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**Court of Appeal Rules That Arbitration Provisions in CC&Rs Are Not Enforceable Against a Homeowners Association**

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An arbitration provision contained in CC&Rs did not bind a homeowners association in a construction defect case against the developer, according to a recent California appellate court decision. In *Villa Vicenza Homeowners Association v. Nobel Court Development, LLC*, issued May 27, 2010, the Fourth District Court of Appeal concluded that because CC&Rs are not a contract between the developer and the homeowners association, the arbitration provision contained in the CC&Rs was not enforceable against the association. The CC&Rs in question were created in typical fashion, that is, the developer drafted and put them in place before the association was formed, and then formed the association and sold homes subject to the already existing CC&Rs. The court referred to CC&Rs as being adhesive in nature, unilaterally written by developers, and not subject to modification by the association. The court noted that an arbitration provision necessarily involves the waiver of the right to trial by jury, which the court determined was too important a right to waive, absent an express, voluntary agreement.

The Court acknowledged that another California appellate court, in *Villa Milano Homeowners Assn. v. Il Davorge*, previously reached a contrary conclusion, deciding that CC&Rs could be used to obtain an agreement to arbitrate. For now, there is an apparent conflict between the conclusions reached in the *Villa Vicenza* and *Villa Milano* decisions.

Should the Fourth District's decision remain in force, arbitration provisions included in developer-drafted CC&Rs may be unenforceable against homeowners associations. Once this decision becomes final in the Court of Appeal (on June 26, 2010) and if the time for petition for review in the Supreme Court elapses (July 6, 2010), arbitration provisions in CC&Rs should be reviewed in light of this decision.

*Please contact a member of Luce Forward's Common Interest Development group if you would like to discuss the impact of this decision on arbitration provisions in CC&Rs.*