

## Hurricane Damage and the Search for Responsibility Arising from Faulty Construction



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*Hurricane Charley has again prompted the public and media to question and criticize the poor quality of residential construction attributed to municipal building departments, developers, contractors, engineers and architects.*

When Hurricanes Andrew, Erin and Opal caused entire roof systems to fly off buildings because nails had been driven through plywood without embedding in a single roof truss, the same question was repeatedly asked. How could my home have been built with such severe building code violations when the municipal building department inspected, approved and authorized my family to occupy it? If the building department made a mistake, can we sue them for negligently failing to detect the existence of these problems?

In the early 1980's, the answer to these questions were fairly clear. At that time, municipal building departments were held liable for the negligent inspection of residential and commercial construction. Proof of these allegations simply centered around the fact that a municipal building department issued a certificate of occupancy and that building code violations did exist. Plentiful and shocking evidence supported these allegations. For example, a building inspector admitted approving the installation of a roof by simply driving his car by the construction project (and not getting out!). Big name developers reportedly paid off building inspectors to approve construction without inspection. Allegations of laziness further came to light when during normal working hours building department vehicles were found parked at public libraries, bowling alleys and at home. When these problems were first exposed, some degree of house cleaning occurred, but the real problems were never addressed. Specifically, how safe were the buildings that passed inspection while the person designated and entrusted to perform this task was reading a newspaper at the public library?

The foregoing problem was further compounded after finish work to a building had been completed. At that point, discovery of a construction defect or deficiency can only occur by performing destructive testing. For example, once reinforcing steel comprising exterior balcony slabs are covered with concrete, how can a homeowner discover whether the contractor poured the required thickness of concrete coverage over reinforcing bars? The Building Code requires 1 1/2" of concrete coverage for structural strength to guard against corrosion and to prevent the ultimate failure of the slab. Likewise, how can a lay person be expected to discover that the studs and drywall located between units to stop the spread of fire from one unit to another were properly assembled; or whether pipes passing through floor slabs were sealed with fire resistive material to prevent the spread of fire and smoke to habitable areas of a multi-story residential building.

Once reports of these activities became public, construction defect litigation became popular and strongly criticized by developers, contractors, architects and engineers. Notwithstanding this criticism they secretly feared what may be discovered once building finishes were removed. These fears were well founded. The opening of interior walls revealed many surprises including, for example, the contractor's improper use of milk cartons to form window sills; beer bottles and newspapers from the 1980s were discovered inside wall cavities that were required to be built with non-combustible materials; construction waste materials were used as a convenient way to plug up voids and gaps in masonry walls ultimately causing them to crack and permit the entry of water into living areas. Additionally, it was

discovered that unlicensed architects, such as draftsmen, were forging the architect's signature on building plans. A wave of lawsuits began by homeowner groups suing manufacturers of fire retardant plywood which rapidly deteriorates when exposed to high temperatures. Typically, this problem would first be discovered when a portion of the roof being repaired, crumbled causing a roofer to fall through it.

The foregoing scenario has become fairly commonplace throughout the past decade. Consequently, even before Hurricane Andrew, homebuyers complained of these problems especially after investing their life savings in order to retire to Florida and leave the responsibility of replacing roofs, repainting their homes and caulking windows to others. In the midst of these complaints, the Florida Supreme Court relieved building departments of any liability for negligent inspections based upon the doctrine of sovereign immunity. In *Trianon Park v. City of Hialeah*, the Court left the homeowner with its remedy for faulty construction against the contractor, developer, seller and others who participated in the design and construction of their home. By virtue of Florida being very much a debtor's state, by the time a homeowner discovers these defects it is likely that the seller or developer has run out of financial gas; contractors have gone out of business; and architects and engineers are typically uninsured which often burdens the good faith home buyer with correcting mistakes made by others during the design and construction process. This is particularly ironic when considering that the homebuyer's only participation in the process occurred while they were living in colder climates saving money in order to retire and buy a home or condominium in Florida.

When defending these lawsuits for faulty design or construction, defenses such as improper maintenance are raised placing responsibility for thin stucco, bad plumbing and poorly attached wood siding back on the homeowner. Should a homebuyer be required to re-nail the wood siding of their exterior walls every six (6) months, as part of their routine maintenance responsibilities?

Something does not seem right! As evidenced by the devastation caused by the hurricane season this past year these excuses must be extinguished and building codes should be strictly enforced. Nightly television programming has focused on incredible instances of haphazard construction practices discovered in the aftermath of a hurricane. Graphic displays of roof

trusses installed upside down and backwards as well as the omission of critical building components such as hurricane clips have dominated special programs devoted to demonstrating slipshod construction practices.

Now that the damage is done, these matters must be investigated and the system rehabilitated. We should not wait for another hurricane to visit Florida and cause greater devastation when at the very least, problems associated with new construction can be avoided by implementing more stringent building department inspection criteria and enforcement procedures. The early detection of building code violations should be stressed during the actual design and construction of a home. As courts have recently whittled away at a homebuyer's ability to sue for economic damages (where although a defect exists but has not yet caused personal injury or property damage), an early decision by the Fourth District Court of Appeals in the case of *Drexel Properties v. Bay Colony Club Condominium*, had the vision to observe:

“Why should a buyer have to wait for a personal tragedy to occur in order to recover damages to remedy or repair defects? In the final analysis, the cost to the developer for a resulting tragedy could be far greater than the cost of remedying the condition.”

There are many reliable and reputable developers, contractors, architects and engineers that produce a quality product. Before purchasing any home, consider the quality of construction, the reputation of the builder and his willingness to make things right when your life savings is put on the closing table in exchange for a key. Be cautious when your purchase agreement includes large typed conspicuous language disclaiming all liability for any warranties existing between yourself and the seller. This is a tell-tale sign that the seller may have already anticipated a problem and seeks to limit or completely avoid liability to the unsuspecting home buyer.

It is unfortunate that only in the aftermath of a hurricane will our governmental agencies, builders, developers, architects, engineers and homebuyers open their eyes to faulty construction practices. These are hard lessons to learn but hopefully, we will continue to see stronger more secure construction as a result of this tragedy.