

When A Common Interest Owners Association Has Standing: Court of Appeal Rules
That Common Interest Association Has Standing to Bring Claims for Damages Even
Though There Is Very Little Common Area

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

A question that has arisen in construction defect lawsuits, and in particular ones involving the Right to Repair Act, is whether a Common Interest Association has standing to bring a construction defect lawsuit for construction defects where the common areas are highly limited. In the case of River's Side at Washington Square Homeowners Association v. The Superior Court of Yolo County (2023) 88 Cal.App.5th 1209 ("River's Side case"), the Court of Appeal, Third Appellate District, ruled that an owners association established to manage a development consisting of 25 residential units and limited common areas had standing to bring suit for construction defects involving the common areas, including breach of contract and fraud, pursuant to *Civil Code* § 945, *Civil Code* § 5980 and *Code of Civil Procedure* § 382.

The River's Side case involved a development that was constructed during the Great Recession. Only three (3) homes were actually sold to third-party purchasers, with an investor group purchasing 22 of the 25 units, and then selling them between 2012 and 2017. The owners association brought a construction defect lawsuit against the developers, various other entities involved in the design and construction process, and the purchasers of the 22 units (who later, in turn, sold them). The original developers and others settled with the plaintiff association. The later purchasers (and sellers) of the 22 units, did not.

The group that purchased the 22 units and later sold them Demurred to all Causes of Action against them, except for the Cause of Action for Unassigned Rights, arguing that the plaintiff lacked standing under *Civil Code* § 5980. *Civil Code* § 5980 provides, among other things, if an association has standing to sue for damages to the common area or to a separate interest, the association is obligated to repair. The defendant group alleged that the only common area in the development is a street known as Lot "A," and plaintiff is only required to maintain or repair that common area and trees located in that public right of way, as well as roof drains, and connections within the City's right of way. The defendant group argued that none of the defects alleged in the Complaint involved any of the common areas that the association had the obligation to repair.

The Trial Court sustained the Demurrer of the defendants. Because the Trial Court did not sustain the Demurrer to all of the Causes of Action, the Association filed a Writ with the Court of Appeal. On appeal, the Court ruled that the plaintiff association indeed had standing to assert claims based upon the allegations in the Complaint, which

included that there were defects in the structure, components, and common areas of the development, and that plaintiff's members had sustained a loss of use and enjoyment. The Court also made a similar analysis under *Civil Code* § 945 (part of the Right to Repair Act).

The River's Side case expresses the notion that a common interest association's obligation to repair, and the right to sue for repairs, is to be construed very broadly.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

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