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**Snohomish County business**

## **Builders call condos too risky**

**By Jane Hodges**

*Times Snohomish County bureau*

A growing number of developers, housing advocates and politicians complain that the state's condominium laws have left builders and their insurers so vulnerable to litigation that new construction is in jeopardy.

They say it might even come to a standstill next year if a bill that would reduce condo developers' risks doesn't pass the state Legislature.

At the same time, the Washington Homeowners Coalition, an organization of about 10 attorneys and 300 homeowners, says no one is listening to residents' needs.

"I think this is tipped very much toward developers," said David Merchant, a lawyer with Barker Martin & Merchant in Seattle who serves on the coalition. "This is a risk-shifting bill that puts more responsibility on homeowners."

Developers, though, say they no longer can afford to do their jobs for fear of litigation, and that could impact the housing markets in King and Snohomish counties.

"The demand for condominiums is fantastic, but now virtually every condo project that gets completed is turning into a lawsuit," said Larry Sundquist, whose \$30 million real-estate-development firm, Sundquist Homes in Lynnwood, worked exclusively on condominium projects until three years ago.

Next year, he says, he plans to get out of the condo business, even though officials project that nearly half of the 82,000 urban-area Snohomish County housing units built between now and 2012 could be condominiums.

This week, senators are expected to vote on Senate Bill 5536, which would clarify the responsibilities of condominium developers to reduce the potential for litigation. It would also ensure that builders construct a variety of housing types to meet growth projections.

Joining the homeowners coalition against the bill are the state Attorney General's Office, the state chapter of the Community Association Institute and the Washington State Bar Association, said Merchant.

The Condominium Alliance — whose local members include Snohomish County Executive Bob Drewel, the city of Everett, the Snohomish County Economic Development Council and Snohomish County Housing Alliance — backs the bill. The group and condo builders cite these problems:

- Developer-responsibility language in the 1990 Condominium Act is vague enough to leave room for lawsuits. The bill attempts to clarify language so developers could be sued only for problems that make homes uninhabitable.

- Lawyers encourage homeowners associations to file lawsuits for repairs.

After lawsuits began appearing in California, condo construction declined by 84 percent from 1994 to 1999, according to the alliance. In Washington, the alliance said, similar lawsuits grew between 1997 and 2000. The number of condo permits issued from 1998 to 2002 fell from 37 percent of residential building permits to 22 percent at the state level and from 53 percent to 36 percent in the Bellevue-Everett-Seattle area, according to the U.S. Census Bureau.

- Some insurers affected by litigation against their clients no longer offer policies for new projects.

Scott Hildebrand, the public-policy director for the Master Builders Association of King and Snohomish Counties, said the liability issue is a major factor, but not the only one, in insurers' retreat from the condo market.

Shelli Lucus-Kennedy, a broker with McDonald Insurance Group in Kirkland who advises the Master Builders, said condo insurance is almost impossible for developers to secure.

In 1997, about 25 insurers in the state sold condo insurance. Now, only two do, she said.

- Condo insurance fees have risen in the past three to five years.

Developer Sundquist said his rates have grown 30-fold. While Lucus-Kennedy said there's no uniform rate of increase, she offered this example: A 200-unit condo project that cost \$3,000 to insure in 2000 now would cost \$300,000.

- New construction materials and changes in building codes have caused problems, such as mold, which many developers need to repair.
- In Snohomish County, many jurisdictions require subdivisions of single-family homes and multifamily buildings to establish homeowners associations.

While homeowners associations are meant to help residents share maintenance-and-upgrade expenses, lawyers are turning the associations into class-action groups that sue developers, Lucus-Kennedy said.

But rather than change legislation to reduce developers' liability, Merchant countered, the building-inspection process should be changed to clarify where developers are responsible. That way, developers may catch potential problems at earlier — and less-expensive — stages of construction.

Some local condo owners say they prefer to settle differences with developers through arbitration. David Yeaworth, an alliance spokesman, said arbitration fees are lower than those for legal settlements.

Lynette Richards, president of the Martha's Vineyard condo association in the Harbour Pointe section of Mukilteo, said her development is next to an older condo community, Nantucket, that was built by the same developer.

Homeowners at both developments experienced problems with sewer lines and water damage from sliding-glass doors. But while Nantucket's homeowners association sued and collected a settlement, Martha's Vineyard homeowners settled with the builder out of court by creating a \$1.5 million repair plan that the developer completed in May.

"We were cautious and did our homework," Richards said, noting that her homeowners association used its repair budget conservatively and banked some of it for future use. When homeowners associations settle out of court, she said, they avoid paying high legal fees.

Sundquist said, for his part, he would like to continue building condos and repairing work that

homeowners consider inadequate.

In his 28 years as a developer in Snohomish County, he said, he had never been sued until two years ago. Since then, he said, four condo associations have approached him about litigation.

Sundquist's insurer settled one lawsuit for about \$1 million, two are pending, and his firm is handling an out-of-court redevelopment with the fourth association.

"Homeowners deserve to have their problems fixed. But in the litigious environment we're in, insurance companies have had to get involved," Sundquist said. "I care about my reputation. We prefer to work directly with homeowners associations."

Sundquist said he hopes the new legislation will pass, but even if it does, he and others don't think the condo-development climate will improve until at least 2005, given the time needed to get permits and begin construction.

"I'm not a believer that this is going to be a quick fix," he said. "If a satisfactory bill gets passed, I think a lot of people will go back into the market."

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