

### Good News for Developers Regarding Construction Defect Statute of Limitations

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Developers and home builders received good news from a recent decision that the 10-year statute of limitations for construction defect claims is not tolled during the time a developer owns a completed project prior to sale. This decision is especially important for developers who are holding standing inventory for longer periods due to the decline in the housing market.

In *Gundogdu, et al. v. King Mai, Inc.*, 171 Cal. App. 4th 310 (2009), the Court of Appeal concluded that the plaintiffs' construction defect claim against the developer of their home was barred because the lawsuit was filed more than 10 years after a notice of completion was filed. The plaintiffs argued that the developer's ownership of the home for approximately 16 months after the notice of completion was filed extended the 10-year period. To support this argument, the plaintiffs relied on Subdivision (e) of Section 337.15, which states that the statute of limitations may not be asserted as a defense "by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to bring an action." The Court disagreed, stating that "such an interpretation of [section 337.15(a)] would be contrary to the purpose of the statute." Based on the Court's decision in *Gundogdu*, developers and home builders can rest easier that they will continue to benefit from the statute of limitations while they own developed property prior to sale.

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