

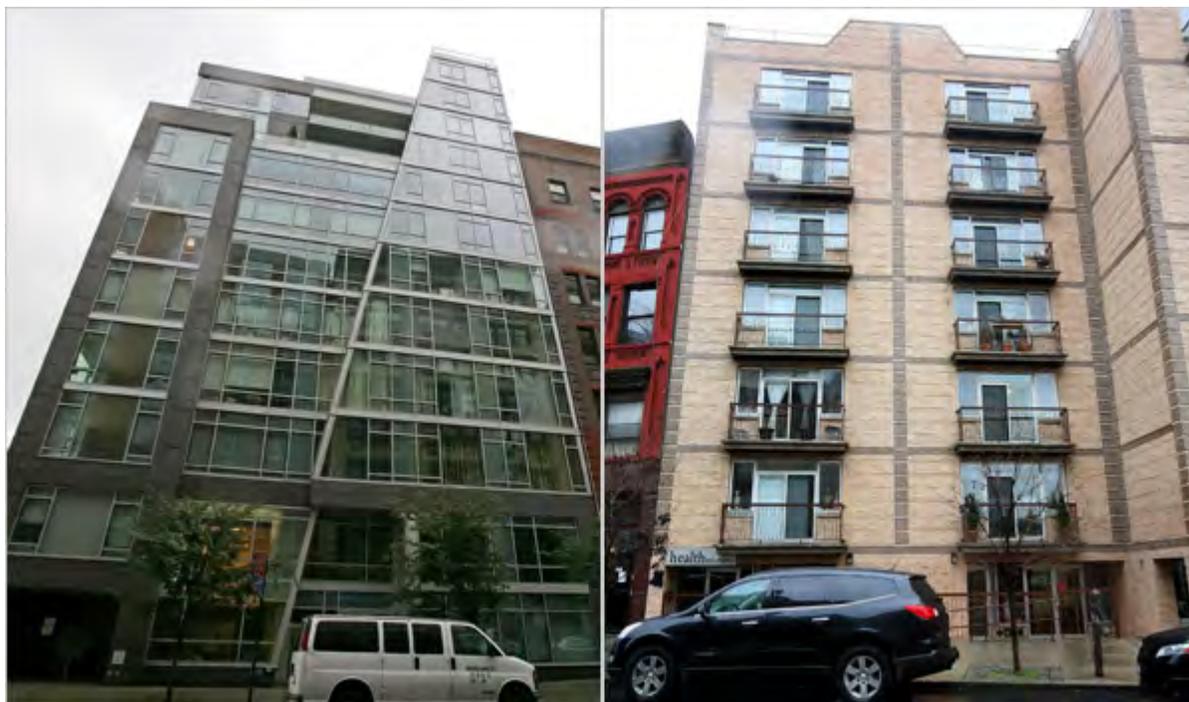
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# The New York Times

REAL ESTATE

October 25, 2009

## Your New Condo Leaks? Join the Club



PHOTOGRAPH BY MARILYNN K. YEE/THE NEW YORK TIMES; TONY CENICOLA/THE NEW YORK TIMES

**FIX IT PLEASE** The boards of both the Slate Condominiums, above, in Manhattan, and the Broadway Arms in Brooklyn filed suit against the sponsors for defects.

By **VIVIAN S. TOY**

**ROOFS** and windows that leak whenever it rains.

Heating and air-conditioning units that can't quite heat or cool the entire building.

Balconies with flaking concrete and wobbly railings.

These kinds of complaints have become more and more common in recent months, according to lawyers and engineers who represent owners of sleek new condominium units across the city.

They say the wave of development in New York City that started in 2004 and crested in mid-2007 has resulted in a wave of accusations about defective construction and building design.

"There's always an underlying number of lawsuits about defects," said Stuart M. Saft, a real estate lawyer and the chairman of the Council of New York Cooperatives and Condominiums, "but about a year ago the number started to increase. And over the next two years there's going to be an explosion, because of all the buildings that were built at about the same time."

He noted that buildingwide problems often don't become apparent until people have lived in a building for a while. Legal action is often delayed because sponsors typically control a condo board for a year or more after a building opens and can block attempts by residents to file complaints.

But since condo owners have a three-year statute of limitations for suing a developer or construction contractors for negligence, many people who moved into new buildings in 2007 — when about 7,000 condos came on the market — are realizing that they will soon run out of time.

A negligence lawsuit charges a sponsor or contractor with causing harm or damage to condo owners. If the owners believe a written agreement has been violated, another legal strategy is to sue a sponsor for breach of contract. The statute of limitations for breach of contract is six years.

Lawyers at several firms said that the volume of condo defect work had doubled in the last year, adding up to dozens of buildings with construction problems. In most cases, the condo owners hire lawyers to add muscle to their complaints, in the hope of getting the necessary work done. In a few instances they have filed suits. Lawyers say that condo owners are reluctant to talk about the defects in their buildings, fearful that publicity will decrease the value of their properties.

Water leaks and climate control problems top the list of complaints. Many of the recently built glass towers are especially prone to temperature issues, because air-conditioning units are too small to combat the punishing summer sun, and heating systems can't make up for a lack of insulation during the cold months.

But lawyers and engineers said that they had also come across buildings with more serious defects that violate the city's building code. The most common code violation involves inadequate fire-stopping components — building materials that are used to fill empty spaces where fire or smoke can spread between floors and apartments.

Howard L. Zimmerman, an architect whose firm is checking about 35 new condo buildings for construction problems, said that his workers had found fire-stopping violations in about a third. He said his firm has clients in buildings of five to 300 units, throughout Manhattan and in Brooklyn and Queens.

According to Mr. Zimmerman, the most common problem is found behind the walls of apartments, where, say, no caulking material has been used to seal a two-inch space between a pipe and a concrete wall. That unsealed space, he said, "is where smoke and fire can travel quickly," and it could also allow smells to float through a building. "Odor migration has been a tremendous problem, and if you buy a \$3 million apartment, you probably don't want to smell your neighbor's smoking or the restaurant downstairs."

Mr. Zimmerman says that the Department of Buildings can miss these kinds of lapses because architects or engineers hired by the sponsor are allowed to vouch for certain aspects of construction. "There was supposed to be somebody on the job who signed off that this was all installed before the walls got covered up," he said. "As nutty as it sounds, just because you have a certificate of occupancy doesn't mean you have a building that's code compliant."

He and real estate lawyers said that even when a condo board discovers building code violations, it is often reluctant to alert city officials because the board then becomes responsible for correcting the problem as well as for paying any fines.

James P. Colgate, an assistant commissioner at the Department of Buildings, says that condo boards are not under any obligation to report code violations. But when they do, the department may decide to investigate whether an engineer or architect improperly certified work at the building.

As for problems like water leaks, Mr. Colgate said that a certificate of occupancy was not the same thing as a guarantee. Such a document “certifies that the building is substantially in compliance with rules governing its construction,” he said, “and even if workmanship in a building may not be superb and you get those kinds of issues, the building might still be in compliance.”

When a building is clearly out of compliance, talk quickly turns to lawsuits.

Steven D. Sladkus, a real estate lawyer at Wolf Haldenstein Adler Freeman & Herz, said that he represents an Upper East Side building where the developer put only one layer of wallboard between the floors, instead of the two layers required by city code to create a fire-resistant barrier. “The board knows that’s a serious code violation, and it’s prepared to do the work and sue the developer and hope for reimbursement,” he said.

Mr. Sladkus said that the board hoped that the New York State attorney general’s office, which oversees condominium offering plans, would press the sponsor to do the work.

It will be expensive and disruptive, he added, since contractors will have to remove ceilings and recessed lighting to install the fire-stopping materials.

At the Slate Condominium, a 12-story glass-walled tower in Chelsea where in 2007 one-bedroom apartments sold for as much as \$1.4 million and two-bedrooms for as much as \$1.9 million, the condo board filed a lawsuit in March accusing the sponsor, Chelsea Luxury Condos, of using defective materials and of not living up to promises made in the offering plan.

“The unit owners have not only personally observed a number of defective and unsafe conditions in the building, but they have suffered a plethora of dangerous conditions,” the suit states. The complaint lists incomplete fire-stopping in hallways, and uneven floors and water damage in various places. Problems common to individual units include warped floors and balcony doors, nonworking electrical outlets, rusted kitchen faucets and water leaks.

Most people moved into the 26-unit building in 2007, and the apartment owners took control of the condo board in April 2008. Debra Guzov, the lawyer representing the condo board, would not comment on the case.

Anna A. Higgins, the lawyer representing the sponsor, said the sponsor had hired its own engineer to inspect the building, and “our position is that the problems listed are mostly punch-list items and are not considered defects, but things that are under warranty and therefore the responsibility of the subcontractors.”

The sponsor has, in turn, brought several of its building and electrical contractors into the suit as third-party defendants, charging they were negligent. “This is a reputable building and company,” Ms. Higgins added. “And they take these matters very seriously.”

The sheer volume of new buildings that went up during the condo construction boom is the main reason for the increase in defective buildings, lawyers and engineers said.

“It happens in every cycle,” Mr. Saft said. “At the beginning of the cycle, workers are underemployed, then suddenly they’re busy, and at the height, there are too many projects and not enough workers. Then what happens is shoddy workmanship, and when you have sponsors running out of money, they start to cut corners.”

Andrew P. Brucker, a real estate lawyer with the New York law firm of Schechter & Brucker, said that the boom had prompted people with no experience in real estate to start building condos. “When the market was hot,” he said, “anybody who had a couple bucks suddenly became a developer, thinking they’d get rich. When the market was strong, if you complained about something, sponsors would fix it, but then the market started to tank and brand-new buildings aren’t selling out, so there’s no money to do that anymore.”

The more unusual problems that Mr. Brucker has encountered include a building whose developer built an illegal pool and another whose developer put the building’s electrical system in a closet inside an apartment. The pool, he said, was never approved by the Buildings Department and may have to be removed. The electrical closet may also be illegal, because it may not be easily accessible in an emergency. In both cases, the solutions will entail costly projects.

When it becomes clear that a building has problems that go beyond punch-list items — a kitchen drawer, say, that won’t stay shut or a closet door that sticks — the first thing owners should do is hire an engineer.

“You have to get a top-to-bottom assessment of the building — the interior, the exterior, all the systems,” Mr. Sladkus said. “That creates a record and tells the board where things stand.”

The sooner this is done, the better, he added, because it takes away a sponsor’s potential claim that problems were caused by the apartment owners. Depending on the size of the building, an engineering report could cost \$10,000 to \$50,000.

Filing a lawsuit is usually a last resort because it can be costly and take years to resolve. Lawyers say the condo board’s first course of action should be to try to negotiate with the sponsor, with a goal of having the sponsor make the repairs or pay a settlement to get the work done.

If that fails, lawyers said, a condo board can file a complaint with the attorney general’s office, which can help to mediate a dispute and press developers to make repairs. The office can, but rarely does, file its own lawsuit against a developer. But lawyers say that the attorney general has been inundated with complaints; it can take months just to find out if the office will take on a building’s case.

“The attorney general will look at life, health and safety issues and things like whether a temporary certificate of occupancy is current,” said Jeffrey S. Reich, another real estate lawyer at Wolf Haldenstein. “But it’s hard to get them motivated to roll up their sleeves on minor issues.”

Lawyers believe that the attorney general’s office is more likely to act on behalf of smaller buildings, because it recognizes that litigation could be prohibitively costly for buildings with relatively few unit owners.

That presumption is well illustrated by one case in which Mr. Reich represents the owners in a large luxury building that he had hoped the attorney general would see to. But, he said, “the sponsor’s attorney went to the attorney general and said they should not take the case because the apartments are larger than regulation basketball courts and the owners are titans of finance who are fully capable of pursuing it in court.”

Mr. Reich said he was able to persuade the office to keep pursuing the complaint only because an aspect of law was involved that could not be addressed in court because it fell under the attorney general’s jurisdiction.

A spokeswoman for the attorney general encouraged condo owners facing building problems to contact the office's real estate finance bureau.

The attorney general's Web site states that when the office receives a written complaint about a building, "we usually demand that the sponsor provide a written response to the allegations. Sometimes, this alone causes the sponsor to repair the defects."

If that fails, the site states, the office may send its own engineers to inspect the property or have the two sides jointly hire an engineer or architect to evaluate the building and suggest solutions.

Sometimes, even when an early settlement offers the promise of resolution, unit owners still end up in court.

At the Broadway Arms, a 12-unit building that opened in Williamsburg, Brooklyn, in late 2004, the owners took control of the condo board fairly quickly. When they noticed the leaking roofs, shoddy balcony railings and a faulty ventilation system in 2005, they hired an engineer to review the building.

By July 2006, the condo board had reached an agreement with the sponsor, Broadway Driggs Associates, to fix many of the problems the engineer had found. But Alan Winkler, the condo board's lawyer, said that the work was never completed and that the board decided to sue the sponsor in late 2008 for failing to live up to the offering plan and the settlement agreement.

Mr. Winkler said that the sponsor had repaired the balconies and done some work on the building's upper roof, but that a lower roof still had leaks, and various problems persisted in the common areas. "At this point," he said, "there shouldn't be any contention as to whether this work needs to be done."

The sponsor denied the charges in court filings and has accused its building contractor of walking off the job. The contractor in turn has denied that in court papers and has claimed that the sponsor owes him \$200,000.

Charles L. Mester, the sponsor's lawyer, said, "A lot of the problems were fixed and it's just an opinion of some other experts that what was done should have been done another way." He added that the \$200,000 figure "has no basis in anything."

Five years after they moved into the building, the owners "would like to resolve this quickly," Mr. Winkler said. "But they want to make sure they get the value they were promised for their units when they bought it."