

Leland Jaquay  
21823 NE Larkspur Ln  
Fairview, OR 97024  
[leland.jaquay@comcast.net](mailto:leland.jaquay@comcast.net)

I am the President of the Fairview Terrace Homeowners Association. Fairview Terrace is a 197 unit townhome style planned community located in Fairview Oregon. Our community was developed and built in phases from 2003 through 2007 by Fairview Commons, LLC, a development company owned by a California developer named Allen Grant. Mr. Grant turned over control of the community to the owners in 2008. I was elected to the HOA Board of Directors at that time.

The Board started to receive complaints of defective construction not long after it took over control of the Association. The HOA at Fairview Terrace is responsible for maintaining, repairing and replacing all of the townhome building exteriors, so we felt that it would be prudent to have an architectural firm to perform an inspection of the property. This inspection revealed that serious defects in the siding, roofing, decks and windows was causing water to leak into and damage the walls and ceilings. We gave the developer a copy of the report and asked him to perform repair work, but he was unwilling or unable to do so.


We filed a lawsuit in October 2008 against the developer, general contractor and some of the subcontractors who had worked on the project. These defendants were all represented by lawyers hired by their insurance companies who did everything that they could to drag the case out for years and force us to spend our HOA budget on litigation.

Our lawyers told us that we had a great case and that the jury would probably award us much more after a trial than what the insurance companies had offered in settlement. However, our lawyers also told us that we would probably have to fight for several more years to collect any judgment that the jury awarded us due to the positions taken by the insurance carriers for two of the main defendants, the developer and the siding subcontractor. We didn't have much hope of collecting from the defendants themselves because they had fallen on hard times when the housing market crashed.

The developer bought a \$2,000,000 liability insurance policy for each year that he worked on the Fairview Terrace project from National Fire and Marine. Understandably, he believed that this insurance would cover him up to the policy limits for any damage that he caused due to his negligence in each of those years which would give him a total of at least \$6,000,000 in coverage. He didn't realize (and wasn't told) that National Fire and Marine had inserted a confusing policy provision which limited the coverage to \$2,000,000 no matter how many policies he bought from them.

The siding contractor, Custom Side, was insured by American Family. American Family didn't have any unusual language in their policy, nor did they have a good reason to refuse to pay the \$1,000,000 policy limits when their insured was clearly liable for much more than that. Despite this, the insurance adjuster for American Family made it clear to us that if we didn't accept his settlement offer of \$600,000, he would refuse to pay any judgment, despite not having any grounds to do so, and force us to spend years in litigation to collect from American Family.

Our home owners couldn't afford to spend years in litigation with insurance companies, so we accepted a settlement that didn't cover our repair costs. The Fairview Terrace HOA learned the hard way that insurance companies in Oregon are not afraid to refuse to live up to their obligations.

  
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Leland Jaquay

March 14, 2013  
Date