



CONSTRUCTION DEFECTS – TYPES, LIABILITY, PREVENTION by: *David A. Szabo, Esq. (7-16-2018)*

Construction defects can happen in a variety of ways and building projects. They encompass mistakes that can threaten the structural integrity of a building to mere issues of aesthetics. It is important for contractors and their customers to be familiar with the different kinds of construction defects, the liability that can result, ways to prevent construction defects from happening and ways to resolve them once they have occurred.

“Construction Defect”

Construction defects are commonly thought of in terms of poor workmanship or labor that went into the construction of a building. They may also arise from defects in the design of the structure or the materials used. Use of such “improper methods or materials” and the liability they might incur are assessed against the terms of the contract and the generally accepted or customary practices within the construction industry.

Construction defects can arise in a number of ways that may include:

- waterproofing
- roofing
- masonry and tiling
- house painting
- flooring
- the addition of porches and sunrooms
- the construction of entire new buildings

Liability

Potential liable parties include:

- Designer/architect

- Contractor
- Subcontractors
- Consultants working under the designer and subcontractor

The owner is almost always free of fault; but depending on state law, might not be able to recover for “patent defects,” which an ordinary person ought to have discovered upon reasonable inspection before their acquisition of the subject property.

A **contractor** is subject to the duty to perform construction work in strict accordance with the terms of the contract documents. It is therefore of utmost importance that the contract terms reflect the processes and materials that the contractor intends to implement, and that these terms are also understood and agreed to by the customer. If the contractor is building a structure according to the design of a third-party, then the contractor may wish to include a term explicitly disclaiming liability resulting from the design. In Ohio, construction contracts are also subject to an implied warranty of good workmanship.

Prior to beginning the construction project, it is prudent for the contractor to visit the project site and become familiar with the local conditions. These might include:

- quality of the soil
- local weather
- the season or time of year
- prior methods or materials used if the project is for an already-existing structure
- and other factors.

The choice of methods and materials should be based on the knowledge of these conditions and the customary industry practices for performing the intended project in such conditions.

Preventing and Resolving Defects

Contractors can take steps to avoid incurring liability in the first place. Having regular procedures in place for purposes of quality control can catch issues before the completion of a project. If the contractor becomes aware of a defect, the contractor should inspect the project and present the findings to the owner so that an informed decision can be made regarding remedial action, possible change-orders or amendments to the agreement, or other measures. This will help to reduce the chance of litigation and may limit the amount of monetary damage the contractor incurs in the event that litigation does arise.