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Understanding Changes to the Built Environment After the Surfside Collapse



Navigating legalities for the volatile condo market

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The tragic [collapse of the Champlain Towers South](#) condominium in Surfside, Florida, triggered a seismic shift in the construction industry in Florida. As the legal landscape evolves to address safety concerns, repairs and accountability, mid-sized general contractors must stay informed about new legal obligations and strategies. Condominium associations now have new legal requirements to perform maintenance and restoration projects that, in some cases, have been long overdue. These restoration projects and, more importantly, how to perform and pay for them have caused a shift in the market for thousands of buildings throughout the state.

With this influx of new potential owners and the deadlines involved in their projects, contractors should be keenly aware of condominium-specific issues as they delve into these types of projects. This article delves into key legal considerations, including contract negotiation strategies, liability risks and other relevant considerations, to help contractors navigate the complexities of the post-condo crisis.





Contract Negotiation Strategies

All contractors, regardless of size, should be well aware of the language in their contracts and subcontracts. However, in the wake of the Champlain Towers tragedy, contract negotiations have become more complex and scrutinized. Condo boards rarely have development or construction experience but find themselves in the midst of a complex construction project when it comes to the restoration projects required of them. As a result, the strategies implemented in contract negotiation must be developed in a sophisticated fashion and address the unique circumstances of these types of projects. Contractors must prioritize the following strategies:

1. Enhanced Clarity in Scope of Work

Contractors should thoroughly review the request for proposals (RFPs) issued by condos and their design professionals to determine the exact [scope of the work](#). The RFP should define project scope, timelines and deliverables. Where gaps exist, contractors should draft thorough qualifications and assumptions (QGAs) to ensure what is and is not included in the scope of work.

When considering the scope of work, contractors should pay special attention to extent of the known and unknown factors that the condominium is seeking to repair. Contractors should be fully aware of what level of exploratory work or destructive testing was performed to understand the type of project they are getting themselves into. Simply put, if the work is not captured in the RFP or addressed in the contractor's QGAs, there will be a dispute. Owners will likely include the much disputed "reasonably inferable" language in their contracts, which will place contractors in a precarious position if not addressed in their QGAs.

2. Robust Risk Allocation



CONSTRUCTION BUSINESS
OWNER
CLAIMS ARISING

Con will almost always demand that the contractor indemnify them for claims arising on project. Admittedly, condos are not actively involved in the day-to-day operations of a construction project so they will look to those who are (i.e., contractors and their subcontractors) to cover the risk of any potential claims that arise from these operations. However, contractors would be keen to limit these indemnification obligations to matters within the contractor's responsibility.

Moreover, contractors should seek to cover their exposure to owners by obtaining similar indemnities from their downstream subcontractors and even seek to obtain a mutual [indemnification](#) from owners for claims arising from the owner's (or their agents, vendors, consultants, design professionals, etc.) actions or omissions. Comprehensive indemnity clauses should delineate responsibilities among all parties involved. These provisions should be analyzed by not only the contractor but also their counsel and insurance brokers to ensure that there is appropriate insurance coverage if and when a claim arises.

Utilize "no-damage-for-delay" clauses judiciously to protect against unforeseen delays without alienating subcontractors. In Florida, a no-damages for delay clause may not, in and of itself, absolutely bar recovery. Courts will look to the specific delay-causing circumstances to determine whether those circumstances were caused by the owner or its agents. Thus, contractors should ensure that the contractual provisions provide sufficient remedy in the event of increased costs resulting from an owners' actions or omissions or those of their agents, consultants or design professionals.

3. Insurance & Bonding Requirements

Concurrently with contractor's review of the RFP and the applicable contracts/subcontracts, contractors should also thoroughly review the expected insurance requirements of each condominium as well as contractor's existing insurance policies to ensure that potential claims are covered by [insurance](#). Condos will have property insurance to cover some claims and their design

professionals will carry the required professional liability insurance. But downstream subcontractors should carry adequate insurance and bonds, as appropriate, to cover claims arising from project operations.

4. Heightened Focus on Quality Standards

Contractors can present valid change orders and curry favor with their owner clients when they and their subcontractors are performing high quality work. This can be accomplished with airtight documentation of the ongoing operations of a project in addition to holding subcontractors to the high standards outlined in subcontracts. Condominium boards, and especially those boards at the luxury condos that line the skylines of major cities in Florida, expect exceptional quality of work and regular communication on all aspects of the project.

Liability Risks

Liability concerns have intensified post-Champlain, with heightened scrutiny on structural integrity and safety. Contractors must be proactive in managing liability risks:

Managing the Unknown

The buildings that are the focus of this article are older (i.e. aged 30 years or older) and, as a result, were constructed in compliance with older building codes. When performing restoration work on these buildings, peeling back layers of stucco, concrete, etc. will reveal underlying issues that may be non-compliant with current code or, worse yet, actually be a latent defect that went undetected for decades. Without question, these items need to be addressed and cannot be foreseen at the time of a contractor's bid or even a design professional's evaluation of the existing building. Contractors should position their bid pricing and QGAs to allocate the risk for the unknown and undiscovered. Moreover, contractors must ensure that the agreed upon inspection protocols throughout the project lifecycle are clarified so the repair, inspection, and approval of the repair work can be performed efficiently and effectively.

Although comprehensive documentation should be the standard in all construction projects, the standard for restoration projects on existing buildings should be heightened. These buildings are already built. Residents are already living there. In some cases, costly assessments have been passed to fund the restoration project. Thus, contractors should be extra careful to document all relevant issues on the project to support their claims or defend against potential claims from all potential parties.

This includes daily/weekly/monthly work logs of what was performed and who was on the job site, information to support claims for extensions of time or additional money, directives from the owner or the design professional, and payments records for work, materials, and equipment. As legal counsel involved in these matters, documentation is vital to proper legal guidance on any dispute.

Additional Considerations

Beyond the immediate legal implications, contractors should also consider broader operational adjustments that will make the work more efficient as well as make the costs more predictable:

Investing in Technology

Utilize construction management software to enhance project oversight. With the influx of technology and artificial intelligence into all facets of our lives, it is no surprise that the construction industry is getting its fair share of these technological advances. By investing in technology and staying at the forefront of imaging and reporting of the work, contractors will be better positioned to document the relevant details of any project.

Strengthening Supply Chain Resilience

With the current political landscape, supply chain costs as well as the effect of tariffs on the supply chain must be considered when bidding any project. Contractors should be diversifying their suppliers to [mitigate material shortages and delays](#), locking in pricing with existing suppliers, or ordering additional quantities of raw materials or other nonproject-specific products, to the extent possible.



Lastly, it is not uncommon for contractors and subcontractors to seek escalation provisions in their contracts to offset the risk of rising material costs. However, in the efforts of good faith, these escalation provisions should be limited to the materials that are actually experiencing volatility and require documentation supporting the increased costs.

The current state of the condominium restoration market presents both challenges and opportunities for contractors in Florida. By evaluating relevant contractual provisions, proactively managing liability risks, and investing time and energy in strategic sectors, contractors can not only safeguard their businesses but also contribute to a [safer, more resilient built environment](#). Staying informed and adaptive is key to navigating the evolving legal landscape and maintaining a competitive edge in the construction industry.

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