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Proposed changes in liability law bad for condo owners, lawyer says

Initiative could limit settlements for damage to leaky units

By WILLIAM BOEI

Proposed changes to B.C. liability law will hurt leaky-condo owners trying to recover repair costs by suing municipal governments, a specialist in construction law said Wednesday.

The changes may limit the proportion of a court judgment local governments can be forced to pay.

"This government initiative is particularly grim for leaky-condo owners," said John Logan, a partner in Vancouver construction law firm Jenkins Marzban Logan.

Also Wednesday, a leaky-condo advocate urged the B.C. government not to cut off settlements based on existing liability law, a major source of revenue for leaky-condo repairs, until it has come up with new compensation policies.

At stake is the legal principle of "joint and several" liability, which holds that when a number of defendants in a lawsuit are found liable and some of them can't pay, the remaining parties pay the whole judgment.

The most dramatic case in point is the municipality of Delta, which was ordered last year to pay the lion's share of a \$3.2-million judgment when other defendants couldn't pay. Delta had been found only 20-per-cent responsible for water damage to the Riverwest condo complex because it failed to enforce municipal building bylaws.

The case is under appeal.

Since the the Delta verdict, B.C. municipalities and the Municipal Insurance Association, which provides liability insurance to many local governments, have been lobbying the province to limit their liability.

Attorney-General Geoff Plant responded with a consultation paper suggesting a number of possible legal changes, including replacing joint-and-several liability with proportionate liability, which would cap how much local governments — and possibly all defendants — can be forced to pay.

A June 15 deadline for public comment on the paper has recently been bumped to Oct. 1. The paper can be found on the Internet at (<http://www.ag.gov.bc.ca/liability-review/index.htm>).

Logan said ending joint-and-several liability will hurt strata councils' ability to recover their repair costs, particularly since the insurance industry, reacting to the leaky-condo crisis, has



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Construction law specialist John Logan says replacing 'joint-and-several' liability language could limit damages condo owners can recover.

been refusing to write new policies for other parties like architects, engineers, builders and contractors.

Municipal governments are also being refused insurance for water damage to housing. But municipalities can always raise local property taxes when the courts order them to pay, making them attractive targets.

(The City of Vancouver operates under its own legislation, which protects it from such lawsuits.)

Most leaky-condo cases are settled out of court. Logan said municipal governments, spooked by the Delta case, have been among the top three or four classes of contributors to recent settlements, at times providing seven-figure sums in larger cases.

But he said local governments are likely having second thoughts now about contributing to such settlements and many will probably try to stall until they see what changes Plant makes.

Although the government has made no decision to make changes or detailed how it might proceed, Logan said he expects Plant to go ahead and curtail municipal liability.

"The [attorney-general] wouldn't have put it on the agenda unless he thought it was a good idea," he said. "And the A-G is not a shrinking violet when it comes to doing things that he thinks are right."

Logan said half his law practice has consisted of leaky-condo cases in the last four or five years, and he feels for the owners.

"It really is very sad to stand up in front of a

roomful of people and realize that many of them are elderly, and that they have nowhere to go," he said.

"They just have no options. They are losing everything. It's poignant. It's very sad."

Logan also said it would be unfair to change the law after some leaky-condo owners have settled their suits but while others are still on their way to court.

"I think that if the law is to be changed, it should not come into effect until the leaky-condo mess has played itself out," he said. "Leaky-condo owners are taxpayers too, and this debacle is in the nature of a natural disaster."

Carmen Maretic, president of the CASH Society (Compensation and Accountability to Soaked Homeowners) said the province should not change the rules of liability until it comes up with another way to help leaky-condo owners pay for repairs.

Maretic's group has been lobbying Victoria to declare the leaky-condo crisis a disaster, which could free up federal disaster relief funding. Community Services Minister George Abbott has rejected that as unworkable.

Maretic said the disaster-relief route would create the same end result as a proportionate liability system, but with more fairness built in.

Victims of the disaster would be compensated with public money, and disaster legislation gives the government powers to bypass the courts "and simply bill the parties responsible" for leaky condos, she said.

bboei@pacpress.southam.ca