

Condo boom spurs surge in defect lawsuits

Law firms hiring to tackle cases

BY J.K. DINEEN
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The 66-unit condominium building at 101 Crescent Way near Candlestick Park was completed in 2003, an early entry in the condo craze that added 10,000 housing units to the San Francisco skyline before collapsing three years ago.

But already the building's wooden beams around the interior courtyard are rotting, according to firsthand observation as well as a lawsuit filed by homeowners against the builders and developers. Leaks are widespread from the windows, elevated walkway decks, roofing and ventilation systems. Water has damaged interior finishes, building framing and exterior stucco.

The building's condition has "deteriorated and fallen into disrepair at a rate far in excess of reasonable expectations," according to the lawsuit.

Three years after the condo bubble collapsed, lawyers say San Francisco is seeing a new boom — in construction defect litigation. As the thousands of San Francisco's new condo units enter their fourth, fifth, sixth and seventh year, the courts are seeing a rise of construction-defect suits. That upswing prompted the Southern California-based Miller Law Firm to recently open a San Francisco office. The firm already has 14 construction defect lawsuits in the city. In addition to 101 Crescent Way, the firm is handling cases for homeowners for the 224-unit 888 Seventh St. and the 110-unit Park Terrace at Mission Bay.

"We are looking at 20 projects, 16 of which are in litigation right now," said Thomas Miller, which is representing the 101 Crescent Way homeowners' group.



"We are looking at a new case every week."

The builder of 101 Crescent Way, Roberts-Obayashi, denied the HOA's claims in court filings. Top Vision Development, which bought the development from Roberts-Obayashi and converted it from rentals to condominiums, "generally and specifically denied each and every complaint," according to a court filing by the defendant.



"This is really an egregious case," says Thomas Miller, right, of 101 Crescent Way, with Rachel Miller. An engineer says a column in the lobby, above, is rotted.

Executives at Roberts-Obayashi and Top Vision Development didn't return a call seeking further comment. Steve Civanovic, an attorney for the insurer at 101 Crescent, also did not return a call seeking comment. A spokesman for Zurich, the insurance carrier on the project, said the company does not comment on cases in litigation.

Brett Ferrari, engineer with Ferrari-Moe LLP who inspected the property

on behalf of the homeowners association, says the building should be "red-tagged" and vacated unless the beams are shored up immediately. In total, attorneys for the homeowners' association claim that work is needed that will cost \$7 million — about \$106,000 per unit, according to the homeowners association.

"This is a really egregious case," said Miller. "Usually we don't have an engineer ready to red-tag a building."

While construction defect suits are common, 95 percent avoid trial because of 1993 Senate Bill 800, known as the "fix-it" law. SB 800 gives California homebuilders the chance to fix defects in their products before being sued if they comply with a lengthy list of pre-litigation filings and procedures. Since the law passed, many construction defect cases are settled before they go very far in court.

Judge Richard Kramer, who presides over complex litigation cases at San Francisco Superior Court, says he has seen more of a shift in the types of construction defect cases than an increase in overall number.

"I am not sure the numbers are increasing, but the locations are changing — it has moved around the city from South Beach to the live-work lofts and now South of Market and Mission Bay.

Residential Builders Association President Sean Keighran said frivolous lawsuits are "still a problem" and that construction defect litigation — between insurance and quality controls and inspections — add between 10 and 20 percent to construction costs. But he said the fix-it law has eliminated some litigation.

"Builders are spending more time focusing on problematic areas up front and the attention to detail means better built buildings," said Keighran.

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