

Construction Defect Litigation And The Apartment Industry

Where did Construction Defect Litigation Start?

Construction Defect Litigation has its roots in the early eighties in Southern California. The litigation was spurred by a building boom of town homes and condominiums. The high demand for housing resulted in a shortage of skilled labor. In their rush to meet the growing demand many builders often took shortcuts and failed to adequately supervise unskilled laborers. Has history repeated itself? Although many builders have improved they face the same challenges experienced in the Southern California boom. Homes and apartments can be built to be water-tight and without structural defects. However, similar to California due to high demand and shortage of skilled laborers construction defect litigation is now active in Arizona. In recent years, we have witnessed the extension of the same legal theories and sources of recovery to the Apartment Industry. This trend will continue to grow as owners, developers and subsequent purchasers become more aware of the sources of recovery available to them.

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What are the Basic Legal Theories and Sources or Recovery?

The recent litigation in Arizona has created a body of law that holds sellers and builders (either residential or commercial) of new construction accountable for construction defects under multiple legal theories. In Arizona, the most important theory of recovery is the implied warranty of workmanship and habitability. The standard necessary to find liability is the proof of a defect due to improper construction, design or preparation. Any deviation from plans, building codes, manufacturing specifications or the standards of practice may amount to a construction defect.

Who is Responsible to Pay for the Damages from these Defects?

Purchasers or subsequent purchasers who are faced with latent defects impacting their maintenance costs and diminishing the value of their property should be entitled to recover the cost to repair the defective condition and any damages that have resulted from the defects. The primary source of recovery is insurance. Most general contractors and subcontractors are required by the developer to carry comprehensive general liability policies (CGL policies). These policies provide coverage based on the occurrence of resultant damage from the defect to other than the insured own work. Since this damage can

The primary source of recovery is insurance - CGL policies

continue over years, these cases often involve multiple insurance policies and carriers all with limits of usually \$1 million or greater, for each subcontractor involved with the project. The insurance company's duty to defend and pay for damages is not dependant on the solvency of the insured; therefore, even if the general contractor and/or subcontractors are bankrupt there are still resources to pay for the repairs.

What Can You Recover?

The typical measure of damages obtained in a construction defect suit is the "cost of repair". Thus, monies can be recovered to repair the defective construction and any damages that have resulted from the defect. Additionally, expert fees and costs for the forensic investigation are recoverable. A plaintiff is also entitled to temporary repair costs it may have expended in its attempts to remedy or mitigate the defects. Finally, the costs of relocation are recoverable. Temporary relocation often becomes necessary depending on the extent of the required repair work.

Most law firms limiting their practice to this area of the law will provide, at no cost, an inspection by a licensed forensic architect to determine if defects exist. We recommend that if one of your properties is experiencing excessive maintenance or repair costs to have an inspection performed.

Author Ritchie Lipson is an attorney with the law firm of Dicks & Coglianese, which has offices in Phoenix, Tucson, Southern California and Las Vegas and limits its practice to the representation of homeowners, homeowners associations and apartment owners in construction defect cases. If you would like a no-cost investigation of your property, or if you have any questions regarding this article, you are encouraged to contact Mr. Lipson at (602) 254-4222 or e-mail: rlipson@hoadefectlawyers.com.