

PROFESSIONAL INSPECTIONS FOR CONSTRUCTION DEFECTS

When a new condominiums or homeowners' association project is ---- complete, owners are often glad to see the construction crews depart, but if the construction is not fully and carefully done, there can be problems with premature failure of various building components. If construction fails to meet building codes or legal standards for implied warranties (i.e. warranties which protect buyers even if not ----- stated in sale documents) the builder can be held responsible, but ----- currently protect themselves in these situations if they take timely action to establish and file all claims.

Claims not filed in time barred.

If potential legal claims arising from construction problems are to be pursued, it is essential that a condominium board have a competent inspection to attempt discovery of construction conditions which violate implied warranties before claims are barred by the statute of limitations, statute of repose or other time limitations.

All claims become barred at some point by the passage of time. under the Washington Condominium Act which applies in condominiums created after July 1, 1990, claims usually become barred four years after the first sale. For condominiums constructed before July 1, 1990 many claims may be barred six years after the date of substantial completion. Under ----- circumstances claims may survive longer, but such instances are unusual. The important consideration is unknown ----can be barred by the passage of time. To prevent unknown claims from being barred, an association must discover any defects while there is still time to pursue a claim. Many defects are not obvious, especially to those not familiar with prevailing building codes. To adequately establish the existence or not of construction faults, it is essential that an association obtain a competent professional inspection.

Association has duty to pursue valid claims.

A condominium association whose buildings contain defective construction could find itself facing liability to an owner or a guest who is injured as a result of a building code violation incorporated into the building. But more important, association boards have a responsibility to protect the interests of the community association. Under Washington law, officers and directors of corporations and associations have a ----- obligation to the organization which they serve. Officers and directors are required to exercise the utmost good faith in preserving the property and furthering the interests of the organization according to the case of Kaoue v. Klos 50 Wn.2d 775, 314 P03d -72 (1995). Failure of board members to meet their -----obligation could result in personal liability of board members

notwithstanding the business judgment rule applied in ----- Apartment Owners, 33 -
---- 397, 665 P2d 1177 (1982).

Needless to say, this ----- duty may not be met if a condominium board allows claims to be barred by the passage of time. This is true even though an inspection for construction defects might reveal something that would adversely affect the resale value of units. An Association's existence is perpetual. As a continuing entity, it is not concerned with the resale value of the individual condominium units. Concern of a board member that an inspection could result in the discovery of code violations which could adversely affect market resale value because such conditions would have to be disclosed by a condominium seller would not appear to be a valid reason for refusing to obtain inspection. Simply put a board member's duty of ---- loyalty in the association may not be fulfilled where concerns over ---- resale value prevent an inspection that would discover construction defects and claims are forfeited as a result.

Building Code Violations may be --- of legal claims

There are two reasons why a board should seek competent inspections for conditions for which an association may obtain recovery. Failure to comply with building codes when constructing a building may create a basis for legal claims against the builder. But inspectors by building departments do not assure compliance with applicable building codes. Taylor v. Stevens County, 111 Wn.2d 159, 759 P.2d 447 (1988). In numerous instances, building department employees have testified that they only conduct spot checks and that their work is not intended to assure full compliance with building codes. Generally, no one conducts inspections of condominiums during construction to assure code complying construction or that implied warranties are met.

I have observed numerous instances where condominiums are constructed with serious violations of building code requirements relating to fire safety or other deficiencies. The existence of such conditions demonstrates that building department inspections are not assurances of code compliance. On one litigated case, it was found that construction was forty percent complete before a building permit was issued. In that same case, it was found that the building department approved the building for occupancy even though the building did not include two exists from the third story or a fire alarm system which the building department had ----- specified as a requirement under the building code. In another litigated case, the building department approved the complex for occupancy even though it did not include a sprinkler system which that building department ----- indicated was required under the code. In yet another case a new complex was found to be in a state of collapse with well over \$1,000,000 of decay damages four years after

construction had been completed despite having passed inspection at the time of construction.

When the Supreme Court holding the Public Duty Doctrine as ----- in Taykay v. Stevens County, cited above, it is not unusual for serious building code violations to be passed over by city inspectors. Everyone (board members included) is presumed to know the law as reported above -that municipal inspections do not assure building code compliance and that building departments are responsible for code enforcement only in limited circumstances. The implied warranty of building code compliance is lost four years after the first sale under the new condominiums act.

Warranted inspection by competent professional is essential.

Just any inspection simply will not do. Get a competent inspection by a well qualified expert. Inspections can be performed by architects, engineers, inspection services, and in some instances attorneys. I strongly advise boards to select an attorney before contacting an inspector. The attorney can help you select an expert who has expertise in code requirements for condominiums and who has had ----- and food experience testifying in court. Selection of an expert without assistance of counsel can result in duplication of the substantial expense of an expert inspection.

Providing meaningful information to an inspector can increase the probability that the inspection will be competent. I suggest circulating a survey to all condominium owners , calculating the results of the survey and providing the4 calculated results to a qualified inspector. This process can reduce the cost of a competent inspection and help direct focus of an inspection. Contact Bo Barker at (425) 746-5995 for a sample survey form.

When an inspection is commissioned, I advise that inspectors be required to warrant in writing their written inspection reports identify all code violations relating to fire safety and moisture resistance and that all code violations identified include specific reference to the code section violated.

If you must select your own expert , ask for a written statement of credentials which should include educational background, an itemization of building code courses attended, a list of all cases where the expert has testified in the last five years, the results of all cases where that expert has testified, a list of attorneys with whom that expert has worked with, full information about the expert's malpractice insurance, if any, and a statement describing the basics of all fees to be charged.