

Condo law needs teeth

Conflict resolution and a construction-defect escrow account?

By MICAH MAIDENBERG
Editor

According to Bill Van Emburg, chair of the Prairie District Neighborhood Alliance's zoning committee, it's not difficult to find condo buildings in the South Loop grappling with construction defects and special assessments to pay for them.

Van Emburg was one of several South Loop residents who spoke Monday at a meeting of the Condominium Advisory Council, a group of lawmakers and experts traveling the state to gather testimony about how to update the Illinois Condo Property Act. That state law governs the formation of condo associations and assigns them and developers various responsibilities.

"In the South Loop in particular, the degree of abuse is so severe. There's not a single building in the South Loop I'm aware of—certainly not in the Prairie District, where we know every single one—that has not had some severe developer issues," he said. Van Emburg lives in a townhouse development at Cullerton and Calumet that's facing a \$100,000 roof repair and other problems. The development is six years old.

Many who testified Monday argued in favor a mediation process between associations and developers when disputes arise, and even for some kind of escrow account that would force developers to reserve funds to pay for construction errors and other defects. Others called for more condominium association transparency and education for board members, who may be unprepared to grapple with the challenges of running what one speaker called the mini government that is the condo board.

Part of the problem with the current law, according to State Rep. Harry Osterman, is that no one in the state is charged with enforcing its provisions.

"If you tried to pick up the phone and call someone in the state of Illinois about a part issue with the condo act, you'd be hard pressed to find them," Osterman said at the meeting. But the city's role in ensuring quality development is unclear, too. Second Ward Alderman Bob Fioretti, who estimated his ward has at least 300 buildings with six units or more, said the city doesn't want to inspect new construction.

"They expect people to follow plans, but that doesn't happen," he said. Residents often call his office with complaints, Fioretti said.

Prairie District Neighborhood Alliance is compiling data about problem buildings from membership associations. Some have already achieved high-profile status—the condo association at 1717 S. Prairie is embroiled in litigation with its developers over leaky windows and problems when the building turned over to them. The association passed a \$6.5 million special assessment

to deal with the windows, leaving unit owners with bills in the tens of thousands of dollars.

Kent Lawrence, a lawyer who lives in Dearborn Park II and has served on various condo and homeowner boards in downtown Chicago for years, was one of the first at the meeting to argue for an escrow, or set-aside, fund. He suggested that two percent of a project's cost, including land, be available, according to his testimony, "to satisfy legitimate claims of poor workmanship, materials or design errors in the building of a project."

An association and its unit owners would be able to make claims on the fund, according to Lawrence, with what remained turned back to the developer. A dispute resolution process would keep developers and associations out of court, allowing associations to avoid costly and elongated legal battles, Lawrence said.

"You really ought to have this pool of money and a rapid response system," he said after the meeting. The attorney general could prosecute repeat perpetrators for criminal fraud.

Enrique Perez, a Printers Row condo owner, said in an interview that lawmakers need to pay particular attention to the turnover process.

Currently, developers operate the building until 75 percent of the units are sold. Perez said the law puts condo owners at a disadvantage when they move into a new or converted condo building, with developers holding sway over the building's finances, operations and reserves. Condo boards made up of the new residents can immediately find themselves in a bad situation, he said.

"[Developers] set the rules and determine assessments ... they might only budget X number of staff but when the new board gets, they realize it's going to take more to operate the building," Perez said, referring to situations that would force board members to raise monthly assessments and levy special ones.

"If it had been a more level playing field, that's probably not going to happen," he said.

Fioretti said that in January 2009 he and 42nd Ward Alderman Brendan Reilly and 32nd Ward Alderman Waguespack would convene hearings about development, taking testimony from unit owners and developers.

Perez said the city needs to change the tone about development proposals, take community concerns more seriously and require more inspections during construction.

"Some of these problems and construction defects and rehab defects might be caught initially," he said.

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