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Law

SYNTHETIC STUCCO BY CARY W. JACKSON

Litigation alert

Like asbestos and radon before it, synthetic stucco, or EIFS (exterior insulation finish systems), rings loud alarms with anyone involved in buying and selling homes in certain

parts of the country. News stories and lawsuits have linked the product to water intrusion behind exterior walls, which in turn rots sheathing and other building components and makes many affected homes virtually unsalable.

Although few if any real estate practitioners have been held liable for EIFS defects, the publicity surrounding the EIFS controversy in recent years has increased the likelihood that you might be expected to know about the defective nature of EIFS.

EIFS didn't always have such a bad reputation. In the 1980s, thousands of houses throughout the United States were clad with EIFS (pronounced "effs"). This multilayered system of synthetic board and finish adhered to several layers of sheathing was attractive and insulated dwellings more effectively than many other products. It's still used in European homes and in commercial building worldwide.

The principal difference between EIFS accep-

tance in Europe and here is that in Europe, the systems are applied to masonry. In the States, they're often applied to wood or gypsum. Because there's no moisture barrier over the wood or gypsum sheathing, the systems can allow moisture to intrude through less-than-perfect window and door edges or through cracks in the exterior or rooflines, causing the underlying wood or gypsum to deteriorate. EIFS houses become moisture magnets, quietly eating underneath their facades.

A second problem with EIFS systems sometimes occurs because applying EIFS correctly is expensive and complicated. Some general contractors and applicators took shortcuts and ignored many of the EIFS manufacturers' written instructions, which added to the risk of moisture intrusion.

As a result of these problems, homeowners have been overwhelmingly successful in recovering for damages resulting from EIFS. In many jurisdictions, use of EIFS has effectively been banned. Likewise, some states require that prospective purchasers of EIFS homes receive written disclosure forms.

Are you at risk?

To date, real estate brokers and sales associates have largely been spared the agony and expense of participating in the EIFS litigation wars. For several reasons, that good fortune may change.

First, because EIFS homes are aging, the time limits for bringing litigation against the principal parties—manufacturers, builders, and subcontractors—are expiring. This means that homeowners will be looking for other parties to hold liable if they experience problems with synthetic stucco.

Second, many EIFS houses are changing hands from initial owners to subsequent buyers. If disclosure is inadequate, these sales trigger new opportunities for litigation directed at sellers, real estate professionals, and home inspectors.

Defenses exist to such allegations. For example, a defendant inspector could argue that many EIFS application defects (and the resulting damage) wouldn't be apparent through a visual examina-

tion. Similarly, real estate sales associates could assert that they're under no obligation to provide information to buyers about EIFS unless there's evidence of some specific problem with the property.

Prevention is the cure

Your best defense? Prevention. An ounce of prevention is worth a pound of cure in averting litigation.

• Demand adequate information from the seller. If you represent the buyer, insist on obtaining all relevant, available information about a stucco home from the seller (even if your state doesn't require disclosure). Is the system multilayered stucco or just EIFS? Have repairs been performed? Have moisture readings or other inspections been conducted? Although low moisture readings are no guarantee that there isn't a problem with EIFS, one or more high moisture readings definitely indicate the need for investigation.

• Avoid potentially misleading representations about the condition of the EIFS or the underlying framing. For instance, stating that the house is "dry" or that the EIFS application defects have been "repaired" is an invitation to the courthouse. There's no way to verify reliably the condition of all the wood under the siding without removing that siding. Nor does any accepted EIFS repair protocol exist. In fact, many engineers contend that an EIFS house can't be repaired, short of stripping the structure completely of its EIFS exterior.

• Encourage the buyer to obtain an EIFS inspection. Buyers' best inspection option would be to hire a structural engineer rather than a home inspector, because the more invasive testing methods engineers use are more likely to find moisture problems. As is the case when recommending any vendor, offer buyers several names to choose from. Also advise the buyers that if they use an invasive test, they may have to return the property to its prior condition.

• Transfer any potential responsibility back to the buyer. Direct buyers to resources (www.eweb.com, www.effsolutions.com, and www.buildingdefects.com) designed to inform them about the product and the surrounding controversy.

Although there's no formula that will inoculate you—or any other party—from EIFS litigation, these recommendations should limit the chance of a successful lawsuit against you. **19**



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Other sources of information are listed on page 32.

Quality is essential, and it's not until the process is complete that you can truly appreciate the quality of the work.

