

REAL ESTATE LAW

Land developers should heed 'casualty loss' provision

When land developers purchase land for the development of multifamily housing, the developers must obtain the necessary financing for construction of the improvements on the land.

Such financing generally either comes from a lender's construction loan or from the developer's own funds. Typically, the more common of the two practices is for the developer to borrow funds from a construction lender.

While there are many significant provisions in the loan documents that the developer should thoroughly review and understand, one of the most crucial provisions the developer should pay attention to is the

the full insurable value of such improvements. The casualty provision in the loan documents normally will provide that all proceeds of insurance will be paid to the lender, which has the option of either: a) applying the casualty insurance proceeds to the debt, or b) releasing the casualty insurance proceeds to the borrower to make repairs. Neither a) nor b) is an option of the developer.

Suppose a developer purchased land, obtained a construction loan and used the proceeds from such loan to construct multifamily housing. Suppose after that, halfway through construction, a fire destroyed the improvements. Would the developer have ac-

cess to the casualty insurance proceeds in order to pay for the rebuilding of the destroyed improvements?

While most developers assume the casualty loss insurance proceeds would be available for repairing any casualty loss damage to the improvements, this is generally not the case. Texas courts have held lenders do not have a duty to release casualty loss insurance proceeds to a borrower (developer). Moreover, most loan agreements are drafted by the lender, and therefore the casualty insurance provision typically will state any and all casualty insurance proceeds will be payable to the lender.

Even if the casualty insurance proceeds are applied by the lender to pay for the loan documents will require the developer to rebuild the improvements.

Therefore, if the casualty insurance proceeds are payable to the lender, then the developer will have to either use its own funds or obtain third-party financing in order to pay for the repairs to the improvements. Additionally, third-party financing may be prohibited by the loan documents.

In order to have the right to the casualty insurance proceeds, the developer must require, in its loan documents, the right to the proceeds so long as the developer is not in default under the loan documents.



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REMODELORS COUNCIL

G H B A

Room additions should blend seamlessly with home's interior, exterior

By TOM PELLEGRIN
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If a room addition is designed and built properly at completion it should not look like a room addition.

That is to say it should be done in such a way it appears to be an extension of the original house. This is not only true for the exterior but the interior as well.

I am sure most of you have driven down a street and came upon a house that it was very evident it had an addition. That situation can detract from the value of the home. Conversely a good design and well-done construction will increase the value of the home.

To achieve a good design, several elements should be taken into consideration. The roofline, the foundation and building materials are of the most

structured of brick. You should try to match the brick if possible. An alternate would be cedar-shake shingles as it was a common building material of that era.

Matching brick can be challenging. There are several brick-yards in the area that have a supply of older-style bricks. Bricks may also be stained to match. This is done prior to laying the bricks.

Some homeowner associations require all sides of the exterior of building materials

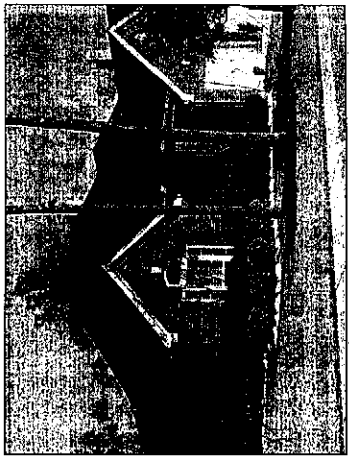
downs may not match the existing ones. It would be wise to update the existing windows at the time of construction so all windows match. If you are contemplating an addition on a pre-1950's home, there are several window companies that have a window that reproduce the old putty glazed look.

The foundation design needs to be compatible with the existing foundation. A structural engineer will be required to consider site soil conditions, existing design and proposed construction to design a proper foundation.

The existing foundation and new foundation will be required to work together to achieve a successful design.

A professional design/build remodeler takes into consideration these design elements to produce a design that is not only compatible with the exist-

Choice of building materials is another element in creating a good room addition. Materials should match the existing structure as close as possible. If that is not possible, an alternate should be used that would be age appropriate.



BEFORE ROOM ADDITION



AFTER ROOM ADDITION