

# BURDMAN & WARD

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Law in Hand

### IMPLIED WARRANTY CLAIMS

*By: D. Robert Ward, Esq.*

#### **HOAs Now ‘Privy’ to Common Area Implied Warranty Claims**

We’re all familiar with the express warranties given by vendors and manufacturers on their products, especially when your car breaks down the day after your 5-year/60,000 mile power train warranty expires (who hasn’t that happened to?).

But did you know that warranties may be implied as well as express? In fact, a builder can be held liable for breaching an implied warranty of “reasonable workmanship” when construction defects are found in a newly constructed project.

A California appellate court case decided back in 2003 gives HOAs the right to pursue builders under a breach of implied warranty cause of action. In *Windham at Carmel Mountain Ranch Assn v. Superior Court*, the Fourth District Court of Appeal held that the “plain meaning” of California Code of Civil Procedure § 383 gives associations the right to bring actions for breach of implied warranty as “real parties in interest.” Although plaintiffs normally cannot recover for damages in a typical negligence defect claim when no physical property damage results, breach of implied warranty remains available to homeowners and associations for damages, defined as any “harm, loss, injury, detriment, or diminution in value.”

For many years, HOAs that brought claims for common area defects were attacked by builder defendants for lacking standing to sue under a warranty claim. This was due to a long-standing rule of contract law that required “privity of contract,” a legal fiction created by the courts that required a contractual relationship between the two parties before a claim for breach could be brought. Their argument was that because no express contract existed between the builder and the HOA, there was no relationship, no warranty, and, ultimately, no standing to sue for breach of warranty. However, the *Windham* court found that because section 383 gives HOAs standing to sue as representative parties on behalf of the membership for construction defects, the required

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“privity” does exist between the HOA and the builder defendant that allows for breach of implied warranty claims.

Although this is a California case, other states, including Arizona and Nevada have statutes giving HOAs standing to bring claims on behalf of homeowners. Therefore, *Windham* may have a beneficial impact on future cases in Arizona and Nevada as well.

**If you think you have potential construction defects, contact Burdman & Ward for a free, no obligation inspection with a licensed contractor.**

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