

## HOGE FENTON REAL ESTATE LAW UPDATE: ARCHITECTS AND ENGINEERS HAVE EXPANDED LIABILITY

The California Supreme Court recently clarified that construction design professionals owe a duty of care to future homeowners – even when the architect or engineer is not directly in contract with the homeowner – and can be found to be negligent and liable under the correct facts.

The Court in *Beacon Residential Community Ass’n v. Skidmore, Owings & Merrill LLP* held that design professionals in a principal role – not working subordinate to another design professional – can be held liable to future homeowners for negligent design of a residential building. This is true even if the architect does not actually build the project or exercise control over construction decisions.

The *Beacon* case involved a 595-unit condominium complex in San Francisco with alleged construction defects causing extreme indoor temperatures due to “solar heat gain.” The HOA alleged that the heat gain resulted from negligent architectural design of the building, including substandard windows and inadequate ventilation. The project developer hired the architect and the HOA claimed to be a third party beneficiary to the contract.

Design professionals can no longer rely on their historical argument that they do not have a contractual relationship with the future homeowners. An architect can no longer escape negligence liability on the ground that someone else – be it a developer, contractor or homeowner – made the final construction decisions.

The Court considered many factors in evaluating the facts and reaching its decision. **The landscape has now changed, leading to greater potential liability – both directly to the future purchasers of the property and to the developer or other party with whom the design professional entered into contract.** It seems possible given this ruling that design professionals in the future may face expanded liabilities stemming from commercial construction design as well. In any case, the *Beacon* decision will change the approach to construction litigation for plaintiffs, architects and other construction professionals.

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For questions about this case and how it may impact you or your business, contact the knowledgeable attorneys in Hoge Fenton's **Real Estate Group**.  
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