

## Pre COVID-19 Construction Cost Estimates Are Likely Outdated

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In New Jersey (and virtually all other states), construction defect cases for common interest community associations are heavily reliant on expert witnesses. Even if a building system is obviously defective — in that windows leak every time it rains, cracks have developed in walls, and sidewalks have sunken from improper soil compaction — the association must still present expert reports and testimony to prove its case at trial. Litigation expert reports in construction defect cases must generally address the following five issues:

1. How was the building *supposed* to be constructed, as required by architectural plans, manufacturer installation instructions, building code, and industry standard?
2. How was the building *actually* built, and how does the as-built construction divert from what was required?
3. How are the construction defects causing damage to the building?
4. What needs to be done to remediate the defects and damage?
5. How much will the remediation cost?

With respect to issue 5 — how much will the remediation project cost — a litigation expert will typically generate a professional construction cost estimate. A cost estimate takes each element from an architect or engineer's proposed repair design scope and assign it an itemized cost. The cost for each item typically includes the price for that particular material and the labor to install it. The cost estimate also includes certain other costs for the repair project such as demolition, fencing, permits, contingencies, architectural design and oversight, insurance, bonding, profit and overhead, etc. A typical cost estimate can have hundreds, if not thousands, of itemized costs for a large repair.

Because construction defect cases, especially large ones for condominium and homeowner associations, take upwards of five or more years from filing the initial complaint until the time of trial, many currently pending cases in New Jersey have cost estimate reports that were generated and produced to defense counsel prior to the COVID-19 pandemic. Although some cost estimates may be

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only a few years old, they are almost certainly outdated and in need an update.

Over the last three years, construction costs have risen dramatically due to many domestic and global factors: soaring construction demand, skyrocketing inflation and interest rates, COVID-19 delays and supply chain disruptions, labor shortages, civil unrest and the Russian/Ukraine war. As a result, prices for construction materials continue to rise. According to a September 2022 report from Associated Builders & Contractors, Inc. (ABC), residential construction costs have risen as high as 40.5% since February 2020. While this average is largely impacted by extraordinary price increases for materials such as structural metal (54.2%), iron and steel (69.2%) and crude petroleum (84.3%), even more common residential construction materials have increased dramatically over the last three years, such as lumber (36.5%), asphalt roofing and siding products (36.2%), concrete (23.1%) and plumbing fixtures and fittings (16.2%). While cases that have been somewhat dormant during COVID-related court delays are now active again, association litigants which have pre-pandemic (or even mid-pandemic) construction cost estimates should confer with their attorneys and experts to make sure the construction cost estimates contain the most up to date pricing data available. Failing to update construction cost estimate reports, and then basing settlements and/or trial testimony on outdated data, will almost certainly result in a settlement or jury verdict that is not consistent with the costs the association will actually incur when it starts bidding the project.

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