

Construction defect—suggested steps for contractors to control claims



Construction defect claims used to be concentrated in the western United States, but this is changing due to a rise in claims nationwide. As a general, prime or subcontractor there are steps that can be taken to reduce the probability of incurring a construction defect-related loss. These steps are outlined in this bulletin, and while not all-inclusive, are a good foundation for your construction loss control program.

WHAT CONSTITUTES A CONSTRUCTION DEFECT?

- Soil settlement or subsidence.
- Water intrusion or damage caused by moisture.
- Defective materials used or inadequate material performance.
- Inadequate protection from weather including flashing, caulking, barriers, etc.
- Poor workmanship or faulty installation.
- Poor or faulty design.

PRIOR TO CONSTRUCTION

- Obtain geological information through soil analysis, requirements for construction and area history for soil failure-related claims.
- Outline and review the qualification of subcontractors including their prior loss history, references and past projects completed.
- Review the architect and engineer qualifications and have professional liability coverage and certificates in place.
- Have the risk transfer include a(n):
 - Subcontractor agreement in place and signed by all contractors on the job with review by designated corporate personnel.
 - Additional insured endorsements **with completed operations** provided on general liability certificates of insurance.
 - Limits of insurance specified and at least equal to the hiring contractor and reviewed to ensure these are in place.
 - A subcontractor agreement that includes a hold harmless agreement.
 - A subcontractor agreement that includes a waiver of subrogation.

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- Make sure the contract specifies that materials to be used are per plans and specs, with no substitution allowed unless approved by the architect or engineer in writing.
- Hold a preconstruction/prejob meeting with all hired contractors to review job sequencing and timelines.
- Set up and maintain files designated by corporate personnel for all job-related documents, emails, change orders, etc.

DURING CONSTRUCTION

- Schedule meetings with all subcontractors to review schedule, incoming materials and construction issues.
- Schedule meetings with architects and engineers to review progress and issues.
- Schedule and review plans regularly with local authorities with jurisdiction to ensure that codes are being met.
- Supervise jobsite to complete regular job walkthroughs/inspections of each trade to ensure compliance with contract requirements.
- Document in writing identified issues with contractors regarding installation, signed by the subcontractor, and provided to corporate office for inclusion in job files.
- Follow up by supervisor to ensure any identified issues are remedied and written documentation is provided for job file.

JOB COMPLETION

- Punch lists specific to the job are reviewed, completed, dated and maintained in job file.
- Monitor project for designated time with customer to identify and remediate any issues or identified defects on a timely basis with documentation of remediation completed and filed.
- Designated corporate and job personnel review overall job issues, subcontractor and supplier performance for future job improvements.

Buildings are designed and built by humans, so there is a potential for errors and mistakes that may cause construction defects. Contractors most likely will not be able to have all their jobs defect-free, but by following the suggestions outlined above, they may be able to reduce the likelihood of a construction defect-related claim. For assistance in this area, please contact your local UFG Insurance risk control consultant.

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