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Construction Defects Can Be Avoided!

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In my previous article entitled "Construction Process Can Lead to Defects", I illustrated various aspects of how the construction process may well lead to defects.

When related to construction claims, the word defect also equates to financial disaster when it reaches litigation.

The Statute of Limitations has been extended for filing defects claims, in the State of California.

Effective January 1, 1995, anyone whose home has been improved or repaired will have more time after the completion of the project to file a complaint.

Contractors can be held liable for patent defects (defined as defects that are plainly visible or that can be discovered by an inspection made with ordinary care and prudence) for up to four years after completion of the project.

For latent defects, the statute of limitations is now ten years. (A latent defect is one an owner does not know about and would not be expected to discover through the exercise of reasonable care). During 1994, under the former Contractors Licensing Law, the statute of limitations for both patent and latent defects was three years.

Construction defects claims can be minimized, or even eliminated from your life's experiences, by performing due diligence when you are engaged in the process of construction.

Due Diligence, or Reasonable Diligence is giving attention to the matter at hand. It is the diligence which is required by the circumstances, and the rendering of that which prevents liability for negligence.

This article is intended to give the reader a thumbnail sketch of how the term "due diligence" equates to another term, which we all have heard of, and yet many find illusive, and that is the term: "Quality Control".

Quality Control

Also known as "Construction Quality Control", or "C.Q.C.", is the process in which the quality of the many products used, and the methods for their use, which comprise the total building project, are scrutinized under a conservative control process, or program.

Building Materials

Before building materials can be used in any building, they are first run through a highly complex, and extensive engineering, testing, and review process. This review process is usually conducted by a vast number of independent testing laboratories and the results are reviewed by many professional committees, such as the American Society for Testing and Materials, (A.S.T.M.) and the International Conference of Building Officials, (I.C.B.O.).

Reports of the testing results and the Professional Societies' findings are published and updated regularly. These reports, often referred to as A.S.T.M. Standards, I.C.B.O. Reports, and Uniform Building Code Standards, state the minimum recommended standards for the use of the materials.

Architects and engineers refer to these "Standards" and specify them in their plans and specifications. Once these specifications are made part of the construction documents for a building project, it is incumbent upon the general contractor, all of the specialty contractors, and all of the materials suppliers to comply with the specifications.

Plans and Specifications

In almost all contract formats the term "Per Plans and Specifications" is used extensively. Architects and their Consulting Engineers will almost always go to some length to specify the products they expect to be used, and the methods to be incorporated for their use either on the drawings or in a separate book of specifications.

Often, the specifications will require that the Contractor furnish "Submittals" and "Shop Drawings" to the Architect for his or her review and acceptance.

Submittal Review Process

This is an area of quality control, that very often goes amiss, and may directly lead to defective construction. All too often the Contractor and his or her Subcontractors do not place enough importance in this process, and the Submittal is either lacking important information needed or is not complete. Often, the items being submitted on are substitutions of that which was originally specified, on the pretext that the product(s) either are no longer available, or the Subcontractor may not be a "Certified Applicator", or they can simply purchase this substituted product cheaper than the product specified.

The Submittal and Shop Drawing Review Process, whether required by the contract, or not remains an extremely vital function to controlling quality, and avoiding claims. Whether required or not, it is crucial that the Contractor "Get It All On The Record".

The following are recommended procedures for the Submittal and Shop Drawing Review Process:

1. In accordance with the Contract Documents, the Contractor should prepare and submit a Submittal Schedule for acceptance by the Architect, and the Owner. The Submittal Schedule should be an integral part of the Contract Progress Schedule to ensure the timely approval of Submittals as required by Contract Progress Schedule. The Submittal Schedule should include all Submittals required by the Contract Documents. Upon acceptance, the Architect should send a copy of the Schedule to the Owner. Key Submittals need to be entered as activities in the Contract Progress Schedule.
2. All Submittals should be made with a Letter of Transmittal which shall contain a list of the items from the Plans and Specifications contained in the Submittal. The letter and items accompanying the letter should be fully identified by listing the Project Name, the Architect's Contract number, (if any) the Contractor's name, the Subcontractor's or Vendor's name, and a clear reference to the Specification Section governing the material submitted, Drawing Reference, Equipment Number, and Contract Progress Schedule Activity Number.
3. Any deviation from specified items should be clearly noted in the remarks section of the Transmittal Letter, with justification for acceptance of this deviation, along with an estimate of cost savings to be experienced with acceptance of this deviation included as part of the Submittal.

4. The Contractor should indicate by a signed stamp on all Submittals that he has checked the Submittals, and Shop Drawings and that the work shown is in accordance with the Contract Requirements and that he has checked for dimensions and relationships with the work of all other trades involved.

5. When Submittals, and Shop Drawings are received at the Architect's office, they will usually be entered into a Submittal Log maintained by the Architect. I recommend that the Contractor maintain a similar Log so the Contractor can track the timely review of all Submittals.

The Architect may reject a Submittal immediately if he notes that it is incomplete and may return all copies to the Contractor with reasons noted.

6. The Architect should, within time limits as specified in the approved Submittal Schedule, return said Submittal after his review, with the results of his review clearly noted.

7. The Architect's Review and/or approval should not relieve the Contractor from responsibility for deviations and alternatives from Contract Plans and Specifications, nor should it relieve him or her from responsibility for errors in Submittals. No progress should be accorded for installation of nonconforming items or installation of any item which requires a Submittal which has not been fully reviewed, and accepted.

By adhering to a constant policy of closely reviewing the requirements of the plans and specifications, gathering all manufacturer's data and specification sheets, installation instructions, test reports, ICBO Reports, and compiling these into a bound presentation booklet, the contractor and his or her subcontractors will have not only complied with the requirements of their contracts, they will also have created a "paper trail" in their job files proving that they have complied.

Once the Submittals and shop drawings have been reviewed and accepted, another vital function of the quality control process is following the requirements of these reviewed documents. This leads to writing another article.

Quality control systems and methods must be taken seriously, continuously, and be religiously augmented throughout by all parties concerned. By not controlling quality, construction defects and the resulting defects litigation cases, will only continue to grow in the future.

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