

# Legal void

Conversion of new apartments raises legal issues about developer warranties for construction defects

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by Paola Iuspa-Abbott

**A** gap in state law has left buyers guessing who is financially responsible for construction defects when a developer sells new apartment buildings to condo converters.

Condo developers and converters offer different warranties to buyers in case of roof and window leaks, cracking concrete or other construction flaws.

“There is a void in the law, and it is becoming a consumer issue,” said condo attorney Gary M. Mars, a partner with Hyman Spector & Mars in Miami. “The rights offered by developers may no longer be available to the unit owners after a conversion.”

Warranties vary greatly depending on whether newly built units are bought from a developer or a converter.

Developers must issue a three-year warranty, but some apartment complexes are being sold before the construction warranty expires.

The unresolved question is who pays for structural, electrical and mechanical repair bills after a developer sells to a converter but before the developers’ three-year guaranty runs out.

Developers insist their commitment ends when a converter takes over.

But owners want to know whether a developer’s implied warranties can be transferred to condo converters.

The void cited by Mars is with someone taking responsibility for repairs when the duties of developers and converters overlap.

Warranties for major building components are valid for three years after a certificate of occupancy is issued or one year after owners take control of a



**Condo association lawyer Gary M. Mars says Legislature should address issue.**

condo association.

State law makes converters responsible for specific building problems for up to three years, depending on completion dates.

In the recent condo frenzy, apartments suitable for conversion were snatched off the rental market by the thousands.

Many properties were new or almost new. Some tenants had just finished moving in when they received a letter saying a condo converter had bought their building and the units were up for sale.

In South Florida, 55 rental high-rises and garden communities built in the last six years have been put up for sale as condos, according to Jack McCabe of Deerfield Beach-based McCabe Research & Consulting, which tracks conversions.

The trend of converting new rental properties gained steam, and condo associations are just learning how to deal with some unintended conse-

quences.

Because of its novelty, disputes over construction defects among condo associations and converters of new apartment buildings have no legal precedent, said Mars, who concentrates on community association and construction defect law.

He is working with six condo associations building a case against their converters and trying to pressure them into taking responsibility for construction defects.

## Implied warranties

One of the disputed conversions is Miami’s Vue at Brickell, which was transformed into condos by Sunvest Communities. The company bought the newly completed 323-unit, 36-story building for \$82.5 million in late 2004.

Three of Mars’ clients share a beef against the Hollywood-based converter.

Frustrated associations want to know if they can force converters to fill the shoes of developers who don’t do a good job.

Consumers need to ask questions about warranties when buying condos in newly built conversions, said attorney Louis P. Archambault, an associate with the Miami firm Pathman Lewis. He works with developers and condo converters and specializes in implied warranties.

Mars hopes to get an answer in court — if his clients end up there.

Archambault said buyers need to do their homework and find out the background of developers and converters including their financial backing.

“Will this company have the money to pay for any future repair?” he asked.

The conversion of older buildings

also can be complex and end in legal fights between condo associations and converters. But converting newer apartments adds one more wrinkle.

By law, developers, contractors and suppliers are required to guarantee their work and materials for the building envelope and the mechanical, electrical and plumbing systems for three years after a certificate of occupancy is issued.

Implied warranties are in place for three years after condo buildings are completed, and a one-year warranty covers property conveyed with the unit, according to state law.

Condo converters have the option of establishing a reserve account to pay for any maintenance for the roof, air conditioning and plumbing systems or other warranties. But that money cannot be tapped by individual unit owners with interior construction defects.

Some units are sold "as is," while others receive some cosmetic improvements to make the building more appealing.

If no reserve is created, owners automatically get implied warranties for structures, roofs, fireproofing, fire protection and the mechanical, electrical and plumbing systems.

Under state law, condo boards have up to a year after taking control of the association to enforce implied warranties or three years after a building's certificate of occupancy was issued.

Prior to closing on the sale of a converted unit, the converter gives the buyer a document that reports the condition of the building and the life expectancy of big-ticket items.

"It is very important that buyers read the report," said Helio De La Torre, a partner with Coral Gables-based Siegfried Rivera Lerner De La Torre & Sobel. His firm represents developers, condo converters and condo associations.

A law applying to condos of any age requires the report to explain when roofs, elevators, pools and other expensive items will need to be replaced.

"I have some problems with conversions because, as a whole, people don't understand what they are buying and the warranties involved," De La Torre said.

### Water seepage

Some lawyers for condo associations say the reserve funds and warranties don't seem broad enough to deal with issues raised by relatively new construction. State laws don't take into account the conversion of apartment buildings less than 3 years old.

"We need to have our Legislatures reanalyze and amend the condo act to address this issue," Mars said.

His clients maintain the reserve accounts are too small for the amount of repair work needed in recently built high-rises.

Mars said the most common problems that his clients share is water penetration through external walls and window frames. He said water stains often appear in units as well as common areas. Balcony and stucco defects also are among his clients' complaints.

Condo attorney Andrew C. Demos with Glazer & Associates in Hallandale Beach specializes in condominium and homeowners association law.

He is noticing an increasing number of condo converters waiving the reserve account option and offering warranties that exclude some construction defects.

"I am finding more and more that condo converters don't know the laws," he said. "There are a lot of warranties still involved" that they don't know of.

De La Torre agrees that more converters are opting out of reserve accounts and taking a chance with implied warranties.

"It is cheaper not putting money up front," he said. "It is a calculated risk."

Because of South Florida's weather, the risk can be high.

About three-quarters of construction flaws are associated with the

building's envelope, including exterior walls, windows, entry doors, roofing and caulking, said Dan Whiteman, president of Coastal Construction.

Torrential rains, high winds and hurricanes are to blame for water penetration and mold, said Whiteman, whose company works on about 20 projects at any given time.

"We need to make sure we have positive pressure in the building, with enough air conditioning pumped in to force the warm moist air out," he said. "We need to make sure we install the right air-conditioning system."

Other problems in new buildings include improper insulation and other easy-to-correct defects, he said.

Anecdotally, McCabe said, construction defects on newer buildings in South Florida appear to be on the rise.

"During the recent construction boom, developers had been scrambling to find workers and general contractors," he said. "The quality of the construction is substandard compared to past years. Some developers are behind schedule, rush to finish their projects, and deadlines become more important than the quality of their work."

McCabe said government inspectors are visiting construction sites, but the volume of projects is shrinking their inspection time.

Whiteman, who isn't aware of any Coastal rentals quickly turning condo, said his company follows an internal procedure to make sure quality isn't neglected.

One of the company's principals with three decades of experience visits all projects every week to make sure contractors, subcontractors and suppliers are following the job specifications, he said.

Coastal's projects include the \$110 million Bella Mare at Williams Island, the \$65 million NeoVertika on the Miami River, the \$80 million Ocean Palm in Hollywood and the \$60 million Ritz-Carlton hotel in Miami Beach. ♦