

## **Alleged shoddy construction brings lawsuits**

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Two Millbrae condominium developers with units between \$599,000 to \$1.28 million recently faced lawsuits over shoddy construction that includes severe structural issues, water damage and cracking — and although city inspectors signed off on the projects, they are immune from legal action.

The two developments each have more than 100 units along El Camino Real — 88 Broadway and Park Broadway. With Peninsula housing demand growing, land at a premium and a regional goal of transit-oriented multi-unit development, such housing is becoming more popular but can lead to a series of legal tangles once problems are revealed in time. While one group was able to reach a settlement, mediation continues for the other. But there may be a trend in the need to seek lawsuits.

Building up comes with different challenges than single-family homes. California has building codes, most recently adopted in 2010, regulating anything built in the state. Cities that have issued building permits are charged with inspecting the buildings to meet those codes. However, the employees and the city are immune from legal action if problems are found with that construction.

Millbrae officials declined to comment on the requirements of building inspectors. Neighboring cities also declined to comment about the requirements of their inspectors. Experts say the challenge appears to be the inability to really watch over every detail on such large projects. Ultimately, California law puts the need to fix problems to the developer. Developers are also given a chance to address the issues under California law and must be invited to mediation before legal proceedings can really begin. Mediation has become a clearly defined process.

Generally, these sorts of cases have a set path.

“When all is said and done, the issues in most of our cases can be simplified as followed. This is a complex, construction defect case. The developer is strictly liable. The subcontractors owe indemnity. What are the problems? What are the most cost-effective ways to repair the problems? How do we fund the repair?” wrote special master mediator William Nagle in a September article for the American Bar Association about the mediation process.

But getting to that point took time for one of the owners who bought into Park Broadway.

The Park Broadway condos, located at 1388 Broadway and 1331-1371 El Camino Real, features 109 units — 13 live/work lofts and 96 residential spaces. Residents listed problems with construction which were concealed by temporary repairs in a 20-page suit filed in November

2011 against Millbrae Town Plaza, L.P., Silverstone Communities LLC and Delaware Limited Liability Company. Advertisements at the time the building opened put the unit prices as starting at \$599,000 and going into the high \$800,000s.

First-time buyers, who preferred not to be named, weren't sure where to start. Luckily, problems found throughout the building were not in their exact unit but it did cause much stress and concern at first. Not all problems are easily visible. At Park Broadway, for example, mold was found inside the walls but only once the walls were open up. And, that wasn't found in all buildings.

Recently, the two sides reached a \$3.5 million settlement.

"We are incredibly grateful that the team we had in place helped us protect our owners, and our homes. We know that these funds will help restore our building to its original condition. We now can move forward knowing our homes are safe," association President Yi Wong said in a statement.

That team, which included The Miller Law Firm, needed to take time to investigate problems in order to find the real cost for fixing the issues.

"Initial visual inspections by experts are the first step. But when we look further and open up the stucco or around windows, there can be very dangerous conditions like mold and dry rot. It is just not something that an owner or a board could know absent the important level of testing," said Rachel Miller, senior partner with The Miller Law Firm.

On the other hand, mediation continues on the 88 South Broadway development.

The 88 South Broadway condos went on the market in late 2006. More than 100 two-bedroom homes ranging from 1,250 to 1,800 square feet were sold from \$795,000 to \$1.28 million, according to a 2007 San Mateo County real estate study. In addition to the two-bedroom homes, the building offers a gym, community room and secure key-card access. Construction of these luxury condos is subpar, according to a 22-page lawsuit filed in January on behalf of the residential homeowners association, 88 South Broadway Association.

The construction violates building codes for residential homes, according to the lawsuit. In addition, temporary fixes were used to cover up larger problems which residents thought would be covered through the association's reserves, it reads. The nonprofit association is suing for the cost to actually make the repairs, any relocation and storage necessary during that time and any lost income from handling the case as well as legal costs.