

# How South Florida Real Estate Developers Are Reducing Litigation Risk

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Leading up to the [Great Recession of 2008](#), properties throughout South Florida were being bought only to be subsequently resold at a profit. This “flipping” of properties culminated in an unsustainably-inflated real estate market that eventually collapsed. Flipping was facilitated, in part, by low deposit requirements. Buyers with little investment capital could buy expensive properties with only 3-5% of the total purchase price, and later resell them at a profit.

When the [real estate bubble](#) burst, developers found themselves with incomplete construction projects, and defending lawsuits against both purchasers demanding their properties and creditors demanding their payments.

Changes were needed and changes were made. Among these changes, South Florida developers altered their financing models and implemented contracting changes in order to reduce their litigation risk.

## Financing

After the market collapsed, South Florida property developers began adopting the Latin American real estate model, wherein buyers are required to deposit upfront 50-90% of the total purchase price of the property. This purchasing model is common throughout South America, where high interest and inflation rates make financing undesirable.

Coming out of the downturn, most area condo developers adopted the Latin American model of requiring deposits of 50 percent upwards to 90 percent from unit buyers prior to closing with the aim of ensuring they would have sufficient funds to deliver their projects, but while the upfront funds have made a sequel to the last cycle less likely, there is still the potential for buyers to come up short financially.”

Requiring buyers to finance the development of their own properties reallocates much of the risk from the developers to the purchasers. Developers no longer need to rely as much (or at all) on third-party

lenders to finance the construction project. Additionally, with substantial skin in the game, purchasers are more likely to close on deals, instead of walking away from minimal deposits. This helps ensure that developers will have the necessary capital to complete their construction projects.

This new financing model, however, is not a perfect solution. While this shift in financing may have reduced the potential for litigations against the developers by creditors, it increased the risk of litigations against the developers by purchasers. Buyers with equity in a construction project are literally and figuratively more invested in the construction project. This means they are more likely to sue developers when a construction project is seemingly off schedule or when they believe it is deviating from the negotiated specifications. Also, remorseful buyers may look for ways to recoup their substantial deposit, claiming the property is somehow defective or delayed.

Ultimately, the most effective way to minimize litigation risk is by keeping a construction project quality controlled and on time. In order to achieve timely and quality project completion, there is no substitute for on-site oversight and frequent communication with contractors.

Even when developers have taken every practical precaution, however, construction projects may still be derailed. Inclement weather, for example, [not uncommon in South Florida](#), could delay a construction project. The best way to protect developers from litigation exposure is by properly allocating liability in the construction contracts.

## Contracting

Construction contracts should include provisions requiring contractors to take the necessary measures to make up the time if they fall behind schedule. These provisions are often hotly-contested terms in contract negotiations because contractors do not want to incur the added expense of hiring extra workers to bring the project back in line with the projected schedule. Developers, however, are demanding that these provisions be included in their construction contracts, and also include high penalties for violations of these provisions, in order to ensure compliance.

In turn, contractors are requiring that similar provisions be included in their contracts with subcontractors. These provisions make explicit who is responsible for bearing these additional costs, and who is liable for violations of these terms.

## Conclusion

Developers may not be able to eliminate litigation risk, but they can minimize it. By securing sufficient capital at the beginning of a project, and by properly allocating responsibility for project delays or defects in their contracts, developers can better manage not only their projects, but also their liability.

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