovery, mediations and settlement or trial.
- Get used to matrices. You can use any word processing or spreadsheet program to create matrices, but I find Word and Excel the most user-friendly. Matrices are an efficient organizational tool for summarizing subpoenaed records and job documents, creating chronologies and acting as containers, if you will, to keep information in one place. If you represent a party who had subcontractors on the job, one matrix with all subcontractor information will be your saving grace.

- Think outside of the box and you will see the bigger picture, even on those cases that seem straightforward. Even the calmest CD case can take a nasty turn when you least expect it, and seeing the bigger picture will help you handle the unexpected boomerangs.
- Utilize your paralegal staff to work the case, and plan to work closely with them. Your paralegal can do all the same things as you can on a CD case, except provide legal advice (unless you instruct your paralegal to relay certain legal advice), set legal fees or represent a client in court.

The above barely touches on the basics of CD litigation, but the rest will come with experience and keeping up on the latest developments in construction defect. Good luck. ☺

*By Susan Littlefield*

*Susan Littlefield, a December 2000 graduate of the Sonoma State University Paralegal Program, has worked as a construction defect paralegal for 13 years with Jordan A. Rodman, currently at Sims, Lawrence & Arruti in Santa Rosa.*




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