

# Construction Defect Claims: Management Company Time Involvement

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**June, 1997** - Professional Property Managers face numerous and time sensitive tasks when their associations are faced with construction defect claims. This will provide a tangible understanding of the time involvement of management company executive and staff. Although management strive to assist with each of these activities, most fall outside the scope of the standard contact with an association and are subject to additional costs to the association. Contracts should be modified to address these added costs due to the increasing number of claims being filed every year. Like other professionals working to resolve a defect, the management team is an integral part in all aspects of the procedure.

## Initial Recognition of Construction Defects

- Identification of defects vs. maintenance
- Repair invoices and coordination
- Maintenance/repair requests
- Correspondence from homeowners regarding repairs
- Meeting with affected homeowners
- Phone calls/memos to board members regarding trends
- Additional site inspections
- Pull archived documents for attorneys
- Pull and permit inspection of homeowners association documents
  - a) Minutes
  - b) Correspondence with Board of Directors, etc. per list of documents
- Permit and schedule preliminary site inspection by construction consultants
- Attend extra Board of Directors meetings regarding initial and final presentation of results
- Coordinate disclosures to homeowners

## Selection Of Defect Counsel

- Recommendations to Board of Directors
- Interviews
- Selection
- Contract negotiations
- Notification to homeowners

## Prelitigation Requirements By Legislation

- Follow time table and guide Board of Directors
- Meetings with developer representatives
- Notification to homeowners regarding options

- Meetings with homeowners regarding options and builders offer, if any

### Litigation

- Increased time at monthly Board of Directors meetings and extra meetings
- Special homeowners association meeting to discuss association surveys and pre-litigation matters
- Educating new Board of Directors members and officers
- Telephone contact with Board of Directors members
- Pre-deposition and deposition
- Expert invoices and reconciliation
- Obtaining and investigation of outside financing for litigation
- Proxy solicitation for loans
- Attend mediations and mandatory settlement conferences
- Pre-trial preparation
- Trial attendance
- Calls from prospective buyers, sellers, real estate agents, special escrows
- Changes to routine maintenance practices and adoption of special procedures
- Additional accounting time to review invoices, pay vendors, negotiate terms and work with consultants
- Make mandatory loan payments and manage cash flow

### Reconstruction

- Work with/interview 1-3 qualified reconstruction experts
- Prioritize and discuss settlement offers (net to homeowners association)
- Set up investment of settlement moneys; interview investment advisors and selection

These duties are not anticipated as part of regular management contracts and vary from association to association. Therefore, all manager involvement cannot be predictably quantified in advance. Association boards should be prepared to look towards their management team as an integral part of the litigation process and an important service provider to their community. The Association should be prepared to pay for these additional services.

Depending on which law firm the association chooses to guide them through construction defect claims, the time noted above can increase if the firm does not have unique staff members, such as construction consultants or client services departments to help alleviate additional requirements often left to the manager.