MILLER STARR REGALIA

AUGUST 31, 2010

Is An Arbitration Provision in Recorded CC&R's Ever Enforceable by the Developer?

Related Lawyers:
Related Practices: **Common Interest Development**, **Construction Claims & Litigation**

As this article goes to press, the Fourth District Court of Appeal has received the parties' supplemental briefs, and is preparing to rehear *Villa Vicenza Homeowners Association v. Nobel Court Development, LLC*, a case squarely presenting the issue whether a provision in a declaration of covenants, conditions and restrictions ("CC&Rs") recorded by a project developer requiring a yet-to-be-formed homeowners association to arbitrate any future construction defect claims against the developer is enforceable as an agreement to arbitrate. Prior to granting rehearing, the Court of Appeal had issued a decision (no longer citable) holding that such a provision is not enforceable. Moreover, the same division of the same District Court of Appeal has just issued another decision, *Pinnacle Museum Town Association v. Pinnacle Market Dev. (US) ("Pinnacle"),*in which it decided both that a binding arbitration provision in recorded CC&Rs is not enforceable by the developer/declarant against a subsequently-formed homeowners association, and that if it were, the provision under consideration would still be unenforceable because it is unconscionable.

© 2026 Miller Starr Regalia. All Rights Reserved. Attorney Advertising.