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Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.



May 6, 2003

Re: Senate Bill 241

HAND DELIVERED

Dear Member of the Assembly Judiciary Committee:

My wife and I own Plaster Development Company, better known in our area as Signature Homes. For over twenty-five years, we have been providing residential housing, including single family homes, condominiums, and apartments for residents of Southern Nevada. Little did we dream that litigation would run rampant through Nevada and have such a devastating impact on our homeowners and our residential building industry. Nor could we have anticipated that this litigation nightmare would be unleashed under the guise of consumer protection.

My employee Shari O'Donnell is hand delivering this letter to you while in Carson City. I would greatly appreciate it if you can make time to meet with her. Shari has maintained a relationship with all our homeowners associations for up to ten years after they are completed, and is very knowledgeable about the matters I've discussed in this letter.

The current provisions in Chapter 40 do not give the builder the right to repair, and do not facilitate homeowners' concerns being professionally addressed by the builder in a timely manner.

Trial attorneys tell our Legislators and the media that developers & contractors don't offer to make repairs after receiving a Notice of Construction Defect. This is not true.

The trial attorneys do not tell anyone, including their clients, that after receiving a Notice of Construction Defect, developers and contractors are obligated by their insurance contracts to notify their insurance carriers of the claim.

From that point forward a process is initiated and: a) builders and contractors are no longer able to work directly with the homeowners toward prompt resolution of their concerns; b) the process is overburdened with attorneys (insurance attorneys and trial attorneys); c) offers to repair are bogged in years of protracted, self serving haggling of insurance attorneys, trial attorneys and their experts; d) attorneys and their experts are skilled at making the process profitable for themselves, though repairs remain unaddressed.

The question that I know legislators want answered is:

Do Responsible Builders Who Have Made Good Faith Commitments to Properly Repair Get Sued?

The answer is Yes. In fact, A Notice of Construction Defect was used to STOP our company from proceeding with repairs.

I have attached three letters from our company to the Association's Board of Directors at the condominium community. These letters demonstrate our good faith efforts and commitment to resolve a water leak problem.

Please See Exhibit A

ASSEMBLY JUDICIARY

DATE: 5-8-03 ROOM 3138 EXHIBIT F

SUBMITTED BY: Richard Plaster FI-F13

Also attached is the Notice that was sent by the attorney, after the board had received our correspondence. Please note how that **the carefully crafted Notice serves the attorneys vested interests in protracted litigation**, rather than promote having timely repairs made by the builder, which would have served the interests of the homeowners.

Please See Exhibit B

A second suit was filed against our company by another condominium community. However at that community the **Homeowners Overwhelmingly Voted To Dismiss The Suit**.

For a brief summary ***Please See Exhibit C***

I am very hopeful that as you become more aware of what actually drives construction defect litigation in our State, you will agree that it is critically important that we not allow trial attorneys to serve their vested interests while wrecking havoc on homeowners and the building industry.

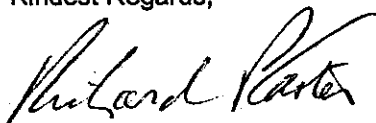
I strongly urge you to vote in favor of SB 241 because it:

- **Fulfills the original legislative intent by giving full protection to the Homeowner and preserving the Homeowners right to sue**
- **Promotes Homeowners ability to get real construction related problems corrected professionally and promptly by their developers and contractors**
- **Gives the building industry the opportunity to address our homeowners construction related problems**
- **Allows for the participation of a Neutral Third Party in the repair process:**
 - **State Contractors Board at NO COST to the homeowner**, in the event:
 - A builder or contractor fails to respond
 - A builder or contractor refuses to make repairs
 - The homeowner is not certain the appropriate repairs were made
 -
- **Promotes procedures outside of litigation that DO NOT:**
 - Negatively impact the ability of the Homeowner to refinance his VA or FHA loan
 - Preclude a prospective buyer from getting VA or FHA financing
 - Taint the homeowner's property with alleged defects that do not exist but impact the perceived market value of their home and their ability to get VA and FHA approvals

Please feel free to contact me through e-mail at Richardplaster@signaturehomes.com or at either of the following phone numbers: (702) 496-7800; (702) 493-1182.

Thank you for taking the time to give my comments your consideration.

Kindest Regards,



Richard Plaster, President

EXHIBIT A

**LETTERS BUILDER SENT TO ASSOCIATION BOARD PRIOR TO
NOTICE OF CONSTRUCTION DEFECT BEING SENT**

the plaster development company, inc.

June 2, 1998

Board of Directors
La Posada Condominium Property Owners Association
c/o Mr. Don Barry, Association Property Manager, EBMC
3160 South Valley View
Suite 204
Las Vegas, Nevada 89102

FAX TRANSMITTAL: 873-0629

Dear Board of Directors,

We felt it was important to inform you of our progress to date in working to identify the cause or causes of leaks at your property. Understandably you are anxious for us to submit our report and recommendations to you and your third party expert so that all parties can come to an agreement as to how best to proceed. We want to assure you that we share your concerns and place great importance on presenting a sound solution, just as you do. We apologize for the time it has taken thus far. We are attempting to do a thorough analysis of the problem and are still in the process of performing that analysis. The following is a brief summary of what has been done to date and what remains to be done before we are prepared to present solutions we have full confidence in, and in turn, hopefully you and your expert will find acceptable.

We are in the process of internally reviewing the reported leaks, the steps we have taken to date to remedy them and the effectiveness (or ineffectiveness) of the remedies to date. We have also done an initial review of the as-builts and, as you are aware, have conducted several on-site inspections. Now we are in the initial stages of arranging consultations with the architect and structural engineer of record for your community. We want to give these experts time to carefully deliberate all the information we have gathered, in addition to any further information they might require of us, so that we might have the benefit of their expertise as well.

We do greatly appreciate the board's patience and willingness to work cooperatively with all parties in order to arrive at the best solution for your members.

Kindest Regards,



Gary Cavender
Executive Vice President/CFO

the plaster development company, inc.

July 8, 1998

Board of Directors
La Posada Condominium Property Owners Association
c/o Don Barry, Property Manager
3160 South Valley View, Suite 204
Las Vegas, NV 89102

FAX TRANSMITTAL : 873-0629

Dear Board of Directors :

It has been over a month since I last corresponded with you, and I wanted to give you an update on our efforts so that you will have the information in time for your Board meeting on Tuesday, July 14th.

On June 23rd we had the owner of the stucco company that was the contractor on the La Posada project conduct an on-site inspection.

We also felt it was important to consult a third party expert who was not involved in any way with the original project. This expert is an Architect in California. On July 1st, this expert conducted an on-site inspection. He is now in the process of reviewing his findings, and all of the material that we have supplied him. Just today our office received a call from him requesting additional information which we are expediting to him.

Although we believe we have identified the cause of the roof leak problem and the proscribed solution, we are awaiting the Architect's final report and recommendations. In the meantime, we are securing bids for work we believe will need to be done. We are going forward with bids, even though we have not received final direction from the expert, because the bid process is time consuming process and we want to get as much ground work done as possible, while we await the expert completing his work. I will notify you as soon as we have confirmation from the expert of a final solution. We can then schedule a date and time for us to meet with you and make our presentation. Once again, we want to express our appreciation to all of you for your patience. Please give me a call if you have any questions or concerns.

Kindest Regards,



Gary L. Cavender
Executive Vice President/CFO

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702/385-5031
quail park I • suite e-4
801 so. rancho dr.
las vegas, nevada 89106

the plaster development company, inc.

July 21, 1998

Board of Directors
La Posada Condominium Property Owners Association
c/o Don Barry, Property Manager
3160 South Valley View, Suite 204
Las Vegas, NV 89102

FAX TRANSMITTAL : 873-0629

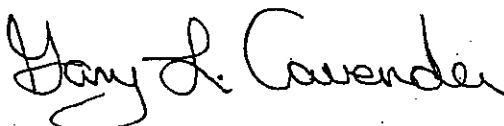
Dear Board of Directors :

Based on the third party's progress to date, he informed me today that we should be able to make our presentation (which will be based on the third party expert's report and recommendations) to you no later than the week of August 24th. The presentation will include an explanation of the process that identified the cause, the proscribed solution, and a time table for completing the required work.

However, the third party expert also told me that he needs to perform one final inspection in order to complete his analysis. Therefore, he has arranged to be in town the afternoon of Wednesday, July 29 to perform that inspection which will focus on upstairs balconies. Core samples will be taken at that time. If weather and circumstances permit the inspection to go forward, he is confident that we will have his report in time to schedule a presentation date for the week of August 24.

Once again, thank you for your patience and cooperation. As always, if you have any questions or concerns, please feel free to contact me.

Kindest Regards,



Gary L. Cavender
Executive Vice President/CFO

EXHIBIT B

ATTORNEY'S NOTICE OF CONSTRUCTION DEFECT

VANNAH COSTELLO CANEPA WIESE & RIEDY

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ATTORNEYS AT LAW
1850 EAST FLAMINGO ROAD, SUITE 236
LAS VEGAS, NEVADA 89119
TELEPHONE: (702) 369-4161
FACSIMILE: (702) 369-0104

FROM THE OFFICE OF:
Scott K. Canepa
Fax (702) 369-0553

July 22, 1998

**VIA CERTIFIED MAIL/
RETURN RECEIPT REQUESTED**

*Protected by NRS
48.105 and 40.600 et seq.*

Richard H. Plaster, President
PLASTER DEVELOPMENT CO., INC.
801 South Rancho Drive, Suite E-4
Las Vegas, Nevada 89106

Richard H. Plaster, President
MONOGRAM, INC.
801 South Rancho Drive, Suite E-4
Las Vegas, Nevada 89106

Re: La Posada HOA; NRS 40.600 Construction Defect Notice

Dear Mr. Plaster:

This office has been retained by the La Posada Homeowners Association, by and through its Board of Directors on behalf of the Association and as class representatives for the class of individual homeowners to the extent required by law, to pursue your company for damages arising from defective construction in and about the Association dwellings and common areas. This letter is sent to you pursuant to NRS 40.600 et seq., Nevada's construction defect statute. We understand that your company was the developer and seller of the La Posada condominiums. If we are wrong, please let us know immediately.

As you know, there are many serious construction defects within the La Posada community. By way of example, and not limitation, a team of consultants retained by the Association has initially confirmed serious problems in the following areas:

- Improper roof construction causing leaks and property damage
- Faulty window installation causing leaks and property damage
- Spalling and deteriorating stucco causing leaks and property damage
- Inadequate sound attenuation between units
- Faulty original electrical installations
- Faulty original plumbing and mechanical installations

This is only a partial list of problems now known to exist now. The Association intends to supplement this list when the consultants hired on its behalf have concluded their investigations.

As you should be aware, NRS 40.600 et. seq. provides that an Association may recover as one element of its damages, the costs of experts employed in the investigation and prosecution of an Association's construction deficiency claims. These costs can be very significant. With that in mind, and in an effort to hold down costs while moving towards early resolution, we have agreed in other similar cases that a neutral expert be mutually employed for purposes of investigating the

LAW OFFICES

VANNAH COSTELLO CANEPA WIESE & RIEDY

Richard H. Plaster, President
PLASTER DEVELOPMENT CO., INC. / MONOGRAM, INC.
Re: La Posada HOA; NRS 40.600 Construction Defect Notice
July 22, 1998
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construction deficiencies and formulating repair recommendations. The parties can then attempt to resolve their differences based on the neutral expert's findings.

The purpose of this letter then is two-fold; first, we wish to inquire whether Plaster Development/Monogram is interested in exploring the possibility of retaining a neutral expert to evaluate the construction conditions and presumably move the matter toward early and efficient resolution. Second, pursuant to NRS 40.695, this letter is specifically intended to toll all applicable time bar statutes including those of limitation and repose until both sides have satisfied the NRS 40.600 pre-filing protocol. As you may know, the Association may not file suit against Plaster Development/Monogram until that protocol is satisfied.

On a related note, we have found that, in most cases, the construction defects and resulting property damage are covered by the Comprehensive General Liability policies of the involved contractor or subcontractors. We therefore strongly recommend that you forward this letter on to your insurance broker and/or CGL carrier without delay.

Unless an alternative protocol, e.g., the retention of a neutral expert, is agreed upon, we expect to forward the Association's preliminary list of defects in accordance with NRS 40.600 et. seq., within sixty (60) days. From that point, your company will have 90 days to inspect the property, and 105 days to supply a mandatory written reply. You may verify these deadlines which are set forth in the statute.

Upon receipt of this letter, your company is to cease and desist any further repairs on the buildings at La Posada. You are further advised that no one from your company or any of its representative or subcontractors have authority to go onto the site for any reason without our prior written consent. If you fail to obey this cease and desist demand then we will proceed to ask the District Court for assistance to enforce the same. Please also be advised that all further communications to the Association or individual Board members or homeowners must be made through this office. This demand is consistent with Nevada's law concerning spoliation of evidence.

Finally, please also accept this correspondence as the Association's Chapter 40 pre-mediation demand for production of documents. As you may or may not know, the statute was amended last year to provide a vehicle by which the parties may obtain certain job file and insurance documents (see NRS 40.645 and 40.687). Accordingly, please produce the following documents within fifteen (15) days of your receipt of this letter:

1. Copies of any and all subcontract agreements for any and all subcontractors who performed services or provided materials for La Posada.

Richard H. Plaster, President

PLASTER DEVELOPMENT CO., INC. / MONOGRAM, INC.

Re: La Posada HOA; NRS 40.600 Construction Defect Notice

July 22, 1998

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2. Copies of all insurance agreements, including declaration sheets, endorsements and related forms, for Plaster Development and/or Monogram and/or its successor- or predecessor-in-interest companies that were responsible for development of La Posada subdivision. This demand includes any and all insuring agreements and above-described endorsements, etc., for all years starting with the year the development of La Posada was first undertaken to the present. This demand also includes all reservation of rights letters that may have been issued by any insurer to Plaster Development and/or Monogram.
3. Copies of any and all documents evidencing Plaster Development and/or Monogram's status as additional insured/ additional named insured on any policy of insurance issued in favor of any of the subcontractors who provided services or materials at La Posada.
4. Copies of all project specification documents for common area construction including, but not limited to, plans and specifications, design documents, design professional agreements, and construction and/or material specifications.
5. Any site maps or other documents documenting the phasing of the common areas. In particular, we would like to know the total number of construction phases. We will also require a listing of which subcontractors worked on each phase of development.
6. All job files, documents, reports, bills, plans, invoices, contracts, video and/or audio recordings, records, pictures, change orders and/or items relevant to the common area work performed at La Posada.
7. All documents filed with, addressed to or received from any governmental, regulatory, city, state or federal agency, including, but not limited to, the City of Las Vegas Building Department, which describe, discuss, refer to and/or relate to the original construction, and /or sale of condominiums at La Posada.
8. All documents addressed to or received from any employees, general contractors, subcontractors, engineers, building designers, materialmen, state, city and/or county building inspectors, fire marshals, and/or any person involved in the construction of La Posada which describe, discuss, refer to or relate to the original construction of La Posada.
9. All documents which set forth, describe and/or refer to any efforts made or action taken by Plaster Development and/or Monogram to repair, correct or otherwise

LAW OFFICES

VANNAH COSTELLO CANEPA WIESE & RIEDY

Richard H. Plaster, President

PLASTER DEVELOPMENT CO., INC. / MONOGRAM, INC.

Re: La Posada HOA; NRS 40.600 Construction Defect Notice

July 22, 1998

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respond to complaints, problems, requested repairs, or notices of deficiency concerning La Posada.

10. All documents which set forth, describe and/or refer to any testing, inspection, review and/or evaluation of the physical condition of La Posada, including, but not limited to, area studies, footing excavation, soil tests, engineering reports, and any documents and/or writings and/or photographs and/or videotapes which set forth, describe or refer to deficiencies in the physical condition of La Posada.
11. All documents which describe, discuss, analyze and/or refer to actual and/or projected expenses for repair and/or maintenance of La Posada.
12. All daily reports and field notes or reports or change orders prepared by you or any contractor, subcontractor, engineer, building designer and/or architect which relate to or concern La Posada.
13. All job meeting notes and minutes, regardless of who prepared them, which relate to or concern the planning, approval, supervision, and/or construction of La Posada.

The above-described information is necessary in order for the Association to adequately consider any Chapter 40 response made by Plaster Development/Monogram. This is particularly true if any settlement proposal involves an assignment of rights against any other non-participating party.

As you may or may not know, the amended statute provides that the Association may ask the District Court to compel the production of the above documents if you do not agree to produce the same. Obviously, I would like to avoid the necessity of involving the District Courts, and thus would like to be advised in writing how you intend to proceed.

Very truly yours,

VANNAH COSTELLO CANEPA
WIESE & RIEDY


SCOTT K. CANEPA, ESQ.

SKC/gm

cc: Board of Directors / La Posada HOA

Don Berry / Eugene Burger Management Corp. F-11

EXHIBIT C

SUMMARY

HOW CONSTRUCTION RELATED ISSUES WERE RESOLVED AT SECOND CONDOMINIUM COMMUNITY *WITHOUT LITIGATION*:

Highgate Pavillions Condominiums: At the time the construction defect firm approached this community, parts of the community had been completed almost ten years ago, while others were approximately nine years old. **We had a history of promptly taking care of problems in the community and the Homeowners had confidence in their builder.** Nonetheless, the attorney persuaded the board to file suit, rather than take their concerns to the builder. The attorney did not send us a Notice of Construction Defect nor notification that a suit had been filed.

When **the homeowners** in this community **learned their board's attorney had filed a construction defect suit**, they **insisted upon exercising their right to vote on the matter**. After a concerted grass roots effort, they prevailed.

58% of the Homeowners voted overwhelmingly to have the suit dismissed without prejudice. (One hundred fifty-one owners voted to dismiss the suit, while only sixteen voted in favor of the suit.)

We preserved the homeowners right to sue us, if we failed to address their concerns satisfactorily. The Association and builder entered into a written agreement to toll the statute of repose (stop the clock) and preserve the Associations rights while investigations by experts were being done and agreements as to repairs could be reached.

A new board was ultimately elected. They had their own independent expert review the construction defect attorney's expert's report, and the Association's expert dismissed some of the allegations as invalid, but felt there were some issues that should be addressed. One of those issues involved a contractor who no longer was in business. We went to our insurance carrier and explained the situation.

All parties have agreed to the issues that need to be addressed, the method of repair and the scope of work for each matter and a bonded bid for repairs is about to be issued.

The advantages of resolving a complex matter as described and without construction defect attorneys being involved is that:

Focus is on identifying construction issues, the appropriate method of repair and getting repairs made professionally and appropriately

The Association's expert determined issues that needed to be addressed and the agreed upon method of repair, rather than an expert paid by a construction defect attorney.

ALL ISSUES raised will be repaired professionally, promptly and in accordance with the agreed upon scope of work

ALL FUNDS will go directly to make the repairs, rather than any portion of the funds being siphoned off to pay attorneys' contingency fees and his experts' fees.

EXHIBIT D

THE NOTICE and LITIGATION IMPACT THE HOMEOWNERS & AFFORDABLE HOUSING

HOW THE NOTICE & LITIGATION IMPACT THE HOMEOWNERS:

The notice, with **its broad, open ended allegations of construction defects taints every condominium home in the community as defective.**

The **litigation involves every home in the community and condominium Homeowners CAN NOT even opt in or out of the suit.**

The marketability of their most valued investment-their home is negatively impacted throughout years of litigation..

The taint may never be lifted, *unless* the Homeowner is able to demonstrate that they or their association corrected the alleged construction defects, or that the alleged defects don't exist.

If they have an FHA or VA loan on their home; Homeowners discover that they cannot refinance that loan until the taint is lifted.

If they wish to sell, Homeowners discover that FHA and VA will not approve a loan, and only some, not all, other lending sources will approve a loan.

WHY CONSTRUCTION DEFECT LITIGATION IMPACTS AVAILABILITY OF AFFORDABLE HOUSING:

Our most affordable residential product is condominiums. Condominiums make the dream of home ownership possible for many young people and retirees on limited incomes.

However, my company discontinued building condominiums. Why? The long and short of it is that **beginning in about 1996 condominiums became the bull's eye in the middle of the construction defect attorneys target.**

Many of the contractors I contract with built both my condominium and single family projects and they did the same for many other highly reputable builders in Nevada because these contractors proved themselves very capable over the years.

Being held in such high regard used to be a mark of success, but **with the advent of construction defect litigation, these contractors were being hit by suits every time a builder they had worked for was sued,** if they had done any work within the community involved in the suit.

Since the vast majority of the suits involved condominiums, many contractors' insurance carriers will no longer provide contractors with insurance that covers work done on a condominium project.

The combination of a shrinking contractor base for condo projects, and the fact that the entire industry is aware that **building condos puts you at the top of any construction defect attorney's list of targets** has resulted in very few new, affordably priced condominiums being built.

Litigation's impact will be reflected in the cost of all residential construction. The **shrinking contractor base will reduce competitive bidding, and bids we are now getting from our contractors who are still in business reflect contractors' increased insurance cost.**