

WALSH CONSTRUCTION CO/OREGON: TASK FORCE RECOMMENDATIONS

Industry Segmentation: The context of WCC recommendations – we are NOT home builders. We are a General Contractor who builds multi-unit housing.

- There is a Major difference between large, mid-size, and even small, commercial general contractors versus residential home-builders and remodelers. True along many metrics:
 - Insurance coverage
 - Bonding capacity
 - Training – office and field
 - Quality/experience expectations: subcontractors and self-performed work
 - Documentation and management systems
 - Warranty services
- Buyout/mergers/spin-offs in larger firms more common
 - Drake, LCG Pence, DPR, Baugh
- Bonding more common than bankruptcy
- Sustainable cash flow, assets, project backlog
- Better insurance for larger projects
- Long-term focus
- When leaving market, finish jobs, move to different established regions
 - McCarthy, DPR, Swinerton
- Larger in scale and fewer projects annually
- Architect and/or 3rd party specialists generally provide inspections during construction phase of every project.

Recommendations for Multi-unit Construction and Design

- A. Clearly differentiate between requirements for Commercial General Contractors and Home Builders. One approach will NOT work with both. Scale and resources differ.
- B. Focus on and require **quality** design and construction
 - a. Design
 - i. Require design certification for building envelope design, by third party consultant or project architect
 - ii. Require certification of compliance with design during construction (especially at envelope systems) by architect or third party consultant
 - iii. Alternate to B.a.ii: require jurisdictional inspection for envelope system compliance
 - iv. Model document submittal requirements for permits and design review based upon Washington State Condominium statute of 2005. No certification means no permit. Period.
 - b. Construction
 - i. Require adequate experience, training, general liability coverage and bonding prior to allowing contractors to build multi-unit housing. [Comment: We do not let untrained or ill-equipped people build cars, operate machinery or perform medical services. Why do we let marginally trained people build major projects?]

- ii. Require “Fix it First” approach to construction claims. This reduces cost to all parties by stopping further damage and reducing legal fees. The current “Right to Cure” statute doesn’t go far enough to actually encourage solutions rather than lawsuits.
 - 1. Require that all parties (developer, architect, contractor and home owner’s association) be notified within 3 months of problem identification.
 - 2. Require that all parties contribute to the initial fix: developer, architect, contractor, unit owners and/or HOA.
 - 3. Through a four step process appropriate repair and liability will be established:
 - a. assess problem,
 - b. establish causes and required repair,
 - c. fix it,
 - d. fight about who pays for it. Right to sue remains intact through the process.
- iii. Require field training and certification for general contractors and subcontractors for building envelope system installation. This needs to be *multi-lingual training*.

NOTE: As a matter of interest, WCC also works out of Seattle. The recent Washington condominium statute includes many of these recommendations. (summary attached)

C. Insurance

- a. Require General Contractors in this market to carry a minimum of \$1MM general liability (completed operations) insurance.
- b. Require Architects in this market to carry a minimum of \$1MM of professional liability coverage.
- c. Make sure Oregon’s “additional named insured” aberration is clarified by statute. Basic **and explicit** theory: each party should be responsible for their own negligence.

D. Warranty

- a. “Normalize” Oregon’s statute of repose to 6 years. 17 states have a 6 year statute.
- b. Align contractor and architect statute of repose. Both should be 10 years, or both should be 6 years.
- c. Establish unit owner and Home Owner’s Association (HOA) maintenance requirements for building envelope and key building systems. (See John Carroll’s recommendations, which we participated in and support.)
- d. Establish adequate maintenance reserves based upon real evaluation of preventive maintenance requirements, as established by experienced and certified reserve specialists.
- e. Require regular, **documented** maintenance on the building envelope and key building systems by the HOA in order to make a construction defect claim. No documented maintenance voids the system warranty provision. [Comment: On a 5 year vehicle warranty it is *required* that the owner changes the oil or the warranty is void. Same principle here.]