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CLASS ACTIONS FOR CONSTRUCTION DEFECTS

The earthquake that struck Chile on February 27 2010 brought, as an additional consequence, a complete review of the legal framework that regulates construction and real estate development, not only regarding its technical standards but in connection with the liabilities of the persons and entities who participate in this market.

As a result of the above, on November 23th 2010 the law number 20.433 was published, which modifies the General Construction and Urbanism Act ("Ley General de Urbanismo y Construcción") making applicable class action procedures in case of error or defects in construction, procedures which so far where strictly reserved to

claims under the Consumer Protection Act . This law presents some particularities over the Consumer Protection Act by allowing the award of damages for pain and suffering, a matter which is not allowed under de Consumer Protection Act.

In order to present a class action for construction defects the law requires that all properties involved where built under the same construction permit, and further requires a minimum of 6 affected parties, this is radically less than the 50 affected consumers required under Consumer Protection Act.

Finally, the fact that the property acquisition contracts may include arbitration clauses shall not be an impediment to class actions since the new law specifically provides that arbitration clauses will have no effect from the moment of the filing of the class action in court.

Authors: Óscar Aitken; Juan Pablo Stitchkin

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl