

THE BERDING|WEIL APPROACH TO MANAGING DEFECTS IN BUILDINGS

WHY LITIGATION MAY NOT BE YOUR FIRST CHOICE

We won't fool you—we litigate a lot, which is why we have recovered more than one billion dollars for our clients. We have perhaps seventy-five cases for defective building construction pending at any one point in time. Berding|Weil's litigation department is one of the deepest, most experienced construction litigation groups in the country representing owners of residential and commercial buildings. So why would we suggest that litigation might not always solve your construction problems? There are several reasons suing someone might be the wrong move. You can find a lot of lawyers who won't hesitate to sue a builder for defective construction. You won't find that many who will talk about alternatives first. We will. Our approach is a little different and we use it exactly because we have so much experience litigating construction claims—no one is better equipped to explain when litigation is not the right choice than we are.

THE PITFALLS OF LITIGATION

When you meet an attorney and they tell you that your best option is to sue the developer of your building, do you wonder whether that lawyer is telling you that because litigation will keep that lawyer busy? You do, and sometimes you'll be right. We're already busy—we don't need to create work for ourselves. What is important to us is that our clients get the most efficient, most successful result and, sometimes, that may not require a lawsuit.

Working with the developer may produce results without the expense of litigation. A small problem, like a minor leak, may be something the developer will repair. Statutes give developers that right usually. Failing to provide them the opportunity to effect repairs can cause a judge staying your case. It also might void the developer's warranty.

Suing may be premature. When you sue, you expect that eventually you will either settle or take it to trial. In either case the defendants will get released from the claim. But what if the building is new, say just a few years old and the issues are small? Would you litigate a case and release the developer of a two-year old building to fix just one or two small leaks? You shouldn't, but jumping into litigation too quickly can mean releasing a party when the history of the building is not well developed.

The cost of litigation may outweigh the results. With small problems, litigation will often be inefficient. No one should chase a dollar with a dollar. It could be cheaper in the long run for the owner to repair the problem if the developer fails to respond.

The target defendant may not have the resources to satisfy your claim. Even in big cases, where the cost of repair is expensive, and the building owner has what we would consider a good claim against the builder or a contractor, recovery is far from automatic. If the builder is underinsured, is a hollow shell, or is out of business, pursuing litigation may result in a positive judgment but no cash.

Litigation may freeze sales and re-financing by owners. Lenders and potential buyers will be leery of a project in litigation. They won't always be sophisticated enough to appreciate that the owner chose that remedy to repair essential components which will cause a better built building.

OUR TEN STEP APPROACH

We understand your need to fix the defects quickly. To accomplish this efficiently we approach each problem as a unique set of circumstances while following these steps:

1. We bring in experts who can make a proper evaluation of the extent of any damage or defect so the owner can evaluate its options—including the option of doing nothing.
2. We will notify the builder or contractor and give them an opportunity to offer to make repairs. If they make a legitimate offer and the repairs can be overseen by the owner's experts, that may be the quickest and most efficient solution.
3. We will investigate the resources of potential defendants before investing our clients' funds in pursuing a claim.
4. We protect our clients from statutes of limitation or other loss of legal rights while we are investigating the defects and the resources of the defendants.
5. We will consider and advise our clients of all other options before starting litigation.
6. We will only release those claims that the settlement demands.
7. We will not sacrifice a client's long-term interests to make a quick settlement.
8. We offer several fee arrangements and we explain the pros and cons of each one. We do not pressure our clients to accept one type of agreement. A client will never be asked to accept any fee arrangement at the first meeting.
9. We will explain our methods to the owners and frequently provide the status of the matter.
10. We are there to assist our client after the litigation in choosing the right scope of repairs and the right experts to oversee them.

We hope this summary answers your questions about how Berding|Weil approaches a construction dispute. If litigation is necessary, you will not find a more effective, motivated litigation team. But we also want you to feel that while litigation is what we do, it has limitations that must be considered before that big step is taken.