

## When Your Association Needs First Aid, Don't Just Give it A Band-Aid

Stop the bleeding! This is the fervent cry echoed by condominium owners when construction defects appear, leaks occur, and their property values drop. The homeowners look to the Board of Directors for relief. The Board of Directors, frequently composed of laymen inexperienced in the intricacies of construction defects, and the law, may not know what to do.

The Board wants to get the repairs made soon as possible, to satisfy the homeowners, and avoid continuing criticism by their neighbors. Fast simple solutions seem to be the preferable course. The risks associated with a Band-Aid repair or "quick repair" are ignored. The owners rights imperiled and the stage is set for the developer to avoid liability for as yet undiscovered problems - all in the Boards zeal to help the owners!

The insistent cries for immediate relief from ongoing defects can make Boards susceptible to a developers offer to provide a quick fix. The Board is tempted by the prospect of fast repairs, at no expense to the homeowners. Of course, if something seems too good to be true, it usually is. Frequently, that is the case with regard to the promises of developers once defects start appearing.

Typically, the developer, seemingly cooperative, wants the Association to sign a "complete release" in exchange for all of the promised repairs that the developer says he will undertake "free of charge." The problem is that "complete release" can later be relied upon to bar any further claims or litigation against the developer. More often than not, visible construction defects are merely the "tip of the iceberg." In the typical construction defect case, the visible damages trigger an extensive expert investigation. Invariably, that investigation uncovers additional hidden defects that were not apparent earlier.

It is not unusual for a developer to provide "Band-Aid" repairs. Unfortunately, those temporary repairs may simply mask deep-seated and more expensive construction problems. After all, the developer who is now so agreeably doing superficial repairs, is the same developer responsible for the creation of the defects in the first place!

Property damages are like healthcare concerns. Absent a careful diagnosis, this wrong surgery can be performed, or more troubling, a necessary surgery or ailment can go undiagnosed leading to much more significant health problems later. The same is true for construction defects. A thorough analysis by an independent consultant, not under the control of the developer, in conjunction with capable and qualified construction defect counsel, will keep the Board from the trap of signing a release that is overly broad. Given the uncertainty, fear and potential great expense associated with construction defects, a Board must be extremely careful that they do not inadvertently give away the rights of the homeowners to get fully compensated for extensive costs of repairs for defects, as yet,

**Temporary repairs  
may simply mask  
deep-seated and  
more expensive  
construction problems.**

undiscovered. Construction defect counsel can work with the Board and independent consultants to obtain a proper diagnosis by virtue of a detailed investigation of the project, the way it was designed, and the way it was built. It is crucial that this step not be omitted by the Board in its zeal to satisfy the homeowners and correct currently visible problems, at the expense of never being able to obtain proper compensation for problems that have not yet turned up.

Short term developer sponsored fixes may only mask deep-seated and expensive underlying problems. Band-Aid approaches by those responsible for those injuries in the first place, should be viewed with skepticism. Early settlements coupled with broad “simple releases”, should be carefully examined. “Simple releases” can lead to a loss of rights, evaporation of compensation otherwise payable, and an inability to repair deep-seated construction defects. Second opinions are necessary. Boards of Directors who do not carefully analyze developer settlement recommendations may be exposing themselves to personal liability if bigger problems later come to the surface. The same homeowners who are urging a quick fix now, will later criticize a Board for rushing into an agreement with a developer that precludes later receipt of compensation for as yet undiscovered, but serious, construction defects. Boards of Directors have high fiduciary duties to the homeowners, and may not, without risk, seek seemingly simple solutions that concurrently void future rights.

**“Simple releases” can lead to a loss of rights, evaporation of compensation otherwise payable, and an inability to repair deep-seated construction defects.**

*Authors Michael Dicks, Esq. and Christopher Coglianese, Esq. are principals with Dicks & Coglianese, a law firm whose exclusive focus is construction defect litigation. The firm has conveniently-located offices in Orange, San Diego, and Ventura, California counties as well as Central Arizona. If you have any questions about this article or construction defects in general, please feel free to contact them at 1-800-739-1222.*