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# BUILDING Management **HAWAII**

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# Commonly Litigated Defect Claims in Hawaii

Construction defects can include bad design, sloppy construction or failed products



Ken Kasdan

**W**hat is a construction defect? Construction defects are construction practices that violate the building code, violate specific installation instructions or product approval, deviate from the approved plans, cut impermissible corners, and/or incorporate components that are prone to fail in their installation and/or use.

The building code is adopted as an ordinance by the governmental entities having jurisdiction over the project, such as the City and County of Honolulu or the State. The code itself is based upon the International Building Code (IBC) and modified to address local conditions. The code is a minimum standard. The code specifically provides that it shall be unlawful to build contrary to the provision of the code. But violations of the code are not always the actual legal claims. Violations of the code are often the substance that form the basis for causes of action like breach of contract, negligence, breach of warranty, and breach of implied warranty. Lawsuits using codes as benchmarks and code violations as a basis for liability typically arise if the contract requires conformity with the code, if the plans require conformity with the code (which they always do), or if there are deficiencies in the construction work or design.

Construction defects can be the result of bad design, sloppy construction that fails to conform to either the approved plans and or the code, or failed products incorporated into the building. Often a failure to use proper corrosion resistant materials become the core of the defect claim.

Typical construction defects in Hawaii can be broken down into a few basic categories: structural life safety



Water intrusion through the concrete garage ceiling, resulting in damage to plumbing lines and attachments.

defects, fire safety defects, water intrusion and code violations.

Structural defects include failing to adequately design the building for the loads it will be subject to in service. In Hawaii, a primary load factor is the wind load because of the risk of hurricane force winds. Hawaii has elaborate wind maps taking into account terrain and exposure. A hurricane can be expected to cause damage, but a house should still be able to remain on its foundation. Winds can also break windows and doors, creating a vacuum inside the house that can blow off the roof. An appropriately designed and constructed building with openings should anticipate the windows breaking but still be strong enough so the roof remains attached. The code also requires design for earthquakes loads—typically the wind loads are higher

Examples of critical fire-life safety issues are the omission of a required

sprinkler system, a poorly designed sprinkler system that fails to provide adequate coverage, or a sprinkler system with inferior parts that are prone to corrosion, rendering the system inoperative. Sprinklers must be installed by specially licensed and trained contractors who are required to know their trade. A good contractor will not take shortcuts.

In addition to having adequate sprinkler systems, proper construction is key to building a fire-safe structure. Building are designed with walls and assemblies of various fire ratings, and construction details are critical to achieving these protections. For example, gypsum board is typically type X fire rated, corridors in most hotels or high-rises are typically one-hour rated in both the walls and ceilings, and unit separations are often two-hour rated. Achieving a two-hour rating requires two sheets of drywall on each side of the wall, with the base and face sheet

nailed in designated patterns, and insulation firmly affixed in the wall cavity. All penetrations from the hallway into the unit must be properly sealed so there are no penetrations that can fuel a fire. Outlets must be properly laid out and installed, without being back to back in bedrooms and with putty packs affixed to the back.

Frequently, contractors make mistakes or cut corners that can have deadly consequences in a fire. It is not uncommon to find sheets of drywall missing, drywall not brought to the top of the soffit, and holes made with claw hammers to get a wire or pipe through the wall. These kinds of defects cause otherwise manageable or escapable fires to quickly become out of control. In Honolulu, we surely have seen the devastating effect of high-rise fires.

Corrosion is also a huge problem in Hawaii. If structural hardware is left exposed to the elements. If the structural connections embedded in foundations are not adequately covered with concrete or if the concrete is porous and of poor quality, corrosion will occur. Often, a builder's failure to

use corrosion-resistant hardware and materials, which are typically higher quality and thus more expensive, is the key factor when corrosion occurs.

Corrosion can occur in locations where safe construction is critical, such as on lanais. Unfortunately, sometimes builders place rebar too close to the edge of the deck or fail to properly embedded railings, creating an environment where safety components are not adequately anchored or protected from corrosion. The building code has explicit requirements for anchorage, and the structural plans should specify critical factors such as fastener locations, types, and lengths. Metal must be properly primed and painted with a minimum thickness of paint specified by the paint manufacturers. Railings must comply with a minimum height of the top rail and maximum height of the bottom rail and maximum picket spacing—the code is comprehensive and explicit, but not always followed.

Corrosion can also wreak havoc on plumbing systems in hotels, apartment buildings, condominiums, and single family homes. Hawaii is plagued

by bronze fittings made with excess zinc than can cause fittings, valves, and water meters to corrode and fail. Plumbing fittings and valves are often made of yellow brass having up to 35 percent zinc, which means they are prone to corrosion. Numerous high-rise buildings in Honolulu have PEX plumbing system failures—in those buildings, though nothing was wrong with the plastic PEX pipe, the critical fittings connecting the pipes corroded because they were yellow brass.

Finally, water intrusion is a common result of construction defects in Hawaii. High-rise exterior cladding systems often leak due to incorrect installation methods or poor-quality materials in the curtain wall design. Exterior EIFS stucco systems can also fail. Although siding is a manufactured product, it is also prone to failure if it is not nailed properly or not primed and painted at the cuts. In all of these installations, unsealed openings soak up moisture like a sponge, deterioration results, and mold can form. If mold is

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