

SUMMER 2016

# fhb

## FLORIDA HOME BUILDER

Official Magazine of the Florida Home Builders Association



**CARLOS BERUFF**

**Building American Dreams**

Outdoor Coastal Trends  
for **2017**

**Florida Shines Bright**  
In the Global Marketplace

Pre-flight your  
**Business**

Impact Fees  
**on the Rebound**





BY James Leach, FHB Insurance

Flying is a passion of mine. Since training in the U.S. Air Force back in the 1970's to now, taking flight is more than a means of efficient transportation – it is freedom coupled with respect for the airplane and being ever aware of the vigilance of its mechanics. Flying is a passion, but so is safety. What does being a pilot have in common with Construction Insurance or Warranties? For me, the answer is Risk Management.

The preflight check-list of an airplane is critical to flight. This 'risk management' must be addressed on the ground before there is an issue. After take-off, it's too late. I was reminded of this recently by a fatal loss in Atlanta that occurred shortly after take-off. One has to wonder if the plane was prepared for flight. Engine failure has been ruled out as a factor. Was the plane over-loaded [seems likely]? Contaminated fuel [was this checked by the pilot]? Did

the pilot 'manage' the risk well, before he took to flight? There are far too many accidents that occur as a result of poor risk management, or lack of proper planning, before take-off.

For builders, pre-fighting your business is equally important, due to the implied warranty laws in Florida. The IMPLIED WARRANTY LAWS are court cases that establish the liability builders will face for 'negligence' leading to structural defect claims. The applicable statute of repose in Florida is ten years, for each home built. These are potential tort claims - lawyers, litigation, time and expense. Courts established long ago that the builder is the expert, and

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they have leveled the playing field for the benefit of the homeowner/consumer, with these court cases.

A contractor impliedly warrants that the new or remodeled home is free from construction defects. The courts have put builders in the cross hairs of plaintiff lawyers. Fortunately, the builder can protect their assets with a written warranty document, which takes the place of these implied warranty laws. They need to couple this with other CONTRACT protections.

Some builders may try to craft warranty documents themselves, but that's a potentially ineffective idea, as a court could very well deem them as a self-serving attempt by a builder to avoid liability. Many years down the hypothetical-road, a construction defect issue could occur due to soil movement. Eighty percent of the qualified structural defect claims

(continued on page 12) ►



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come from some 'soil movement' issue, and most of them happen years later. Double the number in years 4-8, than in years 1-4. At the time of loss, it will be too late to address the implied warranty laws. When a loss happens, if it's not addressed via a contract, the opportunity will have been missed to make this a contract matter and you will inevitably be stuck with a claim in tort. Risk management must be handled up-front - just like the pre-flight of a plane.

A builder needs to address three additional contracts key to good risk management, and to avoiding litigation:

- Subcontractor agreements,
- Sales agreements (for consistency with the warranty), and
- General Liability Insurance contract.

• Together, these four contracts should be coordinated so that they work together, which are critical to a builder's risk management.

I am reminded of the classic questions from Theodore Levitt in the Harvard Business Review circa 1960: *"What business are you in? Are you in the train business? Or, the transportation business?"* You, as a builder, and me, as an aviator, should be in the Risk Management business. Neither of us should take flight without all the proper precautions.

Pre-flight your business. Don't start the construction project until the t's are crossed and i's dotted. Contracts protect builders from potential tort exposures; an uncertain outcome from the public court system and a jury of homeowners (Arbitration is a professional and private court system called for by your contract).

Risk management training never stops. Pilots go through continuous education on improved techniques and technology. Aviation is much safer today than ever. Builders also have many new techniques and products that you are continuously learning. One thing that has not changed: Pre-flight has been a constant over the decades.

Building a home without the proper contract protection, construction check lists, and use of the latest and best techniques, can be hazardous to your net worth. Protect your assets. Preflight your business before you take off – before you construct and sell that home.

*James Leach [Airline Transport Pilot and Certified Flight Instructor], CEO, FHB Insurance*

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