

No Materials, No Workers, No Problem in Construction Quality?

With labor and materials shortages growing in tandem with demand for new developments, landlords need to prepare for the inevitability of construction defects.

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Our firm was recently retained to represent a townhouse association that undertook a large-scale remediation project that started in 2015 but remains unfinished due to materials and labor shortages. Sadly, this incomplete project is representative of the construction-supply problems facing communities throughout the country.

Undoubtedly, labor shortages, supply-chain shortages and overstretched building officials have all contributed to unprecedented construction delays. This article focuses on two areas of the problem: labor shortages and supply-chain logistics, where rising costs and inexperienced workforces will lead to construction defects, insurance claims and headaches for owners and residents.

Labor Shortages

While supply-chain logistics receive more attention in the media, many in the industry are privately more concerned with rising labor shortages. Construction demand is booming, and projects are being developed at an unprecedented pace, especially in certain areas of the country, such as Florida and Texas, that offer tax benefits and diminished quarantine restrictions for potential future residents.

This increased demand has caused a boom in construction projects without a corresponding increase in skilled labor. Contractors who take on multiple projects simultaneously do not have adequate personnel to dedicate to every project. As a result, skilled workers — especially project managers, superintendents and other supervisors — are being stretched between multiple projects at once, leading to less on-site supervision at any given time.

The problem arises across the subtrades, with the inevitable result of inexperienced and under-supervised workers jamming through their trade to meet accelerated schedules. One industry insider likened the current times to the previous decade's recession, when contractors purposefully underbid projects during the lean times and were then left overwhelmed during the boom that followed after letting go of their more expensive, experienced workforce.

One of the largest spikes in construction defect claims in Florida inevitably occurred mid-decade, as the use of under-supervised labor caused an increase in deficient construction, resulting in construction-defect litigation.

Similarly, while contractors are already stretched thin, builders insist on accelerating efforts to develop and build new projects — all without the infrastructure of skilled workers. This leaves little doubt that the current construction boom, replete with under-supervised work, will lead to significant construction deficiencies and litigation.

Material Shortages

Along with the labor shortages described above, projects are suffering significant delays because of material shortages throughout the market. Since the start of the COVID-19 quarantine, there have been sharp increases in the cost of foundational construction products such as lumber, steel, drywall and concrete. Moreover, basic consumer appliances, such as refrigerators, washing machines and dishwashers suffer long lag times due to global chip shortages, wherein the demand for the integrated circuitry found in appliances exceeds supply.

Each commodity has its own story, ranging from closure of factories in China, quarantine of non-essential workers along the supply chain, natural disasters, global shipping logistics, political instability in export countries and Trump-era tariff battles, with each providing additional kindling to the overall shortage trend.

The resulting cost inflation cannot be traced to any one event, but the result remains: construction in the United States is suffering from significant cost inflation and unforeseen delays.

Impact

Construction insiders and risk professionals have been keenly aware of this overall trend well before the COVID-19 pandemic. Construction quality in booming real estate communities has been wildly inconsistent in the past decade. In a seniors housing apartment project we recently represented, windows were so poorly installed that the elderly residents feared simple rainstorms because of the leaks that would oc-



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cur. Rain also rendered a parking garage floor virtually unusable.

The renters had no recourse against the builders, despite living with significant water intrusion. Building officials have neither the time, nor the expertise, to properly evaluate new construction projects and instead increasingly rely upon project engineers to “sign off” on the quality control. Since the last recession, the overall mandate from builders and policymakers has been to build first and to deal with quality control later.

Nevertheless, it is becoming apparent that COVID has exacerbated these problems with the skilled-labor shortages. The list of additional challenges is ominous: builders are demanding accelerated schedules; materials are hampering progress, leading to several projects pending simultaneously; subcontractors are being pulled from project to project as materials are dumped into multiple projects at once; and there is an overall demand to complete trade scopes, despite a failed infrastructure to perform quality control.

This overall disruption of the construction industry will necessarily lead to builders cutting corners to reduce the impact of increased material costs, to subtrades cutting quality control to meet increased demand and to end users footing the ill effects.

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Therefore, now more than ever, property residents, owners and associations must proactively inspect and address construction deficiencies to avoid costly long-term repairs and structural concerns.

Long-term structural concerns usually manifest within five to nine years after completing construction. Small indicators, such as leaks, cracks, discoloration or similar concerns, may pose little to no short-term danger, but they create pathways for salt air and water to continuously erode structural components of a building.

Building owners and operators who independently examine the original construction and develop repair and maintenance protocols can save millions of dollars in costly repairs in the future.

In older developments, maintenance supervisors can serve as the initial spotters of problems, but an experienced repair contractor or forensic consultant is necessary to evaluate a building properly. Moreover, an experienced construction defect lawyer will help navigate the legal

hurdles, which include potential timeliness issues, contractual limitations on claims, pre-suit notice requirements and mediation and arbitration clauses.

An adequately experienced, licensed and insured contractor must be hired if repairs are needed. The building's applicable commercial property insurance policy may cover the identified issues. However, many commercial property insurance policies will not cover the cost of remedying construction defects.

Moreover, engineers typically recommend a thorough inspection of the structural components of a new building at the time of occupancy, and then again every three years from occupancy to account for any additional building settlement. These initial inspections are important to understand if any of the early indicators of structural erosion are present.

These inspections will necessarily involve the developers, contractors and design professionals, and provide the mechanism to bring those parties together to form a long-term maintenance plan. A final inspection, around nine

years from occupancy, is often the last opportunity to perform inspections to hold builders accountable, while simultaneously allowing the completion of a voluntary recertification.

Ultimately, it will always be the responsibility of the owner/operator to evaluate and maintain their properties properly. In the current climate, there is little doubt that the skilled labor shortage, accelerated schedules, materials shortages and increased costs are leading to improperly supervised work, which will lead to significant construction deficiencies. Future owner/operators must act swiftly upon taking ownership to properly evaluate their property to determine if any action is needed. ●

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