

Welcome to

Aging Communities and
How to get a Repair Plan in
Place.



Presented by:

Ed Segat

Morrison Hershfield

503-595-9128

United States and Canada

And

Daniel Zimberoff

Barker Martin, P.S.

206-381-9806

Washington / Oregon

www.barkermartin.com



Leaky West Condominium

Our Building Looks Great!!



Unless you actually enter.....



Hidden Conditions



What is really happening behind that cladding....dry rot, mold and structural deterioration



Window Failures

- Old aluminum frame windows, that have not received proper maintenance over the years, will fail before their normal useful-life is reached.
- Once they fail, moisture will enter the building envelope leading to rot and further deterioration.



Failures, Failures everywhere

- Leaky West Condominiums had so many failed seams, defects and deferred maintenance, the whole building smelled like a musty concrete cave.
- Local realtors would not even show units there.



Saturation Points

- While the exterior might look OK...the interior shows the walls have reached maximum moisture saturation points.



Construction Defects



- When Leaky West was originally built, there were many construction defects that all allowed the moisture that got behind the cladding to be absorbed by the sheathing, which over time continued to rot and deteriorate.
- This led to even higher repair costs as a substantial amount of the sheathing had to be replaced.
- Defects included reversed lapped WRB; windows with no head flashing, no thru-wall flashing; use of improper sealants and insufficient maintenance of the building.

What Do We Do Now?

Board is finally forced to take action to avoid homeowner revolt and/or lawsuit(s)

- **Confer with manager and devise a comprehensive roadmap for the rehab**
- **Seek legal counsel to determine potential third-party contribution**
- **Review governing documents to determine rights, obligations and duties**



Understand the Owner's Perspective

Processing major bad news about their home is similar to learning they have a serious disease

Elisabeth Kubler Ross – *On Death and Dying*

- The five stages of death
 - Denial “There is nothing wrong with our building.”
 - Anger “Who let this happen?”
 - Bargaining “Let’s just paint it, it’ll be fine”
 - Depression “This can’t be happening, I can’t afford it.”
 - Acceptance “I don’t like it but, it’s the right thing to do.”

Define Construction Defects:

- **New Construction:** Where current knowledge and building standards are known but were not properly applied in the actual construction. Possible compensation through mediation or litigation with the developer and contractors
- **Old Construction:** Deteriorated building assemblies from faulty construction practices. It is unlikely that compensation will be available however some old master insurance policies may cover “deferred maintenance”

Nine Steps to Working Through the Problem

1. Have a Building Envelope Condition Assessment performed to determine the scope and size of the problem
2. Review and define the problem with the association owners
3. Explore options for funding the repair
4. Tackle any legal concerns that may limit the associations ability to complete the repair
5. Establish the Team to perform the design and scope of the repair
6. Secure approval and funding for the repair
7. Perform bidding due diligence
8. Select a contractor
9. Complete the repair



Communicate Early and Often to the Membership

Communicate, communicate, communicate

- What happened
- When it happened
- Why it happened
- The necessary repairs
- Initial plan for understanding costs
- Available proceeds (settlement, insurance, reserves)
- Amount needed from the membership
- Initial funding strategies being considered
- Solicit owner involvement

Enlist Help-Don't Go it Alone

How to keep the process going

Select the Team from the beginning:

- Board of Directors
- Owners Rehab Committee
 - Association Manager
 - Architectural or Engineering Firm
 - Legal Counsel – general and litigation
 - Lender
 - Short list of Contractors
 - Owner's Representative



Rehab Committee

- Have initial meeting with Board to explain the benefits of forming a Rehab Committee that will have one or two board members plus three or four other owners to report weekly to the board on progress. The committee can not make decisions but they can devote the time and effort to move the project forward.
- Allows for succession planning following annual elections.
- Allows the board to focus on regular association decisions.
- Rehab Committee is able to concentrate solely on the rehab and establish timelines to complete tasks.
- Rehab Committee can take the lead in communicating with the Owner's.

The Professional Team

- Allow the Professional Team to take the heat off the Rehab Committee and the Board
- Allow the Architecture - Engineering Team to explain the condition of the building and what needs to be repaired
- Allow Legal Counsel to explain the legal steps to accomplish the repair and any possible changes to the governing documents
- Allow the Lender to explain the various types of personal financing available and association financing
- Allow the Contractor to explain how the process will work, from scope to staging to completion

The Professional Team

Architect –Engineer Professionals

- Will assess the building envelope for evidence of premature failure or current construction defect
- Will supervise and report on exploratory openings to confirm the source and extent of damage to the underlying components of the building envelope
- Will provide expert testimony when necessary
- Will prepare a scope of work for the rehabilitation of the community
- Will prepare construction drawings and specifications
- Will assist in contractor bidding and selection and permitting
- Will provide construction management to review proper field installation of the construction details

The Professional Team

Legal Counsel

- General Counsel will review governing documents to assure the association has the authority to do the project, the authority to borrow and to sign contracts.
- Litigation Counsel will assist to see if there are ways to secure rehab funds through construction defect.
- Insurance Recovery Counsel will determine if there may be deferred maintenance funding available
- Ensure that proper legal notices are given to all owners for meetings and for voting when necessary

The Professional Team

Lenders

- Explain to the owners ways to fund the repair – Special Assessment – personal funding and Bank funding
- Explain to the owners the various types of personal funding that may be available to them: second mortgages, Line of Credit, loans from investments etc.
- Explain how Bank Funding would work to provide remaining funds for the repair

The Professional Team

General Contractors

- Have the Board and Rehab Committee interview up to three general contractors prior to the bidding process.
- Allow the contractor to explain their role in the process and how they will assure the repair gets done on time and on budget
- Ask the selected contractor to review the scope for true value engineering benefits
- Recommend contractors who use homeowner liaisons to assist the Board, Rehab Committee and the owners.

Formulate the Project Plan

- Assessment – determine the need for the repair
- Design Brief – Scope of Work
- Legal Counsel Input
- Develop a preliminary estimate of the budget
- **Develop plans and specifications**
 - ❖ Conduct value engineering
- Develop the contract documents
- Present scope of repair to owners with Architect-Engineer Team, Legal Counsel, Lender and General Contractor in attendance

Formulate the Project Plan (cont'd)

- Bid the project or negotiate a price
- Finalize Project Costs
- Assure all legal documents are in place
- Secure Special Assessment and Financing
- Begin Project

Funding the Repair

Authority

Corporate status

- Borrowing authority
- Authority to pledge the association's future income, including the right to receive assessments
- Is the Association bankable?
 - Delinquency rate
 - Sound management
 - Adequate Project Budget
 - Reputable Contractor
 - Owner approval and financial support
 - Attorney opinion letter from General Counsel

Communicate, Communicate and Do it Some More

- Tell them there is a problem
- Let them know who to direct questions to
- Send out regular newsletters or status emails
- Advise what the next steps are going to be
- Determine the estimated costs of the project
- Determine legal authority to borrow and authority to repair
- Determine the funding strategy

Communicate, Communicate and Do it Some More

- Communicate to the membership
- Have preliminary hand votes to gauge acceptance
- Have Team presentations made to the owners regarding funding the assessment and securing financing
- Secure Financing
- Sign contracts
- Begin work

What Goes Wrong

Remember those Nine *Easy Steps* –

- Establish the Team to perform the design and scope of the repair
- Have a Building Envelope Condition Assessment performed to determine the scope and size of the problem
- Review and define the problem with the association owners
- Explore options for funding for the repair
- Tackle any legal concerns that may limit the associations ability to complete the repair
- Secure Approval and Funding for the repair
- Perform bidding due diligence
- Select a contractor
- Complete the repair

They can seem impossible to complete, but when followed will increase the likelihood of success



Whatever happened at Leaky West.....



NEARLY COMPLETE

- After nearly 3 years of preparation and 9 months of construction the owners have watertight windows, skylights, cladding and modified designs details that will reduce the possibility of moisture entering into the building envelope.



Leaky West No More

- Even in today's down economy, units are selling for 10% more than when construction started and the owners love coming home again.



References

- <http://www.toolbase.org/Building-Systems/Exterior-Walls/rehab-guide-exterior-walls>
- <http://www.cmhc-schl.gc.ca/en/inpr/>
 - enter Building Envelope Rehabilitation in Search and then look for the Owner-Property Manager Guide link

Ed Segat
Architect and Department Manager
esegat@morrisonhershfield.com
(503) 595-9128



The Board knows what is wrong and the cost to fix...

Now where does the money come from?

- Settlement
- Reserve Account
- Special Assessment





Special Assessment

1. Lump Sum Payment
 - Refinance (Equity)
 - Savings
 - Borrow (friends and family)
2. Association Loan
3. Lump Sum/Association Loan



Advantages and Disadvantages of Borrowing Money

Advantages

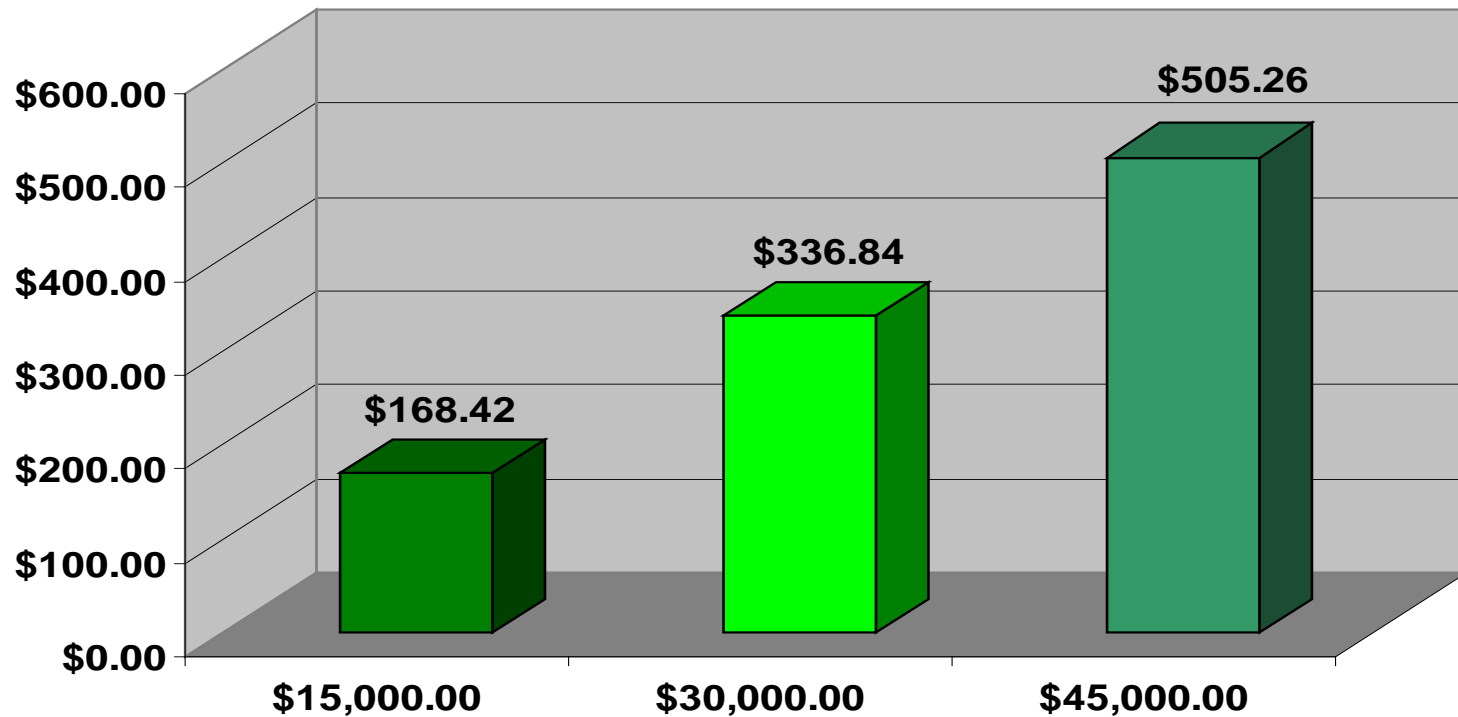
- Downward slide of property values slowed or eliminated
- Needed repairs/improvements are completed quickly
- Reduced financial impact on homeowners

Disadvantages

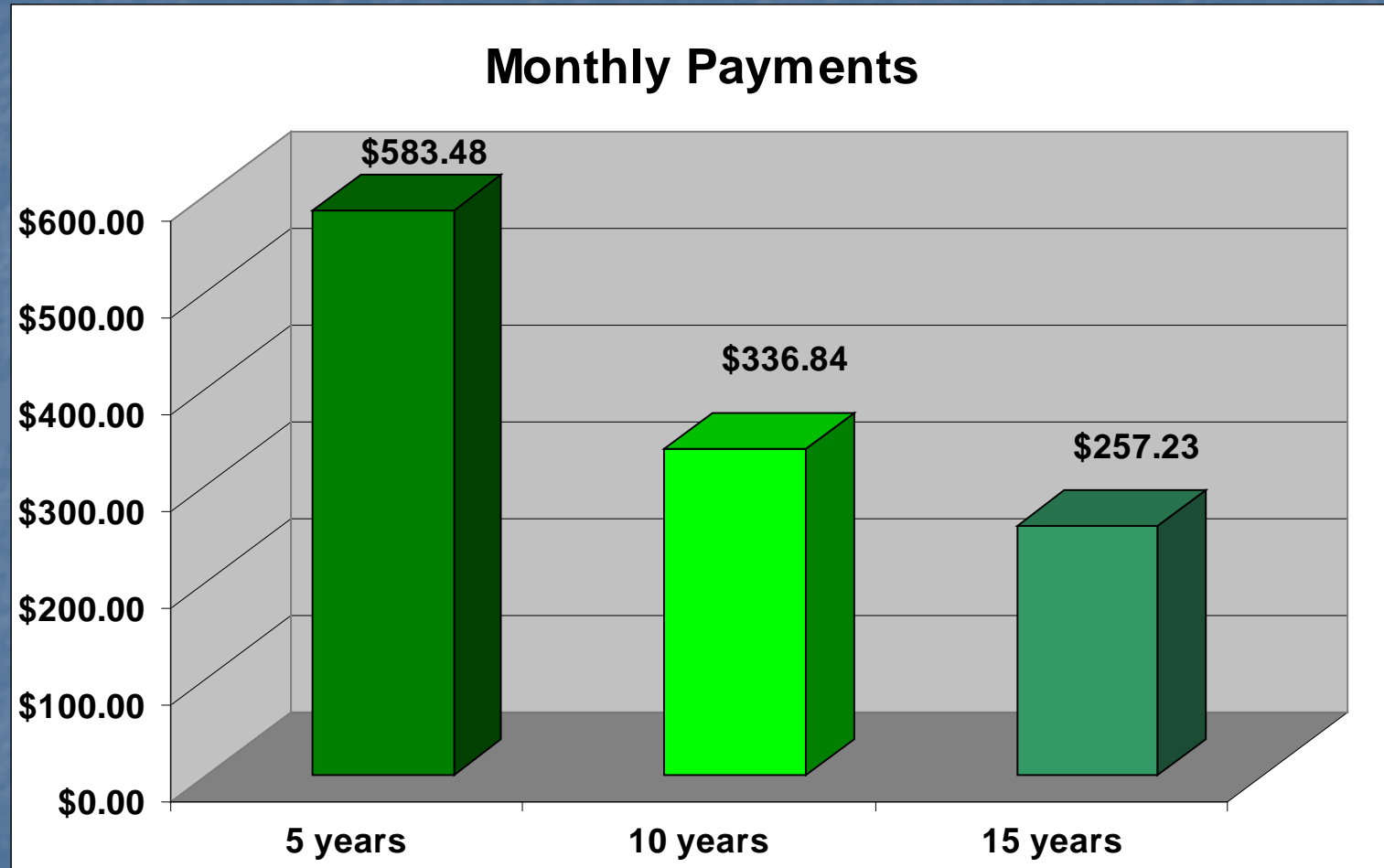
- May increase monthly assessments
- Interest costs incurred may be high

10 Year Loan at 6.25% APY

Monthly Payment



\$30,000 Loan at 6.25% APY



Association Loans

- How is the loan secured?
- Does the Association have the ability to borrow?
- Membership approval



The General Loan Parameters

- One to Fifteen Years
- No Prepayment Penalties
- Typical Structure
 - Construction Phase- initially a “non-revolving” line of credit.
 - Post Construction Phase- line of credit is converted to a variable or fixed rate term loan when construction is completed.



Lenders Criteria to Approve

- Delinquency and Delinquency Policy
- Size
- Reserve Study
- Cash Flow
- Cooperation

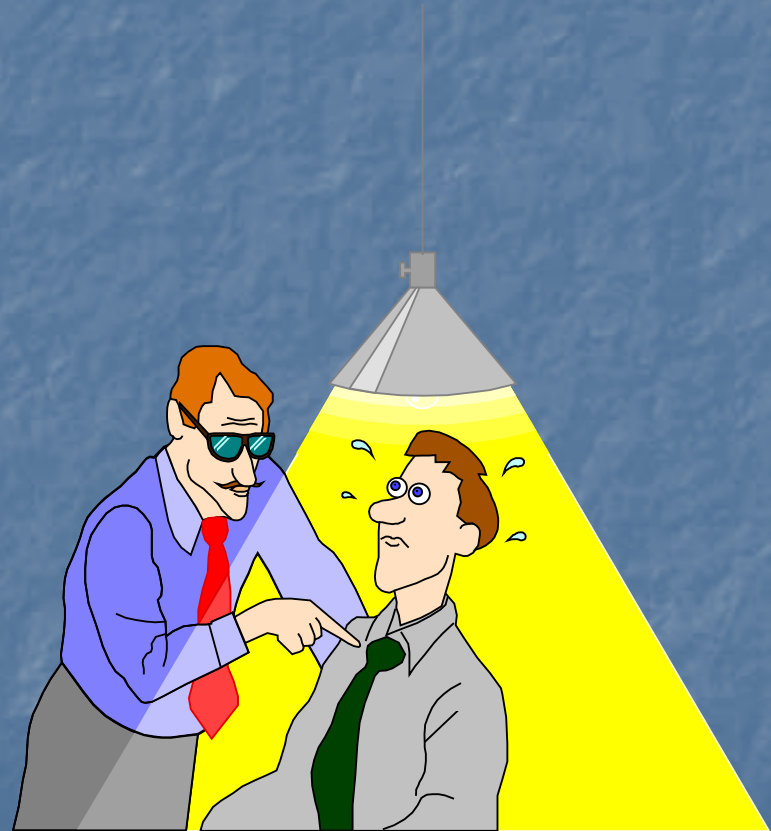
When selecting a lender. . . Ask the following:

How long have they been providing loans to Associations?

- The more experience the better.

How long will the loan approval process take?

- What are the “normal” rates, loan fees, and terms?
- These all vary depending upon amounts, terms, and risks.
- Are there deposit requirements?



Common Questions

- Does the bank put liens on individual units?
- Do board members sign the note as individuals or as officers of the corporation?
- Do the homeowners make their portion of the loan payment directly to the bank?
- Does the bank want the associations reserve & operating accounts?
- Is it possible for only some owners to pay over time with others selecting to pay a one-time assessment?

Common Questions

- If the payment were defaulted, would a lien be placed against the property of all owners or against those who had elected to pay overtime?
- Is a proportional interest on the loan tax-deductible by each owner?
- Is there any tax advantage to the HOA?

Questions & Answers

