

HEFFERNAN LAW FIRM, PLLC

1201 MARKET STREET

KIRKLAND, WASHINGTON 98033-5440

PHONE 425.284.1150 • FAX 425.284.1147

www.heffernanlawfirm.com

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MEMORANDUM

The Oregon Court of Appeals recently held in *Abraham v. T. Henry Construction*, 230 Or.App. 564, --- P.3d ----, 2009 WL 2766868 (2009), that violation of building code constitutes a breach of a builder's duty of care independent of any contractual duty. This holding imposes a new standard of care that may limit defendants' ability to defeat construction defect tort claims.

Abraham arose when homeowners brought breach of contract and negligence claims for construction defects against their general contractor. After construction of the homes was completed, the homeowners discovered damage from water leakage. More than eight years after construction was substantially completed, they brought an action against the general contractor.

On summary judgment, the trial court dismissed the breach of contract claim as barred by the statute of limitations, and dismissed the negligence claim because no "special relationship" existed to preserve the claim. The Court of Appeals reversed dismissal of the negligence claim, holding that such claims survive where a contractor breaches a duty of care, including building code violations. This ruling will likely have a significant impact on developers and contractors, as it allows tort claims to survive the affirmative defense of the economic-loss doctrine and supplies plaintiffs with readily available standards of care to hold defendants liable for construction defects.

The economic-loss doctrine serves as an affirmative defense for defendants against tort claims for purely economic loss. Under the doctrine, the plaintiff must show some duty outside common law negligence. Formerly, such a duty could be established by a special relationship or status beyond the common-law standard for negligence. However, under *Abraham*, a tort claim may survive even where there is no special relationship because the building code will serve as a standard of care independent of common-law negligence standards. Most alleged construction defects can in some way be categorized as building code violations. Therefore, even where no special relationship exists, there will likely be a standard of care preserving tort claims that would otherwise fail under the economic-loss doctrine.