

Washington a model for construction defect solution

Any solution to Oregon's burgeoning construction defect crisis will require comprehensive and balanced legislation, and a good model for the state is the qualified condominium warranty legislation enacted in Washington in 2004.

The Washington State legislation provides a broad scheme for protecting condominium owners through a limited warranty and provides developers and others with immunity from lawsuits.

Under the Washington law, a developer is not liable to a condominium unit owner or an association if the developer provides to every unit owner and the association a qualified warranty that satisfies certain requirements.

The minimum requirements for a qualified warranty include the following: for individual units, a 12-month warranty for labor and material defects and building code violations; for common elements, a 15-month warranty for labor and material defects and building code violations; a 24-month warranty for electrical, plumbing, heating, ventilation, air conditioning,

exterior cladding, windows and doors; a five-year warranty for the building envelope including any defects that permit water penetration; and a 10-year warranty for structural defects.



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In addition to the warranty periods, the legislation also includes provisions governing policy limits and coverage.

A qualified warranty must cover living expenses if a unit is rendered uninhabitable. And although the policy may establish monetary limits, it must include limits of at least the following: for individual units, the lesser of the original purchase price paid by the owner or \$100,000; and for common elements, the total original purchase price for all components of the building or \$150,000 times the number of units.

In addition, the policy may not require a deductible

greater than \$500 for individual units or the lesser of \$500 times the number of units or \$10,000 in aggregate for common elements.

All repairs and replacements made under a qualified warranty must themselves be warranted for the later of one year or the expiration of the original warranty.

The permitted exclusions for qualified warranties relate almost entirely to exterior features such as landscaping, roads, site grading, surface drainage and municipal service operations.

In addition to excluded items, a qualified warranty may also exclude certain classes of damages including weathering, normal wear and tear, deterioration, normal shrinkage, failure to properly maintain the property, failure to comply with the manufacturer's warranty requirements and problems caused by the owner's negligence.

Although a qualified warranty is granted by the developer to the initial purchasers, it is fully transferable to subsequent pur-

chasers without notifying the insurer. In the event of any disputes, either party may demand mediation, and the warranty may include a mandatory arbitration provision.

It is too early to evaluate the impact of Washington's condominium defect legislation; however, Washington's scheme was modeled after similar legislation in British Columbia, and initial reports from there are quite positive.

Compelling developers to offer defect insurance will add to both the development costs and the selling prices for condominiums. But prospects are good that, in the long run, the scheme will deter the significant litigation costs that are often incurred in addressing defect problems. The scheme therefore holds promise.

Oregon needs to watch the impact that the legislation has in Washington and consider similar legislation.

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