

THE PROPERTY LINE

Supreme Court Makes Major Change in Construction Defect Law

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The California Supreme Court recently handed down a decision that may radically change the complexion of construction defect litigation in California.

In a new decision, *Pinnacle Museum Tower Association v. Pinnacle Market Dev.* (“Pinnacle”), the California Supreme Court held that a binding arbitration provision contained in an Association’s CC&Rs is enforceable. In so holding, the Supreme Court brushed aside many of the arguments that Associations have used in the past to have such clauses declared unenforceable. So now, after *Pinnacle*, we are likely to see more and more construction defect cases heard by an arbitrator rather than by a judge and jury in a court of law.

There are binding arbitration clauses in many Associations’ CC&Rs. Such a clause typically requires that an action brought by the Association or the homeowners against the builders is to be decided by an arbitrator rather than by a jury and judge.

The arbitrator is typically an attorney or a retired judge. The arbitration hearing is similar to a trial—witness testimony and other evidence is introduced, although in a more informal manner. However, with binding arbitration there is a limited ability to appeal the arbitrator’s ruling, and of course there is no jury.

Binding arbitration is not necessarily bad for Associations and homeowners. Indeed there is a silver lining in the *Pinnacle* decision. Arbitrations are typically much more streamlined and are resolved much more quickly than Court trials. The Courts can be very overcrowded, which can cause excessive delay in resolving the case. Also, the limited right to appeal can be beneficial to the Association—the builder has less opportunity to drag a good verdict for the Association or homeowner through the seemingly endless delay of the appellate process.

There are many nuances to the *Pinnacle* decision that are beyond the scope of this summary. If you have questions about the provisions in your Associations’ CC&Rs, and how the *Pinnacle* decision may affect the Associations’ claims against the developer, please give us a call.

Thank you,

A handwritten signature in black ink, appearing to be 'J. Stander', written over a white background.

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