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## CAN YOU CONDO? STRATEGIC ANALYSIS FOR DESIGN PROFESSIONALS EVALUATING THE RISKS AND OPPORTUNITIES OF CONDOMINIUM PROJECTS

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June 2007

As a sector, condominiums have not presented a successful business model. Condominiums built in the 1970s and 1980s have had more claims per project and larger claims than any other sector of the construction industry. In fact, all other sectors would represent a very distant second place to the litigation frenzy which has surrounded condominiums. Almost solely as a result of this experience, new condominium projects almost completely disappeared from many geographic regions during the 1990s.

The condominium sector is clearly no longer dormant. "They're Back!" Client, economic, and social demands appear to have re-awakened the sector with a white-hot intensity. The demand is not really difficult to understand. Limited available land in desirable areas, rapidly rising real estate prices, and the perpetual lure of the potential profits from "mass produced" units are all fueling the frenzy. For example, in California new housing production has lagged behind demand for sixteen consecutive years, and only sixteen percent of households can afford to buy the median-priced home.

Many sector participants believe they can and have solved at least some of the historical risk factors associated with traditional condominium projects. This is true. Not all condominium projects are created equal, and not all result in claims. Intelligent and practical design professionals can dramatically influence the risk profile for prospective condominium

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projects. Design professionals seeking long-term success in this market will select and shape projects which reflect a pragmatic and strategic model.

Internal practices and procedures for successful condominium projects are only part of the challenge. Design professionals rely heavily on the support and partnership of their insurance carriers. This reliance is one of the single most important components of any forward-looking business model, especially in light of the "claims made" nature of most professional liability insurance products. Yet, while many design firms may have suffered as a result of the historic condominium litigation, professional liability carriers for design professionals have been truly burned by the experience. XL Design Professional Insurance reports its combined experience with DPIC resulted in a loss experience that was more than eight times higher for condominium projects than the median experience for all other projects **combined**. Often, the great challenge for design professionals is to demonstrate and persuade its insurance partners that it has found ways to approach condominium projects which distinguish it from the stereotypical risk profile. Some insurance carriers will listen. Others will not, and will likely continue to follow strict guidelines, such as limiting the percentage of practice which may be devoted to condominium projects. The goal for design professionals is to demonstrate that they are not merely moths drawn to the lure of the flame and hence their subsequent and inevitable destruction, but instead are the phoenix rising anew and stronger from the ashes of the condominium experience of the past.

With these concepts as background, the objectives of this paper are straightforward but by no means simple. The goal here is to establish a workable strategy for (1) considering; (2) preparing for; and (3) executing condominium projects which will allow design professionals to participate in the condominium sector successfully and profitably. It also seeks to describe such strategies with a major focus on factors which should be important to professional liability insurance carriers, and to provide the basis to demonstrate that condominium work pursued smartly can be a significant portion of a design practice and one to be accepted, if not embraced, by insurance partners.

### **HISTORIC RISK FACTORS OF CONDOMINIUMS**

To differentiate themselves and their practice from the historic losses in the condominium sector, design professionals must understand the factors which have been dominant in that negative history. While each project is different, some of the patterns of losses have been so pervasive that they must guide any strategy for condominium work in the future. Some of those factors are:

- Repetitive implementation of isolated errors. In a single structure, an isolated error or omission in the design would exist only once. As a result, it would be unlikely to become a subject of a claim and, if it did, it would be relatively easy to remedy. However, in condominium projects, an

otherwise isolated error may be replicated hundreds of times and thereby become very expensive to remedy. From this perspective, design professionals are always the most disproportionate victims. Typically, design professionals receive a single, and arguably low, fee for the design of the condominium unit while developers and contractors generate revenue and profit from each replication of the design.

- All condominium projects give rise to a Homeowners' Association ("HOA") or similar entity. HOAs facilitate and even promote condominium litigation in several ways. First and foremost, they provide a cost-sharing mechanism for litigation such that the legal expenses which would otherwise preclude most claims become manageable on a collective basis. Second, even non-disgruntled owners can often be swept into the process and claim by a 51% vote of the HOA. Finally, HOAs are typically managed by resident Boards which can be strongly influenced by outside sources, such as construction defect attorneys and management companies, and must often find means of overcoming their own failures in maintenance and funding.
- Many condominiums are developed on a low-cost basis as a source of profit and marketing for the developers. As a result, the quality of construction is often less than desired, and the ultimate owners may have expectations far in excess of the quality of construction provided.
- Many developers of condominium projects do so through a "shell" entity that is unlikely to exist in any meaningful way when a claim arises. Similarly, many of the contractors and subcontractors cease to exist by the time of the claim and even if they do so, they often lack any insurance which is obligated to respond to the alleged defect, especially if resulting property damage is lacking.

**KNOWING WHEN TO SAY "NO":**  
**SELECTING THE RIGHT CONDOMINIUM PROJECT**

The historical pattern of financial losses from condominium projects described above makes it clear that not all condominium projects are a good risk. Yet, not all condominium projects have resulted in litigation. Claims are **not** inevitable. The challenge is to find those factors, strategies, and practices which can make the greatest difference between a litigated project and one which beneficially serves its occupants and society for years to come. Experience with hundreds of condominium lawsuits and negotiation of dozens of agreements for the design of new condominiums, demonstrates that the single greatest factor within the exclusive control of the design professional is selection of the appropriate project and rejection

of those projects subject to obvious and unacceptable risk elements. In reaching this conclusion, there are four elements which warrant thoughtful and strategic research and analysis before agreeing to become involved in the project. Those factors are (1) project selection; (2) design scope and fee; (3) client selection; and (4) team selection. Those factors are discussed in more detail below.

## 1. THE PROJECT

The fundamental precept of participating in a condominium project is that not all condominium projects are created equal. Some projects will present a far greater risk of exposure than others. Design professionals who ultimately succeed on a long-term basis in the condominium market will likely be those who thoroughly investigate and evaluate the project itself before becoming involved. The lack of such a critical evaluation has now been widely recognized as a key to past condominium failures, and one which has been pointedly blamed on the design community. One of the definitive studies of the failures in the condominium sector was prepared by the Provincial Government of British Columbia. In that report entitled "The Renewal of Trust in Residential Construction", the Commission opined:

*The Commission is disturbed if the professionals charged with the responsibility and appropriate implementation of the technology, have incomplete solutions and, in the face of this lack of knowledge, did not do everything in their power to stop the building of faulty structures.*

Implicit in this statement is the view that design professionals have not adequately evaluated the projects themselves to intentionally design a project with sound design and construction practices. Essentially, British Columbia and others have implored design professionals to investigate, analyze, and know when to say "NO".

Since each project is very different, the relevant considerations can vary widely. However, a few themes have been so prevalent in the failed projects of the past that they are worthy of consideration as a starting point on almost any project. The issues are ordered in descending priority of their importance to the evaluation of the project. Virtually none of these issues is categorically a "deal killer". Rather, challenges under any one of these issues should require a responsive strategy to manage the related risks.

- a. **Site Issues.** Typically, site issues are some of the greatest defining factors in any project. Therefore, site issues are also some of the most frequent triggers of claims related to condominium projects. Site issues have and will become dramatically even more problematic as the available sites for such projects become more and more limited. As a result, sites which would not have even been considered twenty years ago are now among the

most sought-after sites. Among the most common concerns for such sites are the following:

- i. Geotechnical.
- ii. Natural exposures.
- iii. Environmental.
- iv. Drainage.
- v. Code/Permitting

Before beginning work on the project, each should be evaluated and where a concern is identified, a responsive strategy should be provided. If a viable, responsive strategy is not available, it is time to say “NO”.

- b. Qualification & Quality Based Focus.** Historically, many of the problematic condominium projects have been developed on a cost model which seeks to maximize profit by minimizing costs on both the contractor and material side. This is particularly true with respect to the site and structure, as opposed to the finishes which are visually observable by consumers. The physical integrity and quality of the site work and structure are most often the sources of condominium litigation. Accordingly, design professionals should place a heavy emphasis on the quality of materials and contractors in those areas as a part of the project. Developers should be committed to these priorities at the outset, and that commitment should be continually reinforced throughout the project. It also means that value engineering should be carefully controlled and documented.
- c. Construction Methods & Materials.** The vast majority of condominium claims have at least started with water intrusion. This most often comes through the selection of inferior or reliable materials or design features which may challenge the installation methods of contractors and their employees. To the greatest extent possible, structures should be designed as water-resistant shells using inert materials, controlling stagnant air sources, and providing design elements which support, rather than challenge, successful installation by contractors.

- d. **Project Size & Organization.** As indicated above, condominiums are a disproportionate source of litigation and exposure for design professionals because of the repetitions of a single design and the economic efficiencies of claims brought on a group basis. Accordingly, the size of the project and the number of repetitions of a single design should be a significant element of consideration. Simply stated, fewer units and repetitions are **better**. Similarly, the organization of the ultimate HOA should be considered. Some developers have identified means of controlling those entities by combining commercial and residential units, creating super majorities, or retaining units as rentals. The capacity of a Board or simple majority to commit a vast number of “plaintiffs” to a claim should also be evaluated closely.
- e. **Sales Market.** Finally, design professionals should evaluate how and to whom the ultimate units will be marketed. Different market sectors have decidedly different expectations and patterns of conduct. Those expectations and tendencies should be adequately planned for in the project.

## 2. THE SCOPE & FEE

Many design professionals have sought to limit risk exposure on condominium projects by limiting their role on the project. For example, some have limited their role to preparation of the design documents and deferred the construction administration role to others. Others have gone even further and provide services only through design development, with others preparing and stamping the actual construction documents. In the right context, these strategies may make sense, particularly if combined with appropriate limitations in both the service agreements and the design documents prepared as a part of the process. However, this approach runs contrary to many clients’ desires and to the overall interest by design professionals in becoming integral participants in this sector. In fact, “the less is more” approach to design in condominiums has been identified historically as one of the major factors in the historic deficiencies in condominiums. The British Columbia study referenced above reported:

*Many times, the Commission heard that building envelope leakage problems is linked, in part, to “faulty design.” This means insufficient attention to details, both in terms of the amount of information on the drawings, and in terms of the time spent in on-site review of the assembly.*

Frequently, these “insufficiencies” are the result of the low-cost model of condominium developers of the past. However, the most proactive and (hopefully) successful approach to risk management of condominium projects is to insist on a full fee necessary to

provide a complete and fully detailed design, and a significant construction administration role to monitor implementation of the design intent. Experience has demonstrated that an inadequate fee and scope, along with a lack of corresponding disclaimers and protections, is probably the earliest and clearest indicator of a project likely to result in claims and litigation.

### **3. THE CLIENT**

As indicated above, one of the historic risk factors in condominium projects has been that the developers are often created as "shell" entities for a single project. As a result, they often lack a long-term financial capacity or commitment to the project, community, or sector. For design professionals considering condominium projects, the best clients are those who (1) have a long track record of experience and success in the project type; (2) are committed to the long-term success of the project in question and the sector as a whole; and (3) are willing to embrace the design team as a long-term financial partner in the work. As a result, design professionals should fully investigate and analyze their prospective clients. This should include a review of their project experience and expertise, financial resources and commitment, commitment to a quality/qualification based project, and long-term viability.

Some of this may be accomplished by the client's providing a quality insurance product in support of the project. Many "Builder's Wrap" or "Owner Controlled Insurance Programs" have emerged in recent years. The mere existence of such programs is supportive of design professionals in that it increases the chances of non-design assets to respond to a claim. Some such programs even include design team members as insureds. However, almost every policy is different. As a result, its coverage and potential impact on other coverage should be studied carefully.

### **4. THE TEAM**

Finally, all design professionals considering any project must consider the overall strength and qualifications of the entire project team. Under principles of "joint and several liability", design professionals are frequently alleged and found to be jointly responsible with other parties who fail in their performance. This may include both owner-retained consultants and contractors. When the ultimate claims emerge years later, a design professional is too often one of the few remaining parties and part of an even smaller group with potential assets (*e.g.*, insurance) available to respond to the claim. As a result, design professionals are often compelled to respond factually and financially on behalf of the other project participants. This is probably truer with respect to condominium projects than other project types, since the claims typically emerge later than most other projects and the other participants have more frequently disappeared from the market. Accordingly, design professionals should carefully evaluate the qualifications, capacity, and stability of all other project participants before

becoming involved in the project. Where it is a concern, they should establish a responsive plan of action which may include peer reviews, greater coordination activities, differentiated scopes of work, or even limitations on joint and several liability obligations.

### THE PLAN

In reality, there will never be the perfect condominium project, and the participating design professionals will always have issues to resolve. In addition to identifying those projects for which the only proper and sane answer is “NO”, the project selection process discussed above (1) is intended to identify the likely challenges of the project; and (2) is an informed opportunity to create a strategic plan of action in response to those issues. Such a plan of action will most often include contractual strategies, documentation strategies, and project delivery strategies. As with any such “plan” once it is created, it is important to follow up and update it as necessary to correspond to the actual delivery of the project and changes along the way. There are few worse pieces of evidence against a design team than a project delivery plan which was not followed. In the eyes of a lay jury, this often equates to virtual *de facto* negligence and breach of contract. Some of the critical elements which should be included in any such plan include the following:

- Design against failure. In selecting details and materials, preferences should be given for options enhancing the likelihood of successful installation and long-term performance.
- Coordination process for all design disciplines at significant phases in the design.
- Code & permitting, with particular emphasis on structural and ADA.
- Constructability review, ideally while the design is still in progress.
- Peer review.
- Contracting plan for other consultants & contractors (*i.e.*, indemnities, insurance, and joint & several liability).
- Strategy to control terms of transfer to individual owners (*i.e.*, lack of responsibility for inspection, maintenance, and repair).
- Management plan/restrictions for ultimate HOA.



- Maintenance programs and instructions.
- Dispute resolution procedures (*i.e.*, Right to Repair Programs such as California's "SB800").

### THE CONTRACT

The "plan" should serve as the basis to negotiate the contract for the project, and a guide to the commitments to be made by and demanded by the design professional. However, the word "plan" remains conceptual until it is reflected in the actual contract document itself. In essence, the plan should serve as a road map for the negotiation and drafting of the agreements. In this regard, many of the guiding principles will be typical of any design contract (*i.e.*, the need for a detailed scope of work, etc.). However, condominium projects create enough unique issues and exposures, that some provisions are worthy of special mention here. They are as follows:

**Limitation of Liability.** Limitation of liability clauses are often viewed as mythical illusions by design professionals. They have heard that such provisions are a good thing and that others have negotiated them, but they have never really seen them happen. If there is ever a context where a limitation of liability provision can be successfully negotiated, it is in the condominium arena. Design professionals have strong arguments to their benefit here. First, there are the disproportionate economics of condominium projects. That is, the economic benefit typically flows primarily to developers and contractors with a disproportionately small benefit to the design professionals. Second, there continues to be great uncertainty regarding the long-term insurability of such projects, and the design professionals should not be the ones at risk. Ultimately, owners must choose to either compensate design professionals appropriately for condominium projects or protect them from the focus of defect exposure. Limitations of liability in conjunction with indemnity clauses are the best way to do so.

**Circumvent Shell Developers.** If developers are to truly treat design professionals as part of their team, they should and must make a commitment to them which extends beyond any shell development entity and to the actual developer itself. These obligations should extend to limitations of liability, indemnity provisions, and liability allocations.

**Maintenance Obligations.** Many (and even most) condominium claims could be avoided or minimized by appropriate allocation of maintenance responsibilities. Design professionals should be clear that they have no responsibility for the inspection and maintenance of the property after completion, and require that these responsibilities be fully and completely transferred to the HOA and unit owners. This can and should be done in the agreements as well as by preparation and transfer of maintenance guidelines to the ultimate owners. Such a provision might include the following terms:

- a. Owner and Consultant agree that inspection, maintenance, and normal repair are the exclusive obligation of the owner of a structure. Consultant shall have no responsibility for the inspection, maintenance, and normal repair of any portion of the project, and shall have no financial or other responsibility for damages arising out of the failure to inspect, maintain, or repair the Project.
- b. The ultimate owners' exclusive responsibility for inspection, maintenance, and repair shall be included in the CC&Rs for the project and all Purchase and Sale Agreements. The CC&Rs shall require a reasonable reserve account for these purposes.
- c. To facilitate the allocation of responsibility for inspection, maintenance, and repair, Owner shall include a non-exclusive maintenance manual to all purchasers.

***Joint & Several Liability.*** Prime consultants (e.g., architects) on condominium projects have also been routinely victimized by their responsibility for the design team as a whole. To avoid this exposure and to further make subconsultants responsive to the claims, some architects have negotiated terms with owners to limit the extent of joint and several liability within the design team. Such a provision might provide:

*Owner and Consultant have jointly selected subconsultants to Consultant with appropriate qualifications for their designated scope of work, and have required such subconsultants to indemnify Owner and Consultant and to carry appropriate insurance for the Project. Accordingly, Owner agrees that it shall not seek to hold Consultant responsible for errors, omissions, or other wrongful acts of such subconsultants except to the extent of Consultant's proportionate responsibility for such claims, damages, or losses, or to the extent subconsultants' insurance and other resources are inadequate to respond to the claim.*

Similarly, subconsultants should always limit their liability to damages actually caused by their negligence or breach of contract. Damages caused by reliance on others or the failure to "catch" others should be expressly excluded.

***Contractor Indemnity.*** As indicated above, design professionals have also often been the greatest victims of condominium claims because of their viable and insured status, as compared to contractors with whom they share joint and several liability. Provisions similar to the one above for subconsultants may be crafted to be equally applicable to contractors in order to control the risk of joint and several liability. However, an even more important provision may

ultimately be to require indemnity and additional insured status from the contractors. In many condominium cases where contractor errors not "caught" by the design team have been the central issue, such provisions have been critical to the reasonable resolution for the design team. Such a provision might provide:

*Owner recognizes that the Contractor and Subcontractors will be in control of the Project site and exclusively responsible for construction means and methods and jobsite safety. Accordingly, Owner shall require all contractors and subcontractors to defend, indemnify, and hold harmless Owner and Consultant from any and all claims, losses, suits, damages, and liabilities, including attorneys' fees and costs, arising in any way from such contractors' or subcontractors' services or work product, except to the extent caused by Consultant's sole negligence. In support of this obligation, Owner shall require all contractors and subcontractors to include Owner and Consultant as additional insureds under its insurance policies applicable to the Project. Consultant shall not be responsible for damages, losses, costs, or claims caused by contractors or subcontractors, except only to the extent caused by Consultant's sole negligence.*

**Project Insurance Programs.** Finally, a multitude of insurance products potentially applicable to condominium projects have come and gone and come again in recent years. Many are unique, may have special implications of practice policies, and may even create significant uncovered risks for design professionals. Accordingly, any such policy should be carefully evaluated with insurance professionals and counsel. However, many projects now include "Owner Controlled Insurance Programs" ("OCIP") or Wrap policies. If so, appropriate requirements for the design professionals might include the following provision:

*Owner shall secure an Owner Controlled Insurance Program ("OCIP") or Wrap applicable to the Project, which shall be reasonably acceptable to Consultant. Such OCIP, Wrap, or the equivalent shall provide coverage for Owner, Contractors, and Consultants against warranty, property damage, and personal injury claims for a reasonable time following completion of the Project. Such insurance shall be primary to any other insurance available to Consultant.*

### **THE PERFORMANCE & DELIVERY**

All of the foregoing is really just preparation for the most important activities which all relate to the delivery of a quality design and project. As with any project, good design practices should be the key. Nevertheless, some issues and practices have been such consistent triggers for failure in condominium projects that they warrant special discussion and planning.

**Design Philosophy.** While much of this discussion and others has characterized design professionals as “victims” in the historic condominium losses and litigation, the reality is that design professionals are often in one of the best positions to prevent failures. Their greatest tool in doing so is the use of a disciplined design approach which should both design to satisfy applicable Codes **and** design against failure.

Simply stated, design professionals who will be successful in the condominium sector should and must **design against failure**. This is a great philosophical challenge for a group stereotypically drawn to innovation, aesthetic creativity, and new technology. All of these positive tendencies must be tempered by the practical reality that in a condominium project a single failure replicated dozens or even hundreds of times can lead to monumental losses and liabilities. Accordingly, design professionals involved in construction projects must focus on what **will** succeed, not what **could** succeed, if every material and participant performs perfectly. This design philosophy should be reflected in both design elements and material selections. For a veteran of the condominium wars of the past, it is often very easy to scan a design and quickly identify those areas most likely to lead to possible failures in the process.

Contractors involved in condominium claims do not often allege that the plans and specifications were wrong. However, they do almost always claim that the relevant sections were vague, ambiguous, and/or lacking necessary directions. Regardless of whether or not this is actually true, design professionals must recognize the potential for this allegation and guard against it. In reality, many condominium designs of the past are short on specific details and directions for contractors. This may be due to limited design fees, an excessive confidence in contractors and their employees, or a belief that providing only limited directions will help distance the design professional from responsibility. Regardless of the cause, it is an approach which has not been successful, and one which has made design professionals more vulnerable than necessary. Without intruding into a contractor’s sole responsibility for means and methods, design-professionals on condominium projects should provide more information, not less. They should not assume that contractors will know what to do, especially with respect to areas prone to failure.

**Maintenance Issues.** Just as the projects should be designed against failure, they should be designed to promote effective maintenance. Elements which will deteriorate or challenge the maintenance capacity of the typical owner or HOA should be avoided. Design professionals should also take an active role in identifying the appropriate maintenance issues and transferring the information and responsibility for those issues to the ultimate owners and HOA.

**Code Review & Approval.** Building Code issues have historically represented the second wave of liability on condominium projects. Structural engineers have been by far the greatest victims of this phenomenon. As indicated above, most condominium litigation has started with some form of water intrusion (*i.e.*, leaking windows or roofs, water in crawl spaces, etc.). However, once the process has begun, HOA attorneys and their consultants inevitably investigate

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every aspect of the project, including the original design. In doing so, they often find numerous alleged Code violations. Even where the alleged violations have no relation to any perceptible damage to the property, they often become a driving force in the litigation due to the bright line appeal to a jury and the often extreme costs of repair. Accordingly, design professionals involved in condominium projects (especially architects and structural engineers) should put extra focus on Code compliance. This can and should include multiple reviews with local officials and reviews by Code consultants or other third parties where appropriate. Many courts, and even some legislatures, have now recognized such outside consultations as defining the standard of care for Code compliance in design.

***Coordination.*** A lack of communication and coordination of the design team members is one of the most frequent failures in the process and bases for design liability. Given the stakes of condominium projects, it is even more critical. All aspects of the design should be sequentially and repeatedly coordinated to avoid conflicts and gaps. The responsibility and priority of specific design team members should be identified and documented.

***Third-Party Reviews.*** Similarly, the stakes of condominium projects are such that a third-party peer review, waterproofing review, and constructability review should all be seriously considered as a part of the process. The waterproofing and constructability review are by far the most important and should ideally take place during design, as well as at the completion of design. If such a process is included, it is critical that all identified critiques or concerns be corrected or affirmatively explained.

***Over-communication with Documentation.*** Experience also shows that many condominium claims have arisen because of a lack of communication and an informality of documentation. Conversely, many other condominium claims have been quickly dispelled and resolved because a critical communication was documented. It is critical that condominium projects be subjected to frequent and targeted communications which are appropriately documented to make certain that there is a clear understanding and no unwarranted assumptions. Design professionals too often have become lax in this regard, mostly due to the familiarity of long-term relationships.

***Construction Observation.*** Design professionals can and should be involved in construction observations. It is a valuable client service and one which can often be used as a tool to avoid project failures. Of course, this requires a good contractual provision limiting the timing and purpose. The AIA documents are a good **starting** point in this regard. However, even more focus must be placed on the manner in which observations are conducted. A casual walk-through of the site is not advisable. Where contractor failures are at issue and design professionals have conducted broad site walk-throughs, it always opens the door to the criticism that the particular defect should have been identified and corrected. Accordingly, the observation can and should be very focused on specific issues and elements. The record of the walk-through should reflect this focus and disclaim a broader review. In addition, digital

photography has become a valuable tool to recording observations. If so, the records should be limited to the areas of focus and overall site photos should generally be avoided without a prevailing purpose to include them.

***Adaptability.*** Finally, design professionals must recognize that no project is stagnant and there will be changes. When those issues arise, design professionals must be adaptable, but must also constantly refer back to their contract and plan to make sure they are consistent with those changes, or that the contract and plan are modified accordingly.

### **THE FOLLOW-UP**

Once the project is complete, there is generally little design professionals can do to improve their risk exposure on the condominium project except hope and wait for the applicable statutes of limitations to expire. However, the following can be very useful steps to preserve and promote the best post-project risk scenarios.

***Document Last Act/Substantial Completion.*** Document your final act on the project and substantial completion of the project. This will help confirm the start of any statutory period for claims.

***Project Closeout Survey/Documentation.*** Survey and document the condition of the project at the time of substantial completion. This will confirm the condition of the project at that time and thereby any subsequent modifications. For example, such documentation has been critical when subsequent landscaping modifications have dramatically changed drainage conditions.

***Monitor Ongoing Insurance Programs.*** Many insurance programs and obligations will survive the completion of the project. This applies in some fashion to OCIP or Wrap policies, project policies, and any professional or other policies which are written on a claims-made basis. A procedure should be implemented to monitor the ongoing existence and compliance with such insurance programs.