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Condominium development this spring

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The market for condominiums has become strong again. This brings to the forefront the recurring problems that surface when a developer or a successor developer of a stalled (multi-phase) project starts building again after a hiatus of many years.

Massachusetts provides significant protection to unit owners. Successor developers are liable, for example, for implied and express warranty claims involving the earlier phases of the development. Unit owners need to prove that the construction is truly defective. An issue such as sound insulation may be very costly to remediate and total remediation is very often impossible. There will always be a certain amount of noise transfer in a multi-family building, and this should be a risk unit owners accept.

The Massachusetts Appeals Court has recently held that "a condominium unit owners' association may recover damages in tort from a responsible builder-vendor for negligent design or construction of common area property in circumstances in which damages are reasonably determinable, in which the association would otherwise lack a remedy..." Wyman, et al. v. Ayer Properties, LLC, Lawyers Weekly No. 11-176-12. The Wyman case may level the playing field between developers and associations because it strengthens associations. This case probably will make developers more willing to enter into a reasonable settlement agreement.

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