

Proposed construction defect legislation misses opportunity

The state-commissioned Construction Claims Task Force has identified water intrusion through the building envelope as the most significant cause of construction defect claims in Oregon and has suggested remedies it believes would fix the problem. The task force's recommendations are a good start. However, the task force may be missing an opportunity to initiate some innovative approaches to address water intrusion problems. The task force proposes revisions to the building code and requiring building envelope certification, training and competency standards for workers that install or work on building envelope components.

Absent from the task force's recommendations is any proposal to provide the legislative framework to support a third-party construction warranty insurance program modeled, in part, on British Columbia's very successful warranty insurance program.

The task force reviewed and abandoned the third-party warranty concept in part because of uncertainty as to the willingness of insurers to provide the requisite warranty insurance program.

There are currently no insurers that provide extended building envelope warranties in the United States. However, in Europe, Canada and Japan, extended building envelope warranties are common.

British Columbia's warranty program has been successful in

reducing construction defect claims and providing consumer protection. According to the American Actuarial Consulting Group, which prepared a report

covered by the warranty.

Oregon should not miss the opportunity to enact legislation necessary for the development of a voluntary, or "qualified," third-



GUEST COMMENTARY

Darien Loiselle and Mark Jacobsen

on insurance issues for the task force, the third-party warranty insurance program in British Columbia has provided a level of protection to homeowners that did not exist before the program was implemented.

Why should the Oregon Legislature consider measures that would support a similar third-party warranty program? Simply put, a third-party warranty would motivate the builder and designers to create buildings that perform, and it would represent a win-win scenario for all stakeholders.

From the consumer's perspective, a warranty would offer a single source for efficient construction defect resolution through warranty service and warranty claims resolution and ensure that there is no "empty pot" when resolving claims. The warranty would also help consumers avoid the very costly litigation that has spurred this task force effort. In addition, from the developer's perspective, the warranty would be the sole remedy for claims

party warranty for condominiums, at least.

Washington state's qualified warranty statute for condominiums, with some modification, could be a model for Oregon's legislation. Washington's legislation isn't perfect, but the Oregon Legislature could look to Washington's qualified warranty statute as a guide to creating a framework that would attract third-party warranty providers to Oregon.

A warranty program does not have to be mandatory, which seems to have been the task force's primary concern. It can be voluntary. Either way, third-party warranty in residential construction is a good idea, and the Legislature should take steps this session to make warranty an available option to consumers and developers in Oregon.

Darien Loiselle is a shareholder and chairman of the construction group at the Schwabe, Williamson & Wyatt in Portland. Mark Jacobsen is a risk manager with Ankrom Moisan Associated Architects.