

## Homeowners Awarded Treble Damages for Developer's Failure to Disclose

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On February 4, 2016, the Appellate Division affirmed an award of treble damages to three new home purchasers, where the developer knew, but failed to disclose, that the garage could not practically fit a normal-sized sedan. [1] Plaintiffs purchased model homes with a two-car garage, but the garage bay on the left side was not able to fit a normal-sized sedan. The residential developer and

others involved in the construction and sale of the homes were aware of this issue and failed to disclose it to the purchasers. Plaintiffs filed an action alleging a breach of the New Jersey Consumer Fraud Act (CFA) and sought damages to repair the condition.

The CFA prohibits, amongst other fraudulent conduct, the knowing concealment, suppression, or omission of any material fact in connection with the sale or advertisement of real estate. A violation of the CFA may result in the award of three times the damages caused thereby and attorney's fees. Here, the Court found that the inability to park a car in a garage was a material fact required to be disclosed under the CFA because a reasonable person would attach importance to such information in purchasing a home. Therefore, because the Developer knew, but did not disclose this condition to the plaintiff purchasers, the Court found that the Developer violated the CFA and awarded damages of \$9,200 to each plaintiff, which was trebled to \$27,600 each. The Court also awarded plaintiffs approximately \$102,000 in attorney's fees.

The decision should be of particular interest to all new home purchasers because it sets forth that the CFA does not require the violation of a building code before the omission of material information constitutes consumer fraud. If a reasonable person would attach importance to the existence of certain information in determining whether or not to purchase, and the developer knew, but failed to disclose such information, the developer may be liable for treble damages under the CFA. We recommend that you consult with an

attorney if your condominium association has discovered that the developer or others involved in the design and construction of the property failed to disclose certain material facts in connection with the sale or advertising thereof.

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