

## **Court Orders Association to Notify Owners of Hazardous Condition**

A multi-story condominium named the “Churchill” is located along Wilshire Boulevard in Los Angeles. It was converted from an apartment in 1976. Each unit rests upon a concrete slab containing “slab penetrations” (holes) through which vertical plumbing and piping is installed. At the time of construction, both the construction plans and the City’s permits required the penetrations to be fire-proofed. They were not.

After the owners of a unit repeatedly complained of odors (e.g. smoke) in their unit, experts determined that the odors were coming from the penetrations. When the Churchill refused to fill the penetrations, the owners filed a lawsuit (Ritter v. The Churchill Condominium Association). The Court ruled in favor of the owners, ordering the Association to “fire stop” and seal all open penetrations adjacent to the owners’ unit. The Court rejected the defense that the penetrations were “construction defects” attributable to the original developer. In discussing liability, the Court stated “*a homeowners association is also potentially liable for any violation of statute, administrative code, regulation or building code provision relating to the condition of the property.*” In other words, if conditions violate some statute or regulation, the association has a duty to correct the violation regardless of how that condition arose.

What the Court also ordered, which is unique in how the Court believed the problem should be addressed, is that “*The Board of Directors is ordered to call a special meeting of the members with suitable experts in attendance to explain to the membership the nature and extent of these slab penetrations, the fire and safety hazard posed by lack of fire stopping, and the fact that the ceiling and fire stopping of the slab penetrations is an Association responsibility pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions.*” So, why did the Court not order the Association to repair all slab penetrations, but instead only ordered it to “notify” the members of the fire safety risk?

While the reasons are not clear, it is known that the, then existing, Los Angeles Building Code allowed unfilled floor penetrations to remain unfilled. Accordingly, there was no violation of law. However, in the Ritters’ case, “damage” existed because odors were entering into the unit, triggering the repair obligation. The Court may have felt it was improper to order all penetrations sealed when the law allowed them to remain in the unsealed state. Or, the Court may have felt it was more appropriate for the members to decide whether to raise the money necessary for the repair, and with that in mind, ordered the meeting with experts in attendance.

This case contains two lessons. First, an Association cannot refuse to repair “defects” by claiming the developer is responsible. Second, the Board should notify members of all hazards to health and property, and provide them an opportunity to initiate voluntary repairs. Imagine the consequences in the above case if a fire swept through the project because of unsealed penetrations, but the membership at large had never been informed on what the Board of Directors knew about the fire safety risk to the residents.

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