

# RA&MCO QUARTERLY

## The Design and Construction Newsletter

A publication of RA&MCO Insurance Services

Fall Quarter 2002

Volume 20, Issue 3

### Residential Condominium Construction Defect Claims: Part 1, Causes

Condominiums(a), a form of Common Interest Development, have been defined as a "system of separate ownership of individual units in multiple-unit building. A single real property parcel with all the unit owners having a right in common to use the common elements with separate ownership confined to the individual units which are serially designated" (citation omitted). Such mode of real property ownership may be commercial (office buildings, etc) or residential.

There is common agreement that residential condominiums are an efficient use of land and capital to create affordable housing, thus creating broad social and economic benefits. Inherent in these types of projects, however, are substantial dangers for design professionals and constructors, to the extent that many insurers no longer consider them to be "fortuitous" risks. Rather they are so nearly certain to result in various claims sounded in contract and/or tort made against those who design and/or construct them that such firms may not find willing insurers for their services, or if they do, only at very high premiums. For example, one leading insurer has shown that while its insured architects generated only 1% of their fees from condominium projects, it paid 14% of its total claims dollars on behalf of these architects on condominium-related claims. Contractor insurers have witnessed similar experience, and construction defect litigation has been blamed for destroying the residential condominium market, though there are numerous other factors that have contributed.

Most claims are initiated by Homeowner Associations against their condominium complex developer and/or building contractor. These parties, directly or at the instigation of their insurers, then frequently involve others related to the projects such as design and consulting professionals, sub-contractors, materials suppliers: in some instances, virtually any party who touched the project, down to the firm that striped the parking lot! By this strategy, many with no fault or culpability are forced to expend sometimes large sums to defend themselves or contribute to a settlement for the sake of avoiding such expense and a possible uncertain outcome if the matter should proceed to trial or binding arbitration.

Builders and others admit that many of the claims and resulting lawsuits involving condominiums were justifiable, especially during what was considered a building boom in the 1980's, when quality was sometimes compromised for the sake of quantity or expediency. And, of course, a perfect project without defects should theoretically not produce claims. However, such perfection is impractical so such

defects as may arise should ideally be minimal and reasonably remediable by the builder, who ideally is sensitive to customer complaints which may be helped along with better public relations as well as corrective action. Many builders have been successfully utilizing third party or independent inspectors to produce a better product by curtailing problems in the course of construction but also by documenting the construction process via notes and photographs that can be used later in defense of claims that may arise.

Design and consulting professionals may be particularly vulnerable to claims on condominium projects since their scopes of service may be inadequate or minimal and, in particular, they may be deprived of construction observation opportunities because of owners' budgetary limitations.

Considerable opinion exists as to the causes of construction defect claims in regard to condominiums, including poor and underfunded maintenance by the Homeowners Associations and what is perceived to be a penchant by aggressive law firms to target Homeowners Boards for owners complaints, the Boards then seeking recourse from others. Additional causes include unrealistically high expectations of first time home buyers, non-responsive or insolvent developers, financially highly leveraged projects that require cutting costs and quality, conversion of apartments to condominium ownership, and the very nature of a Homeowners Association which facilitates a "class action" type of claim.

### Coming Next Quarter: Condominium Construction Defect Claims: Part 2, Risk Management and Loss Prevention

If you would like more information about this or future publications please contact (800) 684-7475.  
or you can reach us by mail at:  
RA&MCO Insurance Services  
2300 Clayton Rd, Suite 1100  
Concord, CA 94520-2142  
[www.ramco-ins.com](http://www.ramco-ins.com)  
[Info@ramco-ins.com](mailto:Info@ramco-ins.com)

RA&MCO is one of the nation's leading underwriters of professional liability insurance for design professionals. It is accessed through over 1,600 brokers across the country. This newsletter is dedicated to its readers as an educational and informational resource and the views and opinions expressed herein are not to be construed as legal advice from the author(s), RA&MCO Insurance Services or any insurer. Readers should seek specific legal advice from competent legal counsel on any issue or topic herein before taking any action. References and citations are omitted for the sake of brevity.

**RA&MCO**

INSURANCE SERVICES

Professionals insuring Professionals

© RA&MCO Insurance Services, 2002