

# SCOTT M. MACKEY



PARTNER | BERDING & WEIL LLP  
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## AREAS OF PRACTICE

Scott M. Mackey is a Partner of Berding|Weil joining in 2015 as a trial attorney and member of the litigation department. Mr. Mackey has repeatedly been recognized as one of the top attorneys in California. Mr. Mackey is focused on representing homeowner owners associations and owners of real property with large and complex construction defects matters involving high-rise buildings, common interest developments, residential condominium projects, mixed-use residential projects, commercial projects, commercial retail and shopping centers, and single-family homes located throughout the state of California. Mr. Mackey also handles cases involving misrepresentation, failure to disclose, and contract disputes arising out of real estate and business transactions, as well as mass tort, personal injury, and product liability lawsuits.

Mr. Mackey has over 21 years of experience and his background, in both Federal and State Courts, encompassing both complex real estate and construction matters where he has recovered hundreds of millions of dollars for his clients, including both seven-figure and eight-figure results. Most recently, Mr. Mackey secured an \$11,000,000 settlement for an owner of a commercial retail and shopping center in Oakland, California that was suffering from construction defects that were damaging the building and interfering with the operations of its commercial retail tenants. As a result of his representation, the owner will be able to repair the building and continue to provide much needed amenities for the residents and visitors to the City of Oakland.

Mr. Mackey also represented an owner of an 88-unit apartment complex in Del Oro, California. Because of the extent of the defects and damage that threatened the overall use and enjoyment building and the tenants' use of their owner units, the owner was facing escalating and surmounting repair and maintenance costs, as well as claims by its tenants for rent concessions and relocation costs. As a result of Mr. Mackey's representation, he secured a settlement of \$9,000,000 to allow the owner to perform the necessary and much needed repairs to the buildings in a first-class condition so it can continue to provide housing in the San Diego area.

Mr. Mackey was also instrumental in securing an \$8,000,000 settlement on behalf of a homeowners association of a residential condominium project in San Francisco, California where he was able to show that a lack of ventilation within the residential units caused and/or contributed to excessive heat gain was a cognizable claim under the law. While there was no specific violation of a standard of residential construction under Civil Code section 896, the lack of ventilation within a building/residential unit was a violation of a building standard that was actionable under Civil Code section 897, which serves as the catch-all provision for the violations. What was significant, was that Mr. Mackey was able to demonstrate that there is no requirement of "property damage" associated with a violation of building standards under Civil Code section 897. While

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the Builder always argues that there is no violation unless there is property damage or a personal injury, Mr. Mackey was able to show that such a position was incorrect as it was inconsistent with the express language and legislative intent of the statute. Instead, an owner only needed to show a loss or detriment to constitute “damage” under the statute. Therefore, a homeowners association or an owner does not have to wait to file a claim until something is damaged or a person is injured before bringing a claim for a violation of the standard of residential construction under Civil Code sections 896 and 897.

Some of Mr. Mackey other recent results that he obtained include:

- \$15,000,000 settlement on behalf of a 99-unit residential condominium development
- \$15,000,000 settlement on behalf of an 82-unit apartment complex
- \$9,000,000 settlement on behalf of a 74-unit residential condominium development
- \$6,750,000 settlement on behalf of a 33-unit residential condominium development
- \$5,000,000 settlement on behalf of an 87-unit residential condominium development
- \$5,000,000 settlement on behalf of a 46-unit residential condominium development
- \$4,000,000 settlement on behalf of a 24-unit residential condominium development
- \$4,000,000 settlement for an owner of a single-family home
- \$2,600,000 settlement on behalf of the owners of a single-family home

## LEGAL HISTORY

Prior to joining Berding|Weil, Mr. Mackey practiced as a defense attorney where he worked for one of the largest law firms in the Country representing builders, developers, contractors, and product manufacturers in litigation and transactional matters. Mr. Mackey specialized in handling a broad array of transactions and dispute resolution matters, including initial drafting, preparation, review, and negotiation of contracts, delay and disruption claims, negotiation of restructuring agreements, multiparty construction issues, environmental contamination (illegal dumping), product liability, geotechnical claims, errors & omissions/professional negligence, insurance, and risk management.

## EDUCATION

Mr. Mackey received his Juris Doctor from the University of Pacific, McGeorge School of Law in 2002. Mr. Mackey received his Bachelor of Science in Criminal Justice with an emphasis in Law Enforcement Management and Investigation from California State University of Sacramento in 1999.

## SPECIAL INTEREST GROUPS

Mr. Mackey frequently participates in Board Member education seminars and new homeowner orientation seminars. He is affiliated with the Executive Counsel of Homeowners (ECHO), Community Associations Institute (CAI), and California Association of Community Managers (CACM), as well as an active member of the Consumer Attorneys of California.

Mr. Mackey is also actively involved in assisting low-income Contra Costa County residents to gain the skills and confidence to get and keep jobs that support themselves and their families.

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## PROFESSIONAL MEMBERSHIPS AND ACTIVITIES

State Bar of California, 2002  
U.S. District Court, Eastern District of California, 2002  
U.S. District Court, Central District of California, 2018  
U.S. District Court, Southern District of California, 2018  
U.S. District Court, Northern District of California, 2024  
United States Supreme Court, 2018

## AWARDS

American Institute of Legal Advocates, Civil Litigation Elite Advocate, 2020 to the present.  
Top 100 Attorneys in Real Estate Law by The American Academy of Attorneys, 2020 to the present.  
Lawyers of Distinction (Recognizing Excellence in Real Estate), 2019 to the present.