

**LEGISLATIVE REVIEW (OHIO)**  
**FEBRUARY 7, 2003 – REPORT #4**

**COURT RULES AGAINST BUILDER-CSPA VIOLATION IN HOME INSPECTION DISPUTE**

In a recent decision, the Franklin County Court of Appeals ruled against a builder citing a violation of the Consumer Sales Practices Act (CSPA) and awarding damages of \$7,725. The Court found the CSPA applicable to transactions that include the conveyance of real estate in connection with the construction of a new home by citing the Greene County Court of Appeals decision in *Keiber v. Spicer Construction*. Among other causes of action including unfair and deceptive acts under the CSPA, the buyer alleged unjust enrichment resulting from the builder's retention of certain deposit monies.

In *Saraf v. Maronda Homes* the buyer contracted for the construction of a residence. The contract explicitly addressed the circumstances in which the builder could retain deposits, and the Court ruled the unjust enrichment claim invalid. The Court noted that unjust enrichment, as an equitable remedy, is only available in those cases where there is no contract or the contract is void. Since the contract addressed deposits, the contract terms reflect the circumstances in which deposits are recoverable.

More troubling for residential builders is the CSPA claim and the Court's award of damages for it. The buyer alleged that the builder engaged in unfair, deceptive and unconscionable acts by inducing him into entering the contract without advising him of the policy against allowing the buyer to have an inspector at the presettlement inspection of the house.

The contract provided in part: "Maronda Homes Inc. takes pride in delivering a quality product...for that reason we schedule a presettlement inspection between the supervisor and you. At that time you will have the opportunity to go through the house and assure yourself work has been completed in accordance with your contract..."

Evidence supported that the buyer had complained to the builder of certain problems associated with construction. The buyer requested that his inspector attend the presettlement inspection. Citing the above language, the builder refused claiming that the only parties permitted at that inspection were the buyer and the builder.

The Court ruled that the policy was patently unfair because buyers are at a disadvantage in transactions of this nature because they are not experts in construction, as are builders. The Court reasoned that buyers lack expertise to recognize construction defects in workmanship. The Court noted that the builder's policy allows the buyer to inspect the home but should allow the buyer's own "expert" to represent the buyer's interest.

The amount of the award represented the amount of the deposit the builder withheld. The Court found this award to be justifiable inasmuch as the buyer did not attend the closing because he was not permitted to bring an inspector to the presettlement inspection. This case has broad implications for residential builders. This Court clearly determined that builders should allow buyers to bring inspectors to presettlement inspections. You should re-examine your contracts to review whether they permit the buyer to be accompanied by an inspector at these inspections. You should consult with private counsel to consider making changes to your contracts.

Additionally, the Court cited the *Keiber* case in holding that transactions of this nature are subject to the CSPA. Therefore, this is now the controlling law in Franklin County. All builders should be aware of this decision and its implications, especially if you do business in Franklin County.