

Kevin P. Kennedy

Shareholder

T 301-230-5219

F 301-230-2891

E kkennedy@shulmanrogers.com

Kevin P. Kennedy, Chair of the Firm's Builder/Developer practice group, concentrates his practice in the representation of home builders and land developers, both residential and commercial, with a particular emphasis in real estate contract, land use, administrative and construction litigation and trials. Kevin represents many national and regional home builders, both as outside general counsel and as litigation and dispute resolution/avoidance counsel. While keeping an active trial and litigation practice (with many "wins" in large, complex cases to his credit; see Results), Kevin is also conversant in real estate transactions, land use entitlements and municipal law in all local jurisdictions and actively consults with many of the firm's clients concerning real estate transactions, entitlements and contract documentation, with a particular view toward cost-effective deal point enforcement and litigation avoidance. Widely known for his legal scholarship and tenacity, Mr. Kennedy's clients also appreciate his negotiation prowess and problem solving approach, which helps leverage cost-effective dispute resolution for his clients, tapping his knowledge of deals to craft whatever restructure or complex settlement documentation is needed to shrink and eliminate disputes, often in their infancy.



Bar & Court Admissions

District of Columbia

Maryland

Education

University of Maryland
School of Law, J.D., 1983

University of Maryland,
B.A., 1980, *cum laude*

His clients appreciate Kevin's knowledge of their business, business acumen and proactive problem solving approach, including updates to boilerplate consumer and commercial contracts (including homebuilder outsale documents, HOA and condominium documents) to lawfully include dispositive defenses to foreseeable claims, potentially devolving from those transactions.

Kevin's solution repertoire also includes in-kind remediation compromise agreements of disputed construction claims that not only eliminate those claims, but also allow his clients to utilize their more culpable/cooperative subcontractors and suppliers to perform the work (for free – win/win). For this, Kevin has developed result-tested documents that effectively avoid post-work disputes, while saving his clients the distasteful alternative of cutting a check.

Kevin's clients have also relied on him to secure and/or restore government approvals for many hundreds of building sites worth many millions of dollars. Among national and regional home builders and land developers, Kevin and his team are widely known for their legal scholarship, tenacity and creative solutions to land entitlement disputes in large, complex legal and administrative cases in key counties in Maryland, including: Montgomery, Charles, Anne Arundel, Carroll, Howard and Prince George's. He and his team have been equally effective in delivering business value in similar matters for clients in Virginia's most challenging counties and municipalities including: Arlington, Alexandria, Fairfax, Loudoun and Prince William.

Over the past 20+ years, Kevin and his team have also consistently helped clients shrink, eliminate, settle and successfully win at trial and/or on appeal scores of disputes involving either real or alleged exposure in the range of several hundred

million dollars in the aggregate. Because he understands the nature of his clients' businesses and because Kevin seeks to establish long-term relationships with his clients, Kevin is also amenable to alternative fee arrangements and billing rates tailored to the size and complexity of the matters entrusted.

As alluded to above, Kevin and his team also have a proven track record for helping clients procure effective representation from their insurance carriers (at the carrier's expense), despite the attempted constraints initially invoked by both 1st and 3rd party carriers (e.g., Erie, State Farm, Cincinnati, Chubb, Prudential and Travelers) who are often incredulous in the first instance, initially seeking to control who selects and finances the insured claimant's defense and indemnity.

Results

- Won a four day bench trial on behalf of a national real estate developer in Arlington, VA who was sued for Slander of Title. Secured a directed verdict at close of plaintiff's case. Won our client's counterclaim and secured a high six figure judgment for damages and attorneys' fees.
- Persuaded a Fairfax, VA Court to adopt Maryland "Vendee Lien" law to recover millions in developer bonds posted as a contract deposit.
- Won summary judgment for our developer client in a \$37mil case alleging collusion to circumvent an owner's subordinate mortgage note. Defeated foreclosure exceptions at trial in Frederick County Circuit Court, allowing our client to acquire and develop the land

free and clear of subordinate liens held by former owner.

- Won a favorable trial ruling in Montgomery County Circuit Court for our commercial real estate developer client rejecting plaintiff's \$20 million claim to valuable FAR in the central business district of Bethesda. The Court granted our dispositive defense motion at the close of the adverse plaintiff's case – as a matter of fact and law – defeating the claim in its entirety and allowing our project to proceed using the disputed FAR.
- Used the prospect of a legal claim in Loudoun County, Virginia to favorably resolve a post closing non-compete and non-solicitation claim against an M&A seller/principal and others following a large stock purchase transaction. After a one day of mediation, we were able to hammer out extremely favorable terms in the multimillion dollar acquisition for our ecstatic client.
- Defeated a multi-count, multi-million dollar “bet the company” claim in Montgomery County Circuit Court against a start-up client defending an alleged pirating of a key employee and misappropriation of trade secrets claim. The Court granted summary judgment in our client's favor and we were able to get Erie Insurance to reverse its denial of coverage and defense under the client's CGL policy as well.
- Over the last 20+ years Kevin and his team have also successfully resolved/settled – using merits-based negotiations, mediation and either subcontractor and insurance carrier funding and/or in-kind remediation of a compromise scope of work – literally dozens of large, complex class-type litigation claims against his practice group's many

condominium developer clients, involving alleged condominium construction defects and related consumer protection claims in Maryland, D.C. and Virginia, wherein the well-funded condominium association and their contingency fee plaintiff's lawyers aggregate and bring claims belonging largely to the unit owners.

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