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Update on Condominium Liability Laws:

Which States Are "Safest" for Your Next Project?

Which states are the safest in which to do condominium projects? Alaska, Florida, Georgia, and Indiana, according to architect-lawyer G. William Quatman, FAIA, Esq., Shughart Thomson & Kilroy PC. The much-longer list of riskier states is depicted in his "At-a-Glance Matrix of 50 State Condo Liability Laws," which is part of the AIA Trust's report on Risk Management Ideas for Condominium Projects. To build this matrix, Quatman examined right-to-cure laws, how laws specifically address condos and protect architects, and state-specific joint liability.

Four major factors in play

The analysis looked at four factors:

1. Does the state have a **"right-to-cure"** law in effect? As of August 15, 2006, a total of 30 states have enacted laws requiring property owners to give written notice and an opportunity to correct a defect in a building before suit can be filed. These laws have been growing in popularity in recent years as a way to curb frivolous lawsuits and expedite the process of resolving residential construction disputes.

2. Does the **statute apply to condominium projects?**

3. Quatman looked at whether those **laws protect "architects" or cover "design defects."** Surprisingly, out of the 30 states with such laws, only 16 specifically protect design professionals. In the other 14 jurisdictions, only builders, contractors, or sellers of residential property are protected. This means that there are still 34 states that have no "right-to-cure" law in effect to protect architects. "This should be a number one legislative priority for AIA components in those states," Quatman urges. In 2006, three states enacted these laws—Minnesota, Oklahoma, and Wisconsin. But, out of those, only Oklahoma specifically mentions "design" defects and none mentions "architects."

4. The analysis looked at the status of the state law on **"joint and several liability."** In eight states, an architect can be held liable as a codefendant for the negligence of a builder or developer who is found negligent but has no assets to pay the judgment.

"In these states, if the developer is a shell LLC with no assets, or if the contractor has no insurance or goes out of business," Quatman says, "the architect might be held jointly liable for 100 percent of the damages even if design errors were a small part of the problem." Ten states have completely eliminated the concept of joint and several liability by statute. In the rest of the states, the concept survives in some limited form. For example, in several states, an architect can be held jointly liable for someone else's negligence only if the architect was found by a jury to be 50 percent or more at fault. "If below 50 percent," Quatman explained, "then each defendant only has to pay for its percent of the damages, and no more."

States are all over the map

For the "safest" states, Quatman picked those that have a right-to-cure law covering condos and architects and in which the concept of joint and several liability has been abolished. For the "riskiest" states, he warns of eight states in which there is no statutory requirement to give notice of defects before suing and in which architects can still be held liable for the negligence of others. In the rest of the country, his At-a-Glance matrix shows by color code the degree of risk based on his four factors. The matrix can be a useful tool in evaluating condo projects for potential legal risk.

Reference:

To learn more about condominium liability and right-to-cure laws, visit the AIA Trust Web site. [www.theaiatrust.com/condocrisis/index.htm]