

UNDER CONSTRUCTION

GLOBAL CONSTRUCTION SURVEY 2005: RISK TAKER, PROFIT MAKER?

By [Geno Armstrong](#) and [Brian M. Relle](#)
KPMG LLP

A global survey of top construction executives by KPMG, the audit, tax and advisory firm, has found that construction executives are positive about the industry's future, but the road ahead is fraught with challenges that need to be addressed today. Managing contracting risk and properly pricing it is one of the key challenges that the industry faces, and 63 percent of respondents said it was their biggest issue.

Globally, those challenges were fairly consistent, with the most common being a combination of the following:

- recruiting and retaining skilled labor
- risk management — reducing transfer of risk to contractors
- contraction of market demand in the medium to long term business outlook
- new competition, and
- innovation and technical challenges.

Current Business Needs

Fifty-four percent of all respondents identified a shortage of skilled resources as a critical issue facing the industry. It was a concern in all geographic regions, with demand for qualified resources seen as far exceeding supply.

Many respondents indicated that this challenge threatens to constrain the growth of their organizations. Says one executive from Australia: *"People are a key issue for the business. ... It is getting harder to attract good talent and there are fewer and*

fewer people in the industry. In the Australian market 80,000 to 100,000 skilled resources will leave the industry in the next few years only to be replaced by approximately 30,000 to 40,000. This is a big drain on our talent pool."

Another key challenge cited by forty-two percent of respondents was securing forward workload (i.e., future projects). For too long, the industry has been plagued by a fixation on forward workload rather than focusing on securing higher-margin work. Yet, most organizations continue to use forward workload as an important Key Performance Indicator (KPI). Survey respondents voiced a concern that securing forward workload is a troublesome

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REPORT OF THE NOMINATING COMMITTEE

The Nominating Committee of the Forum on the Construction Industry convened at The Forum's Mid-Year Meeting in New York City in January and selected nominees for Chair-Elect and Governing Committee Members-at-Large. The nominees are: for Chair (automatic) [Ty D. Laurie](#), Chicago, IL; for Chair-Elect: [Michael Tarullo](#), Columbus, OH; for Governing Committee Members-at-Large: [James S. Schenck, IV](#), Raleigh, NC; [A. Elizabeth Patrick](#), Atlanta, GA; [Anthony Meagher](#), Baltimore, MD; and [Andrew Ness](#), Washington, DC. In accordance with The Forum's by-laws, the nominations will be presented to The Forum membership for a public vote on May 18, 2006, as part of The Forum's Business Meeting which is held in conjunction with its Annual Conference in San Diego, California.



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MESSAGE FROM THE

CHAIR

Ty Laurie,
Chair-Elect

ELECT



DISCOVERING FORUM RESOURCES

Leave the beaten track occasionally and dive into the woods. Every time you do so you will be certain to find something that you have never seen before.

Alexander Graham Bell

In preparing to highlight resources available by virtue of your Forum membership, I found that the above quote from Alexander Graham Bell hits a bull's-eye. You may know of my already vociferous championship regarding what the Forum offers each of us, but even I was impressed upon re-acquainting myself with the array of Forum tools at our disposal.

For example, need information about the meaning of "other property" with respect to the economic loss rule? Need a book devoted solely to payment practices under AIA-A201? Need to know what arguments could be asserted regarding the applicability of UCC's Article 2 to a sewage treatment facility? Need jury instructions specific to a construction claim? Answers to each of these questions are available if you:

- Look on the searchable index in the Forum's website;
- Order a book on a specific topic from the Forum;
- Search a program CD containing program papers, presentations, and our e-library;
- Attend a workshop at the Forum's annual meeting in San Diego.

Forum Website

If your main use of the Forum website consists of searching for meeting dates and the hotel phone number in order to make reservations, please take a second look. Very near the "Meeting Information" link on the Forum's home page is the "Publications" link. Click on "Publications" to find searchable author and subject indices for the past 26 years of *The Construction Lawyer*. Also available is the full text of each *Under Construction* newsletter published since December 2001.

As an experiment, I entered "economic loss" in the search engine under the Forum's Publications link. The results provided 25 hits, including the article described above regarding the definition of "other property" in terms of the economic loss doctrine.¹ The searchable subject index includes virtually every significant construction law topic. The alphabetical author index lists those members who are Forum contributors and the titles of their published articles.

The information on the Forum website is specific, abundant, and comprehensive. Please take a moment to surf our website, and think of it as a resource next time you're searching for information.

Forum Bookstore

Titles available from the Forum bookstore impress on their own.² Read the list. If you're like me, you'll find at least three books that you want immediately:

¹ Janis Cheezem, *Economic Loss in the Construction Setting: Toward an Appropriate Definition of "Other Property,"* *The Construction Lawyer* (April 1992).

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DISCOVERING FORUM RESOURCES

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- [The A201 Deskbook](#)
- [Construction Accident Law](#)
- [Construction Contracts Book](#)
- [Construction Damages and Remedies](#)
- [Construction Lawyer's Guide to Labor and Employment](#)
- [Design-Build Deskbook, Third Edition](#)
- [Discovery Deskbook for Construction Disputes](#)
- [Federal Government Construction Contracts](#)
- [Fundamentals of Construction Law](#)
- [Insurance Coverage for Defective Construction](#)
- [Model Jury Instructions - Construction Litigation](#)
- [Partnering in Construction: A Practical Guide to Success](#)
- [State-by-State Guide to Construction and Design Law](#)
- [Sticks and Bricks: A Practical Guide to Construction Systems and Technology](#)
- [Sweet on Construction Law](#)

•² Space constraints prohibit us from acknowledging and thanking all of the authors who contributed to these books. The editors or authors-in-chief of these books are: [Adrian L. Bastianelli III](#), [Daniel S. Brennan](#), [Frank Carr](#), [Richard Craig Cooper](#), [Carina Y. Enhada](#), [Cheri T. Gatlin](#), [C. Allen Gibson Jr.](#), [Allen Holt Gwyn](#), [John R. Heisse](#), [Edward F. Hennessey](#), [Buckner Hinkle Jr.](#), [Kimberly A. Hurtado](#), Charles Lancaster, [Richard H. Lowe](#), [Robert J. MacPherson](#), [Charles A. Markert](#), [W. Alexander Moseley](#), [Andrew D. Ness](#), [Jennifer A. Nielsen](#), [James Duffy O'Connor](#), [Leslie O'Neal-Coble](#), [Douglas S. Oles](#), [Mark D. Petersen](#), [James S. Schenck](#), [Marc M. Schneier](#), [Charles F. Seemann III](#), [Charles M. Sink](#), [Richard F. Smith](#), [John I. Spangler III](#), [Justin Sweet](#), Paul Tucker, [Joseph D. West](#), [Christopher C. Whitney](#), and [Fred D. Wilshusen](#). We also wish to thank [Carl J. Circo](#) and [Christopher H. Little](#) of the [Section of Real Property, Probate and Trust Law](#) (for *State-by-State Guide to Construction and Design Law*), the [Construction Litigation Committee of the Section of Litigation](#) (for *Model Jury Instructions*) and [TIPS Section](#) (for *Insurance Coverage for Defective Construction*).

e-Library

Another unexplored Forum resource that may be on your bookshelf right now is the CD that comes with program meeting materials. You will find the CD contains a wealth of information. It not only includes program materials from a specific Forum meeting but provides access to The Forum Electronic Library, a broad compilation of legal and business resources. Our Forum Electronic Library may very well equal or exceed similar resource collections compiled by librarians of large law firms for their in-house websites.

The CD contains all the speakers' materials from the meeting in two formats (a searchable PDF format and an interactive HTML format that allows incorporation into other documents) as well as the slide presentations viewed at the meeting. Electronic links allow you to navigate directly to each speaker's e-mail, to the website of each speaker's firm, to Forum leadership, to the slide presentations, to a photo gallery of the meeting, and to The Forum Electronic Library.

The Forum Electronic Library puts construction law and business information at your fingertips, including access to sites providing free legal briefs, law review articles, real-time legal news, on-line construction news, and business research tools. Maps are also provided that allow you to click on geographic areas and link to both state-by-state and federal resources, including the U.S. Constitution, the U.S. Code, The Code of Federal Regulations, the Federal Acquisition Regulations, and much, much more. The resources in The Forum Electronic Library are collected on free public sites, so all of your searches will be free.

Attend the Meetings

The best may be the resource described last in this message: joining your colleagues at Forum

meetings. Your next opportunity will be the Forum's 2006 Annual Meeting on May 18-19, 2006. The Forum will gather on a private 44-acre island at the [Paradise Point Spa and Resort](#), just a few minutes from downtown San Diego.

The program, [Swimming with the Sharks](#), will focus on litigating the construction case. Forum members will examine the following topics:

- Trying the Case Before a Jury vs. a Judge vs. an Arbitrator;
- Prerequisites to Litigation: Notice, Documentation, and Claim Submission;
- Discovery in Arbitration: International and Domestic;
- A Mediator's Inside View: How to Advance Your Interests;
- Jury Instructions: Standard vs. Special Instructions;
- Implementing the Dispute Resolution Procedures;
- The Electronic Courtroom and Paperless Trial;
- Advanced Course in Negotiations;
- Beyond No: Appealing the Arbitration Award;
- Cross Border Disputes;
- Ethics: Use of Former Employees as Witnesses or for Information;
- Preparing Your Expert for Trial;
- Ethics: Multi-Jurisdictional Practices.

For more information about the meeting, watch for an aqua-colored brochure coming in your mail or view the brochure on-line now at http://www.abanet.org/forums/construction/featured_program/home.html. I urge you to attend the meeting and look forward to seeing each of you. ♦

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Key Performance Indicator, as it ignores the inherent risk/reward equation.

Close to three-quarters of respondents indicated that more than half of their current business is secured through competitive bidding. Of those organizations obtaining work through means other than competitive bidding, a high percentage were Australian and Asian construction companies, which appear to rely heavily on existing relationships or referral work.

To secure work ahead of their peers, seventy-one percent of respondents indicated that "quality of reputation" was a key factor. Only a small proportion (five percent) of the respondents considered the company's history of litigation and disputes to be a factor affecting its reputation.

Asked what the most significant cause of disputes were with clients, one Australian executive stated, "*I think the biggest cause is an abdication of 'issues management' by the client and dependence on a contract which supposedly transfers all risks to the contractor.*" While the industry is often perceived as litigious, sixty-two percent of respondents indicated that only ten percent of all projects require specialist consultants, mediators or lawyers to resolve claims or disputes on construction projects.

Recognizing and Managing Risk

Construction and risk are two words that go hand-in-hand. While risks can be mitigated, completely eliminating them is a rarity in the construction industry. In other words, success requires intelligent risk-taking. The survey revealed that close to seventy percent of respondents considered their organization had an *advanced* or *sophisticated* framework for managing risks during the project lifecycle. Despite this positive response, many respondents still felt that there was

room for improvement and that the effectiveness of a risk-management framework was inherently dependent on the quality of its project managers to assess the qualitative factors on construction contracts.

Concerning companies' key risk-management policies and procedures, close to seventy percent of the respondents were *confident* or *highly confident* that their risk-management policies were consistently applied throughout the organization, and twenty-five percent of respondents believed their organization *never* overrode key policies in order to secure a contract.

Respondents generally were comfortable with the independent monitoring of business and operational risks at their firms, which took the form of surprise executive reviews, scheduled quarterly or monthly presentations to senior executives, internal audits, and external audits.

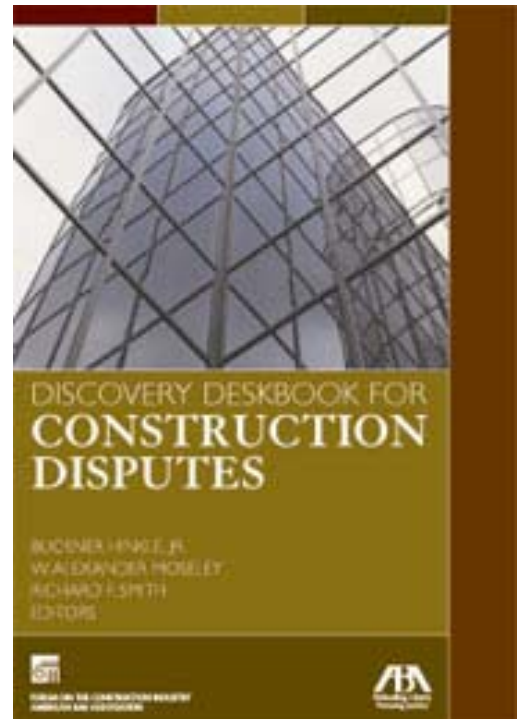
Surprisingly, given the high levels of procurement activity within most construction organizations, only one-third surveyed had detected fraud or economic crime during the previous twelve months. These crimes ranged from low-impact fraud — such as credit-card abuse — to more serious instances — such as procurement fraud, fraudulent internal reporting, and embezzlement.

If you want to access the full report, you can at:
http://www.us.kpmg.com/microsite/attachments/2005/Global_Construction_Survey_2005.pdf



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All information provided is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.



“CONDO-MANIA” HAS ITS RISKS

By [G. William Quatman, Esq.](#)
Shughart Thomson & Kilroy, P.C.

We are in the middle of the largest construction boom in the past decade. In February 2006, *Engineering News Record* reported on a record-breaking housing market in the U.S., with new residential construction topping 2004 by 14%. The largest growth sector has been in the multifamily housing market, which jumped almost 24% over 2004. Every major city is seeing a dramatic increase in urban condo projects, from old warehouse and loft conversions to new high-rise and mixed-use projects. The Multi-family Housing Market Index published by the National Association of Homebuilders (NAHB) shows that condos are the strongest category in multi-family construction. *Realtor Magazine* reported that condos account for 12.8 percent of the housing market, a 33.3 percent rise over the last decade. “The demographic factors - baby boomers who want second homes or smaller-scale, maintenance free living, and the echo boomers just entering the work force - both serve to support a rising demand for condos and apartments,” said NAHB Chief Economist David Seiders. Robert Murray, the Chief Economist for McGraw Hill Construction said simply that, “It’s condo-mania out there!” Murray predicts another record-breaking year in multifamily housing in 2006. With all of this new work available, you would think that architects and contractors would be targeting the multifamily and condominium market as a priority. Well you would be only partly right, since many large firms are making it a priority to stay clear of the fast-growing condo market for well-founded fear of getting sued and due to rising insurance costs.

High Risk Projects. Construction defect litigation has exploded in several states in the condominium market, attracting aggressive plaintiff law firms and resulting in legislation that attempts to limit frivolous suits against designers and builders. Condominium

construction carries with it an unusual risk and higher than average number of claims. High-end residential construction generally leads to high expectations by purchasers. When you stack 50 to 100 of these luxury homes in a high-rise tower there is the potential for a major lawsuit if the building fails to match up to the marketing materials or, worse yet, contains code violations, leaks, or mold. The condo developer, commonly a single-purpose LLC which disappears once all the units are sold off, may not be solvent, insured or even exist a few years after project completion when maintenance issues grow into defect cases. In states that still have joint and several liability among co-defendants, a design firm or builder can be tagged with damages that result from the developer’s failure to maintain property after occupancy. Even contractual indemnity may not help to mitigate this situation if the developer has no assets nor insurance.

Claims on the Rise. One university study reported that a full one-third of all condominium projects reported construction defects and that almost 40% had “major flaws.” One major insurer reports that one *out of every five* claims (or 20%) against their insured architects/engineers involves a condominium project. With an increase in need for housing, especially in urban areas, and reduced availability of land, there will be an increase in condominium construction for the foreseeable future. As a result of this incredible growth in condo construction, construction defect suits by homeowners associations is expected to rise since more homeowners are choosing to live in common interest ownership communities. But this is not just a risk for designers and contractors, since most claims by condominium associations also involve the developer. The university study, mentioned above, found that

almost 14% of the condo unit owners surveyed had already filed lawsuits against their developers; another 12% had threatened suit.

Multi-million dollar claims are not unusual given the sheer number of units in the average condominium project. For example, in July 2005, a Texas-based homebuilder settled a condominium lawsuit in Colorado for \$39.5 million to resolve a 2003 lawsuit over a 246-unit project. The 43-building complex was alleged to have multiple defects in foundations, walls, drainage, and windows. The same law firm that represented the condominium owners achieved a \$12 million settlement in April 2005 on a different 104-unit complex in Colorado.

Target Market for Law Firms. With settlements like the one in Texas, condo claims are attracting contingent-fee plaintiff-oriented law firms, some of whom advertise on the Internet their success in representing condo associations, boasting multi-million dollar awards and settlements. Condo association property managers report being courted heavily by law firms seeking to represent the unit owners in construction defect litigation. A *New York Times* article in 1996 reported that lawyers are aggressively wooing property managers and homeowners associations. According to the article, plaintiffs lawyers “troll for clients” at trade shows for condominium managers and put on slide shows, prodding homeowners associations to sue their builders. One manager of 130 condominium complexes said she “was deluged with boxes of cookies and other gifts sent by lawyers.” Proactive measures have been taken in some states, like Kansas where it is illegal for any person to “provide or offer to provide anything of monetary value to a property manager of an association or to a member or officer of an executive

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board of an association to induce the property manager, member or officer to encourage or discourage the association to file a claim for damages arising from a construction defect.” See [K.S.A. 60-4708](#). A person who willfully violates this section shall be guilty of a class C misdemeanor.

Insurance Industry Reacts. As a result of this increase in residential claims some insurers are now limiting the amount of residential work an insured can perform, with some capping that work at a fixed percent of overall volume. The risk of such projects has driven most insurers for contractors to remove standard coverage for all residential construction from the standard CGL insurance policy. Some insurers have chosen not to renew most residential subcontractors. Additionally, some carriers are raising their rates and scrutinizing their underwriting practices more intensely in “hot states” like California, Florida, Nevada, North and South Carolina, Oregon and Washington state. Design professionals renewing their errors and omissions insurance now have to complete a supplemental application form to evaluate condo exposure for each insured firm. The more condo projects a company engages in, the more likely it will see an increase in premiums. Several major architectural firms simply do not do condo projects due to the risk and the insurance premiums. Large design firms, like large contractors, might be seen as deep pockets by plaintiffs regardless of insurance coverage.

One Example. Nevada is one example of a state that has seen an explosion in condo projects and condo litigation. The risk of suits has not slowed down the market for condominiums in Nevada. A January

2006 article reported that, “There are 60,000 condominiums and 19,000 condo-hotel units currently proposed, planned or under construction in the Las Vegas Valley.” *Engineering News Record*, Jan. 23, 2006. Clark County (Las Vegas) reportedly had only 12 construction defect cases pending in 1996, but according to a 2003 article in *Las Vegas Business Press*, Clark County had more than 200 construction defect lawsuits pending at that time. This increase goes back more than 5 years. Condo lawsuit filings in Nevada in 1999 reportedly saw a 442% increase over 1998. Today Clark County reportedly has *over 120* condo suits currently on file. Some contractors have left the condo market due to high risk. A February 3, 2003 article in *Las Vegas Business Press* reported on a contractor who had built more than 3,500 condominium and townhouse units but who closed his company due, in part, to liability and higher insurance premiums. In 2000, the contractor was hit with a \$15 million construction defect lawsuit by the homeowners association for a 208-unit condominium complex, which cost only \$9 million to build; after two years of litigation, the contractor settled the suit for \$3.8 million. This caused his insurance premiums to increase. The article said, “Over the past two years, Las Vegas has lost an estimated 60 homebuilders, many citing rising liability and narrowing profit margins.”

Legislative Remedy. Laws have been enacted due to lobbying efforts by the contractor and design professional associations that reduce (but not eliminate) the risk of condo claims. Right-to-Cure laws (or “Construction Defects” Acts) have been passed in twenty-seven states, which have detailed “pre-claim” requirements for notice to builders and, in some states, designers plus required mediation before a condo owner can sue for residential construction defects.¹ Without such notice and inspection, a condo defect lawsuit must be dismissed until the parties complete the pre-claim process of notice, inspection and mediation. The laws vary from state-to-state and many require specific contract notice

provisions in the Owner-Contractor agreement to invoke protection of the law.

Condo Act. The [Uniform Condominium Act](#) has been adopted in most states. Under the Act, the developer gives an express warranty to unit purchasers as to the physical characteristics of the plans, specs or project - even if the words “warranty” or “guarantee” are not used. This warranty can be excluded or modified, however, by agreement of the parties. The Act also creates implied warranties of quality, which can be also excluded or modified by agreement. Be aware that a “general disclaimer” of implied warranties is not effective under the Act and to be effective the disclaimer must specify the defect being waived. Also under the Act the developer can reduce the statute of limitations on both express and implied warranties from 6 years to 2 years. This has to be evidenced by a separate instrument, executed by the unit purchaser.

What to Do? Now is the time for builders, designers and developers to develop risk management ideas and specially tailored contract clauses. These may require conformance with

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¹ States With Residential Right-To-Cure Laws (Jan. 2006).

Alaska. [A.S. §§ 09.45.881](#), et seq.; Arizona. [A.R.S. §§ 12-1361](#), et seq.; California. [Cal. Civ. Code §§ 895 - 945.5](#); Colorado. [Co. Stat. §§ 13-20.801](#), et seq.; Florida. [Fl. St. §§ 558.001](#), et seq.; Georgia. [Ga. Code §§ 8-2-35](#), et seq.; Hawaii. [Hi. Stat. §§ 672E-1](#), et seq.; Idaho. [Id. Code §§ 6-2501](#), et seq.; Indiana. [In. Code §§ 32-27-3](#), et seq.; Kansas. [K.S.A. §§ 60-4701](#), et seq.; Kentucky. [Ky. Stat. §§ 411.250](#), et seq.; Louisiana. [La. Stat. §§ 9:3142](#), et seq.; Michigan. [Mi. Stat. §§ 339.2411-2412](#); Mississippi. [Ms. Stat. §§ 83-58-2](#), et seq.; Missouri. [R.S.Mo. §§ 436.350](#), et seq.; Montana. [Mont. Stat. §§ 70-19-426](#), et seq.; Nevada. [Ne. Stat. §§ 40.600](#), et seq.; New Hampshire. [N.H. Stat. §§ 359-G:1](#), et seq.; North Dakota. [N.D. Stat. § 43-07-26](#); Ohio. [Oh. Stat. §§ 1312.01](#), et seq.; Oregon. [Ore. Stat. §§ 701.560](#), et seq.; South Carolina. [S. Car. Stat. §§ 40.59-810](#), et seq.; Tennessee. [Tenn. Stat. §§ 66-36-101](#), et seq.; Texas. [Tex. Prop. Code, Chapters 27 & 428](#); Virginia. [Va. Stat. § 55-70.1\(d\)](#); Washington. [Wa. Stat. §§ 64.50.005](#), et seq.; H.B. 1848 (2005); West Virginia. [W. Va. Stat. §§ 21-11A-1](#), et seq.

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applicable state law before they are used in any one state. Be aware, that under the Uniform Condominium Act, a court may find that a contract or contract clause was unconscionable at the time the contract was made, and may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. The Act says that every contract or duty governed by the Act imposes an obligation of good faith in its performance or enforcement. Here are five risk management tips that should be considered by builders and design firms for this risky multifamily housing market:

1. Avoid Inexperienced and Risky Developers. Condos are an easy market to enter because there are more developers with experience in residential than any other building type. Condominium construction is considered a “short jump” for developer/builders of single family or duplexes, but they may lack the experience and skills to manage a multi-unit housing project. Conduct more in-depth client selection for condo projects. Interview the developer/client for prior experience; contact past contractors; go see prior projects. Conduct a simple Internet search for company history in litigation and newspaper articles about the developer’s past projects. Use this information in evaluating whether to take the project or not. Require a “secondary sign-off” for condo projects by an executive officer of the design or construction company before any new condo project is accepted.

2. Identify Potential Problem Areas. Water intrusion is the number one defect in construction problem cases. Homeowners do not notice most of

the other things, but will notice huge stain on their wall or the water leaks. Window leaks and roof leaks as well as cracked slabs, soil movement, drainage problems, cracks in walls, defective plumbing, cracked stucco and EIFS, structural deficiencies, and improperly installed mechanical and electrical equipment are also frequent sources of condo suits. Hire a “peer review” firm to review details and specifications in these areas. Promote early involvement, when possible, of the contractor in developing design details with input from specialty subcontractors. Discuss alternatives to troublesome details.

3. Avoid Reduced Scope of Architect Services. There is a perception by some developers that the architect’s fees are an unnecessary cost burden, created by the building permit process (need for sealed plans). Architects and engineers are often asked to provide bare minimum services, and limited or no construction phase services. Where the designer has less fee, less services and less control, it cannot help to correct a problem it does not see during construction. Insurance coverage may also be compromised if work scope is reduced. It is in everyone’s best interest to keep the design professionals and their insurers engaged for the duration of the project.

4. Binding the Unit Owners. Once the project is completed, sold and occupied there will be multiple unit owners, who have no direct contract with the architect, engineer or contractor. The chances of dissatisfaction by the owners are multiplied accordingly when there is a problem in the building which impacts on all of their individual living units. Include specific limitations from the Owner-Contractor or Owner-Architect Agreement into the Unit Purchase Agreements between the developer and the unit buyers and in the condo declaration and HOA By-Laws so as to bind the unit owners to reasonable terms for project upkeep, maintenance and pre-claim procedures.

5. Maintenance Budgets. Some condominium associations have inadequate budgets for maintenance,

insufficient maintenance staff and a reluctance to increase association dues to cover needed annual maintenance. This results in problems (especially in building skin, roof or common areas) being left unattended until too late. Untrained maintenance staff may not know what to look for or how to fix problems properly. Require by contract that the association By-Laws include an adequate maintenance budget, increased by the cost of living index annually, with inspection of roofs and other areas every two years or more often. If the association does not have a full-time maintenance employee, require some outside contractor to perform routine maintenance on a regular basis. Agree to do an annual walk-through inspection of the premises for the period of the Statute of Repose (6 to 10 years in most states). Include the cost of this inspection in the initial construction fee paid up front by the developer or have it paid out of association dues annually. Assist the architect and developer in preparing a “Maintenance Manual” for the Project. Failure to follow the manual would be a defense to any claim.



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Join Us in San Diego For Our 2006 Annual Meeting!

WHEN: May 18-19, 2006

WHERE: [Paradise Point Resort and Spa](#)
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TITLE: [Swimming with the Sharks](#)
Litigating the Construction Case and More

TELL ME MORE: This two-day litigation oriented program is designed to assist you in achieving success for your clients long before a complaint is filed. This interactive program is built on previously presented programs and updates them with the latest ideas for efficient issue resolution, including contract drafting to anticipate disputes. Speakers will address, among other issues, appealing arbitration awards, expert preparation, electronic evidence presentation and mediation techniques. Moreover, what better place to learn such important practice oriented information than on Paradise Point, a 44-acre island in the midst of gentle Mission Bay.

Register by May 3, 2006 for advance registration rates. To register for the program online or to download a registration form, please visit the Forum's website, at www.abanet.org/forums/construction.



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