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Law in Hand

The Role of the Community Association Manager in Construction Defect Litigation

Owning a home is one of the biggest financial and emotional investments that one makes in life. Thus, when the value of the property declines due to construction defects, the homeowner's sense of stability and safety decreases correspondingly. Property managers can most efficiently aid their homeowners by either anticipating construction defects and preventing them or, if already present, by guiding homeowners through the difficult process of litigation and reconstruction. Property managers should observe the following steps to carry out their duties to homeowners:

- The association manager should perform visual observations or informal inspections of the property. For example, the manager should conduct a walk-through of each project at least once a month. The most common signs of possible construction defect problems include excessive ponding of water on roofs or in common areas, stucco cracks around windows and doors of units, cracks in concrete foundations, water intrusion through roofs or in windows, cracking of asphalt pavements, excessive gas or water bills, and unusually high maintenance and repair costs or depletion of reserves.
- The manager should also maintain close interaction with homeowners and/or the board of directors and coordinate with them to keep detailed records of all problems reported on the property. Generally, if ten percent of the units exhibit the same defect, very strong consideration should be given to consulting with an attorney and an architect or engineer. There might be a need for formal expert inspections if the problems are severe enough to warrant further testing.

If the homeowners, through their board of directors, decide to pursue construction defect litigation, the manager can act as liaison between the attorneys, engineers, homeowners and the board of directors, if authorized to do so by a board of directors resolution. All communications in this capacity are protected by the attorney-client privilege and are considered confidential and inadmissible in any related subsequent court proceeding.

In the event that the construction defect lawsuit is subsequently settled, it is important to remember that often several months may pass between settlement of the lawsuit and reconstruction of the property. During this time, the manager should deposit settlement funds into an interest bearing account to maximize return on the money.

The manager also has an essential role during reconstruction of the property. The manager should assist the board of directors in soliciting at least three to five bids for each type of reconstruction work and should arrange that an architect or engineer supervise the reconstruction. The manager should also exercise due diligence in verifying licensing, checking references, verifying insurance, and coordinating bid packages of all parties involved in the reconstruction. Finally, the association manager has a duty to disclose construction defect and other problems or limitations to existing homeowners as well as any future purchasers of the property. Towards that goal, during all phases of this process, a disclosure file should be maintained by the manager noting construction defects, status of the litigation and any material developments during this time.

Managers can be essential allies to homeowners and the board of directors if they are informed, prepared and committed. By establishing clear policies that anticipate possible problems or complications, managers can reduce much of the anxiety and stress that homeowners feel when confronted with construction defects.

For more information on this topic, please contact Burdman & Ward at (888) 350-9080.