

As condo market booms, so does litigation

The condominium market has grown dramatically in recent years and appears to be on the verge of exploding. Buyers are getting in line to make offers, and some developers are even holding lotteries to select the people who will be given the first chances to make purchase offers. It's a seller's market.

However, the growth in condominium sales has fueled an almost equally aggressive growth in lawsuits. It seems as if nearly every condominium project in the Northwest has generated a legal claim of some sort, and several projects have resulted in sizable lawsuits.

Insurance industry statistics bear this out. One recent study of insurance statistics for design professionals found that professional fees for condominium projects represented 5 percent of all fees, and claims from the projects associated with those fees represented 20 percent of all claims. This four-to-one ratio of claims dollars to fees has resulted in the insurance industry rating condominium work for design professionals as "highly risky."

Insurance statistics for contractors similarly demonstrate the large number of claims associated with condominium work. Many contractors are prevented by their insurance carriers from performing any condominium work at all.

The same insurance industry study for design professionals also found that the major allegations asserted in condominium lawsuits related to waterproofing, HVAC systems, foundations and roofing. Waterproofing is by far the most significant item and includes several building components including siding, windows,

flashing and decks. Another common allegation in condominium cases is inadequate soundproofing.

Oregon is one of a small number of states leading the condominium litigation boom.



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The other states with high levels of condominium litigation are Washington, North Carolina, South Carolina, Georgia and Florida.

Two environmental factors common to all these states are moisture and wind. Oregon and Washington experience large amounts of rain, and the other four states have seen the construction of numerous ocean-front condominium projects.

There are a number of reasons why condominiums are problematic. First, many are developed by shell corporations set up for the limited purpose of developing only a single condominium project. Once the project is finished and the units are sold, the corporation is dissolved. The developers have no long-term stake in the project and therefore little incentive to demand quality construction and an attention to detail.

Second, the nature of condominium ownership can be problematic. Rather than having one building owner, condominium buildings ultimately have multiple owners, all members of a condominium association. Some of the most problematic components of a building, such as the siding and the roof, are owned by the associa-

tion, and association boards are made up of volunteers who are usually working with limited budgets. Unfortunately, boards are typically not as attentive to maintenance issues as a single owner might be.

Multiple ownership creates other problems as well. For example, when water damage affects both individual units and common elements, the developer and contractor can face multiple lawsuits related to the same building.

Third, many condominiums are developed from converted apartment buildings, and the design and quality criteria for an apartment building are usually different from the criteria for a condominium. Apartment buildings are often constructed with shorter life expectancies than would be anticipated for condominium buildings and construction quality is therefore often significantly less.

Additionally, because apartment developers usually anticipate a maintenance staff to take care of problems as they arise, they can often get by with lower quality systems and materials. Although some of the quality issues can be addressed in the conversion process, not all can be, and many of the most significant components of the building (e.g., the siding, roof, windows and decks) are often unaltered.

Finally, because condominium units are usually people's homes, there is often a higher level of emotional attachment. People generally expect higher quality in their homes than they do in the buildings in which they work. Furthermore, many owners are expecting lower maintenance when they purchase a condominium and are disappointed when they discover otherwise.

The solutions to the condominium litigation problem are not simple and will not happen overnight. Developers, contractors and design professionals will all need to change the way they do business.

Developers need to be prepared to spend more money for quality and should consider retaining building envelope and other consultants to advise during the construction process.

Design professionals will need to prepare many of the design details that are often left to the subcontractors.

And contractors will need to become better educated about the causes of construction defects and ways to avoid them.

Condominium buyers also need to change their practices. Rather than inspecting only the particular unit being purchased, a buyer should consider retaining a qualified professional to inspect the entire building. The buyer should also look into whether the developer is local or instead an out-of-state developer with few ties to the region, whether the developer or any of the developer's principals are purchasing some of the units or otherwise have a long-term interest in the project, and what other projects the developer has built.

Although the condominium litigation boom is likely to continue for some time, the risks can be minimized. Doing so will require careful attention by everyone involved in building, selling and purchasing condominiums.

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