

Why do purchasers need protection

1. Current system encourages bad construction
2. Minimal plans needed for permit
3. Minimal plans given to subcontractors for bidding
4. Public duty doctrine protects building departments from claims of malfeasance.
5. Privity requirement appears to be well known by designers and subcontractors
6. No negligent construction in Washington
7. New corporations set up for each project; Ballard Square v. Dynasty Constrn, 126 Wn App 285 (2005)
8. New legislation HB 1848 is no improvement.

Practical considerations

1. Cost of legal fees to individual purchaser
2. Cost of expert fees to individual purchaser
3. Individual seller may be judgment proof
4. Long road to recovery

What can you do to help a buyer

1. Discourage any condominium purchase
2. Encourage purchase of lower cost single family residence
3. If client is insistent, encourage purchase of building that has been through litigation and had repairs by reputable contractor
4. Encourage prospective buyer to retain counsel before signing any document.
5. Encourage client to gather information about builder and gather all relevant documents
6. Inspection before purchase but may be cost prohibitive and give false sense of security
7. If buyer is an owner, urge analysis by law firm that specializing in construction defect cases before claims are barred.

What information would I want to know about a declarant

1. Who are the individual principals of declarant
2. Under what names have the principals of declarant developed multi family projects
3. What projects has declarant or its related entities developed
4. List of claims against declarant or related entities & results
5. Who was involved as architect, engineer, general contractor, subs & owner's rep.
6. Does declarant have CGL insurance, what are limits, what exclusions relate to condos.

What documents should be obtained before signing

1. Public offering statement including articles of incorporation, bylaws and declaration; POS requirements at RCW 64.34.210 found at Exhibit 2 to materials
2. Budget for association and is it realistic
3. Copy of declarant's insurance declarations page since commencement of construction to present
4. Copy of subcontract with framing sub and siding sub
5. Copy of construction plans in 11" X 17" format
6. Copy of any document that purports to modify statutory implied warranty

What provisions to look for in purchase form declarant

1. Limitation or modification of warranties
2. Disclaimers relating to sound transmission and/or view
3. Mandatory arbitration
4. Limitations on right of board or owner to assert construction defect claims or to commence suit
5. Limitations on amendment of governing documents

Who are the reputable builders

1. Polygon has taken a position that is genuinely different from many other declarants in the multi family market.
 - a) Polygon appears interested in benefit of reputation in long term
 - b) Polygon has made proposals to remedy defects for associations whose claims are barred by statute of limitations
 - c) Polygons repair proposals have been fair
2. There may be others. I know that a few quality contractors have been approached to do initial developments
3. There are some large and well known developers who have produced very poor projects and whose true reputation is not known. I decline to name them.
4. In general look for a developer who focus is not on limiting liability but is on producing a better product.