

# *Why Building a New Condominium is Riskier than Converting*

Lawsuits brought by condominium owners and associations against condominium developers have dampened condominium development nationwide. Yet, even with the fear of such lawsuits, we are starting to see more condominium development in the Atlanta region.

If developers build a bad condominium housing product, they will almost certainly get sued by the owners. Unfortunately, developers sometimes get sued for minor construction issues that are typical of new construction but are sometimes unfairly overblown by plaintiffs' lawyers and their handpicked engineers in multi-million dollar lawsuits.

The law in Georgia makes it easy for developers of new construction condominiums to be sued. This is because with any new construction, the developer is subject to claims for "negligent construction". This means that the developer can be held liable if any part of the condominium is not built in accordance with building codes or accepted standards and practices in the construction industry.

It is the second part of the definition which results in the most disagreements between developers and condominium owners. This is because whether something is built in accordance with accepted standards and practices in the construction industry is often a matter of opinion. The condominium owners usually find an expert to testify that what was built was not built in accordance with accepted standards and practices in the construction industry. The developer's engineer argues just the opposite. With the costs of litigating being high and the outcome uncertain, most of these lawsuits settle, oftentimes for sums far larger than what the developer believes is reasonable.

A condominium conversion eliminates the risk of negligent construction lawsuits (except for the construction upgrades undertaken by the developer) because the developer normally has not constructed or overseen the construction of the condominium. As stated before, a negligent construction lawsuit can normally only be won against a condominium

converter if the converter did additional construction work to the property. So, for example, if the converter replaces all of the flooring in a condominium conversion and the flooring starts to buckle, a negligent construction lawsuit will likely be brought against the converter for this addition to the property.

What a condominium converter is responsible for is to disclose all latent or hidden defects in the property of which the converter is aware. Developers can eliminate much of their potential liability in this area by hiring engineers to fully evaluate the building being converted and prepare disclosure reports for unit buyers on what is wrong with the building. In fact, the Georgia Condominium Act requires converters to provide a report on the condition of certain components within the building. When we work with converters, our recommendation is usually to go beyond the disclosure requirements in the Georgia Condominium Act and to disclose every possible thing that might not be perfect about the property. This is because if a converter tells a buyer, for example, that the shingles are old and need to be replaced, the owners will not likely win a lawsuit when the shingles then need to be replaced.

Condominium development is a risky business for developers which requires a lot of strategic thinking on how best to minimize claims. Of course, if proper thought is put in on the front end, it can avoid claims on the back end. 

