

# Rod E. Fehlman

Attorney at Law

Palm Square

2174 W. Foothill Boulevard, Suite A

Upland, California 91786

Phone (909) 982-8887

Facsimile (909) 982-4142

---

The following is a summary of interesting recent case law concerning the real estate industry. More detail is available on my website at [www.fehlmanlaw.com](http://www.fehlmanlaw.com).

## CASE LAW

### LANDLORD IS LIABLE TO TENANT FOR CRIMES.

Tan v. Arnel Management Co. (2008) 170 Cal.App.4th 1087. Tan leased an apartment at Pheasant Ridge Apartments in Los Angeles.

Prior to Plaintiff moving into Pheasant, there were three prior violent attacks by strangers in the common areas. Plaintiff came home late one night and parked in common area parking in front of the leasing office. Same location as other three prior violent attacks.

Plaintiff was confronted by a stranger who pointed a gun and demanded the car. Plaintiff refused and the assailant shot Plaintiff in the neck resulting in him being quadriplegic. Plaintiff sued property owner for damages alleging it owed a duty to prevent crime in the common areas.

Court held that a landlord is generally not responsible for criminal acts of third parties. However, if there has been a string of similar crimes in a particular development such as to make the crime "highly foreseeable," then landlord must make the conditions safe.

Court held that (1) future crimes were "highly foreseeable" given the prior similar crimes, (2) landlord owed a duty to take reasonable action to make the common area safe and (3) owes Plaintiff damages.

### ARE NEIGHBORS REQUIRED TO SHARE IN THE COST OF FENCE REPAIRS?.

Wilson v. Handley (2002) 97 Cal.App.4th 1304. Wilson and Handley are neighbors in the placid City of Yreka. Wilson began to construct a large log cabin and asked Handley to share in cost to replace a dilapidated fence between the properties.

Handley declined to pay his share of the cost and plants a row of evergreen trees 16' tall on the property line in lieu of a new fence. Wilson sued for (1) the cost to repair the fence and (2) an order declaring the row of trees as a "spite fence" and a nuisance.

California law requires adjacent homeowners to share equally in the cost of repair or

replacement of common fences. Civil Code §840(a) states:

- (a) Adjoining landowners shall share equally in the responsibility for maintaining the boundaries and monuments between them.
- (b)(1) Adjoining landowners are presumed to share an equal benefit from any fence dividing their properties.

A spite fence is

“Any fence. . . unnecessarily exceeding 10’ in height maliciously erected. . . for the purpose of annoying the owner. . . is a private nuisance.”

The court held that the row of trees were a “spite fence” and ordered its removal, and ordered Handley to pay half the cost to repair the existing fence.

#### UNLICENSED CONTRACTORS CANNOT BE PAID.

Furtado v. Schriefer (1991)228 Cal.App.3rd 1612. Schriefer is a homeowner. Furtado is a commercial painter who was an unlicensed contractor. Schriefer hires Furtado to paint his house in anticipation of sale.

Furtado falls off the roof on the first day on the job resulting in \$45,000 in medical bills. Furtado sued Schriefer for personal injuries. The court states that unlicensed contractors are “employees” of the homeowner. The court enters judgment against the homeowner for \$45,000.

1. Unlicensed contractors are considered “employees” of the property owner. If the unlicensed contractor is injured working for the owner, then the owner is liable for his injuries.
2. Agents/Brokers are liable to the owner for “negligent” referral of an unlicensed contractor. If you refer an unlicensed contractor to your client, and that unlicensed contractor gets injured, then you are liable to the owner.

REFUSING MEDIATION RESULT IN LOSS OF ATTORNEY FEES (see 22A of the RPA).  
Cullen v. Corwin (2012) 206 Cal.App.4th 1074. This case makes clear that a buyer or seller who refuses to mediate will not be entitled to recover their attorney fees.

The RPA requires all buyers and sellers to mediate (paragraph 22A) their disputes before resulting to litigation. Mediation is required even if the parties did not sign the arbitration provision (paragraph 22B).

The RPA was revised in 2011 to allow the broker to enforce mediation and arbitration against either party. Upon learning of a dispute, the broker should immediately demand mediation.

Mediation is required for all parties before litigation.