

Contractor Responsibilities..... Pre-Shovels in the Ground?

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January 18, 2025

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So, we have historically presumed that the traditional role of contractors in **construction projects** has been understood to be participation only after the architectural / engineering plans are finalized for pricing, scheduling, and the contract negotiating process is completed. Over time owners have more consistently retained contractors in larger projects to team with designers to participate in the development of conceptual ideas in saving time and money to deliver the project. In that case, subject to any specific agreement(s) with designers and owners, the contractor may absolutely be accountable for their duty and legal obligations to the owner, even before construction documents are completed.

Secondarily, another approach can be that contractors may only be selected after the project bid and building permit issuance, but prior to the construction phase beginning.....and actual shovel in the ground.

In either scenario, before the start of actual construction, the general conditions of contract of the executed final contract documents, will require that the contractor must undertake a complete review of the project documents, to ascertain their applicability and completeness with regard to all code-compliant building designs.

Forensic architecture, which involves the investigation and analysis of constructed architectural /engineering designs and possible resultant building failures, focuses on identifying and understanding the cause(s) of accidents, construction defects, and/or consequential structural issues. In such contexts, contractors may be held accountable for not only their own construction performance, schedules, practices, workmanship quality and document compliance, but also as explained, the duty and standard of care in reviewing the construction documents (drawings and specifications) prior to the initial.....shovel in the ground.

Based in Palm Beach, Florida, and Hilton Head, South Carolina, **FORENSIC ARCHITECT - David Erik Chase, AIA** is a **CONSTRUCTION EXPERT WITNESS** and dedicated to helping owners, architects and contractors understand their interlocking obligations during the design phase and the pre-construction period, with particular emphasis on forensic architectural analyses and simple factual defensible opinions.

Continue reading for a brief overview of what contractors should know.

Contractor Responsibility, Pre-Construction Duty

Whether actually under contract for pre-design team activities, or review of signed and sealed construction documents, contractors' have several key legal obligations to prevent future issues leading to a required project-wide forensic investigation. These responsibilities extend beyond simply following the construction drawings and specifications once the construction phase begins. Contractors must make sure the design is safe, practical, cost-effective, and compliant with all applicable codes and industry standards, keeping the following duties in mind.

Duty to Review and Report Design / Specification Errors

Contractors have a legal duty to carefully review the construction documents before construction begins. While they may not be tasked with designing and drafting the plans and specifications, they're required to make sure the design is feasible and follows building code and standards requirements.

If a contractor identifies any potential issues or errors in the design that could impact code-compliant safety, stability, or functionality, they have an obligation to report those defects to the architect-of-record and engineer-of record. This includes reviewing components and systems as such as:

- Load-bearing calculations
- Material and system specifications
- Overall constructability of the design

Failing to identify design defects or inaccuracies could expose contractors to legal liability if those defects result in structural failures. If forensic architecture is later employed to investigate such failures, contractors who negligently overlooked or failed to report the issues prior or even during the construction phase, may be found negligently responsible for the resulting damage and outcomes.

Duty to Adhere to Code Compliance

In most jurisdictions, construction projects must adhere to local building codes and standards, as well as national codes like the International Building Code (IBC). Contractors have a duty to make sure the design complies with all applicable building codes to protect the health, safety, and welfare of its users and public. This includes not only structural codes but also the following:

- Fire safety standards
- Building envelope weather controls
- ADA requirements
- Electrical standards
- Plumbing standards
- Environmental standards

Forensic architects as **construction expert witnesses** often investigate whether building codes were adhered to during the design and construction process. Failure to comply with building codes during the design phase could lead to issues down the line, including accidents, structural failures, or building code violations. ❖

In these cases, the contractor could be held liable for failing to identify or report code violations pre-construction.

Forensic Architecture

Forensic architecture focuses the **construction expert witness** on understanding why a building or its components and systems failed. This could involve investigating and analysis of water leakage and intrusion into the exterior building envelope, structural failures, ADA non-compliance, standard of care performance, mold, copyright infringement, contract disputes, building code infractions, Florida 718 Statutes for condominiums, betterment issues, design errors and omissions, sound transmission in building spaces, all other factors related to design or construction.

The duty of contractors to review and report issues in forensic investigations is crucial, particularly when a design defect is linked to issues that could have been prevented or mitigated during the design phase.

Contractor Involvement in Forensic Investigations

If a building failure occurs, contractors may be called upon to participate in a forensic investigation.

Forensic architects typically investigate the construction process to determine if the contractor adhered to the design and followed proper construction practices. They also assess whether the contractor identified potential issues during the design phase and raised concerns when necessary.

BUT...In cases where a failure can be traced to a design flaw, contractors may still be found liable if they didn't fulfill their duty to review the design and provide feedback. Contractors may be required to provide documentation or testimony about their involvement in the design phase, including any recommendations they made for modifications or improvements.

Contractor Liability in Design Failures

Contractors may be held legally responsible for design defects that lead to failure or defects, even if they weren't responsible for creating the design.

Forensic architects are skilled in identifying whether the contractor failed to identify a design issue that could have led to a disaster. This may include issues related to load-bearing calculations, material weaknesses, or improper construction methods.

If the contractor ignored potential issues or failed to raise concerns about an unsafe design, they may be found partially or fully liable for the failure. This is particularly true in cases where the contractor had the knowledge and opportunity to detect the design defects prior to the shovel in the ground period.

Proving Contractor Liability in Forensic Architecture

When a building failure occurs, forensic architects as **construction expert witnesses** will conduct a thorough investigation and analysis of the facts to determine the cause of the failure. This process includes:

- Reviewing Party Agreements
- Reviewing the signed and sealed permit contract documents
- Reviewing change "DELTA'S" to ascertain the context of the construction history
- Interviewing key personnel involved in the project
- Inspecting the construction site to determine if the failure was due to design defects or construction errors

Contractors can be held accountable if their actions or inactions contributed to the failure.

In forensic investigations, it's important to establish the contractor's knowledge and involvement prior to the shovel in the ground. If a contractor were to be shown to have had a duty to report a design defect but failed to do so, or if they ignored safety concerns, they could be held liable for all or a portion of the damages caused by the failure.

Now, let's take a closer look at how the results of forensic investigations can impact contractors legally and financially.

Legal and Financial Implications for Contractors

Contractors who fail to fulfill their duty responsibilities prior to and during the construction phase could face serious legal and financial consequences. The legal liability they face will depend on the specific facts of the case, including whether they acted negligently, violated their contractual duties, or failed to comply with applicable codes and regulations.

Legal Consequences

Contractors are subject to lawsuits, claims, and regulatory enforcement actions if they fail to meet their legal responsibilities.

If a contractor's actions or inactions lead to building failures or defects, they may be sued by the property owner, developer, design group, or other parties involved in the project.

Additionally, contractors may face claims for negligence, breach of contract, or violation of building codes.

Financial Consequences

Contractors found liable for design flaws or failures can face significant financial consequences. This may include:

- The cost of repairing or replacing defective work
- Project delay
- Legal fees
- Insurance claims
- Potential penalties for non-compliance with building codes

The financial fallout from a duty failure can be especially damaging for smaller contractors, as they may face reputational damage, loss of business, or even bankruptcy.

In some cases, forensic architecture investigations may uncover evidence that could lead to insurance claims. Contractors with sufficient insurance coverage may be able to mitigate the financial impact of a failure, but they will still face increased premiums, reputational damage, and the potential loss of future business.

Contact an Experienced Forensic Architect

Contractors' legal responsibilities extend beyond following just the Contract Documents. A forensic architect can help provide a proper understanding of these responsibilities.

With a firm based in Palm Beach, Florida, and Hilton Head, South Carolina, **David Erik Chase, AIA** has over 20 years of experience as a Forensic Architect and **Construction Expert Witness**, Arbitrator and 55 years as a registered practicing Architect in 21 states and the District of Columbia,

Contact Mr. Chase today for assistance consulting regarding Contractor responsibilities.....pre-shovels in the ground. (d-chaseforensicarchitect.com)

Disclaimer: David Erik Chase is a registered Architect in 22 states and not an attorney. The content of this article is intended only as a general overview of process and not a representation for guidance or any professional opinions, as advice. (Nb. Legal consultation is always advisable in this entire process.)