



CONSTRUCTION DEFECTS: KNOW YOUR RIGHTS
FOR HOMEOWNERS IN CHARLESTON & THROUGHOUT SOUTH CAROLINA

Steinberg Law Firm
(843) 720-2800
www.steinberglawfirm.com



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FREQUENTLY ASKED QUESTIONS

■ 1. What should I do if I find a construction defect?

In our experience, the best action to take if you find a defect is to promptly contact us about the problem. If it turns out that there isn't a problem or it is something minor you can have fixed yourself, you haven't lost anything by contacting us. We provide a free initial consultation, and we provide legal representation on a contingency basis.

If you have a serious problem, it needs to be evaluated by an architect or engineer experienced with the issue and not an architect or engineer paid by the builder. We have relationships with architects, engineers, and other experts we use to evaluate potential defect claims and will have them inspect an issue to determine if you have a claim worth pursuing.

Also, document the problem. If you have an active leak in your home, photograph or videotape the leak. Keep all documents and communications you receive from a builder. If a problem with your home destroys property or requires you to take temporary measures to address the problem, keep receipts or other documentation.

■ 2. Who is responsible and liable for a construction defect?

Under South Carolina law, the developer, general contractor, and subcontractors are all responsible for the quality of your home and are potentially liable for defects in your home. When a developer sells a new home to a buyer, the law provides that the developer is guaranteeing that the home is habitable and free from defects. Similarly, when a general contractor and subcontractors construct a home, the law provides that they guarantee they performed the work properly.



The developer, general contractor, and subcontractors can all be liable together for defects in a home. For example, while a subcontractor may have installed the windows in a home and the developer or general contractor's employees may not have actually touched the windows, the developer and general contractor can still be liable for defects in the windows.

Homes can also suffer from design defects as a result of improper work by architects or engineers. In those instances, the architect or engineer may also be liable for defects in a home.

Additionally, we sometimes encounter products installed in homes that were defectively manufactured or produced. In those cases, the manufacturers and distributors of those products may also be liable.

■ 3. How does South Carolina law protect home purchasers?

South Carolina protects home purchasers from defects in a number of ways, with only an overview of the most important ways covered here. First, the law provides that anyone who sells someone a new home, townhome, or condo guarantees that the home is suitable for someone to live in. The law recognizes that the majority of home buyers are not contractors, architects, or engineers and are unable to assess the quality of construction work. Those who sell new homes though are in the business of building and selling homes and are knowledgeable about construction problems. The law says that if a home is not suitable for people to live in, regardless of whether the seller could or could not have done a better job building it, the seller is liable to the homeowner. This guarantee applies even if a homeowner did not purchase a home directly from the original seller.



Second, the law provides that anyone who works to build a new home, townhome, or condo guarantees that they performed their work properly. This means that everyone from the general contractor who builds a home down to the subcontractor who installs the flooring guarantees to the homeowner that they did their work properly, and if they did not do their work properly they are liable to the homeowner and must compensate the homeowner. Similarly, the law provides that if an architect or engineer provides a design, the architect or engineer guarantees the design. A homeowner can recover compensation from a contractor, subcontractor, architect, or engineer for faulty work or a faulty design even if the homeowner purchased the home from a former owner rather than from the builder.

Third, just like how the law says that if someone drives their car negligently and hits you, the person is liable to you; the law provides that if a builder is negligent in constructing a home, the builder is liable to the homeowner.

Fourth, the law provides that if there is a problem with a home, regardless of whether the problem was caused by the original construction or caused later, a home seller must disclose the problem to a purchaser of the home. If the seller fails to disclose the problem, the seller is liable to the purchaser. Typically a home seller informs the purchaser of any problems the seller knows of through giving the purchaser a written disclosure statement.



4. If my warranty has expired, does that mean I no longer have a claim against the developer or contractors?

The fact that the builder's warranty expired does not necessarily mean that you no longer have a claim against the builder or contractors. When you buy a home or condo, the developer often gives you a written warranty. The warranty is usually a "1-2-10" warranty that covers a broad set of potential problems for 1 year, a narrower set of problems for 2 years, and covers a very narrow set of "structural" problems for 10 years. If you have water coming into your home five years after the home was built, the developer or builder may refuse to do anything about it and tell you that your warranty has expired.

South Carolina law provides homeowners with "implied warranties." This means that even if your builder provides you with a written warranty you should still have warranties provided by law that protect you for periods longer than your written warranty. Builders often try to have you agree to forfeit the warranties provided by law, but there are ways we can fight back and you may still be able to rely on the warranties provided by law. In short, even if the written warranty provided by your builder expired, you should still consult an attorney because your builder may still be liable for problems in your home.

5. What if the builder says there is no problem with my home?

Builders often will tell homeowners that what the owner think is a problem is not a problem. Builders like to tell homeowners that a condition "meets the building code" or "meets industry standards" or that the home's construction is "adequate." It is important for homeowners to remember that the builder is always looking out for the builder's own interests and has reasons (money) for downplaying or ignoring a real problem. Homeowners should have someone who does not work for the builder and who is looking out for the

homeowner's interests take a look at the issue and determine whether if it is a problem or not.

This is where having good legal representation is crucial. We have relationships with top quality architects, engineers, contractors, and other experts who specialize in evaluating building problems.

6. How long do I have to file a suit against the developer or bulder for my home?

In South Carolina, the general rule is that you have 8 years from the last date on which work was performed on your home. After 8 years, the law (the "statute of repose") limits the claims an owner can bring. However, even if a home is more than 8 years old, it is still important to contact an attorney because are still ways we can recover compensation from a developer or builder.



South Carolina law also provides (the "statute of limitations") that an owner usually must bring suit within 3 years of when the owner knew of a problem. However, even if a problem may have existed for more than 3 years, it is still best to contact an attorney because there may be facts that make it so that the limitation does not apply.

Due to these time limitations, it is important for homeowners to consult a lawyer and take legal action as soon as possible to ensure they do not forfeit their legal rights.

7. I did not purchase my home or condo directly from the builder. Do I have a claim against the builder?

Yes, even homeowners who did not purchase their home directly from the developer or builder of the home still have potential claims against the developer and builder.

8. How long does a construction lawsuit last?

A lawsuit to recover damages for building defects can last anywhere from six months to several years. The length of a [construction defect](#) lawsuit varies depending on a number of factors including how extensive the damages are, how complex the claims are, how many homes or condo units are involved, and how many defendants are in the suit.

9. If I sue my builder, can I continue living in my home or condo while the lawsuit is ongoing?

Yes, you can continue living in your home, townhome, or condo while a construction defect lawsuit is going. Typically, you can use the home in the same ways you did prior to the lawsuit.

10. What role do homeowners' association play in addressing construction defects?

In a multi-family building, like a condominium building, the homeowner's association will own parts of the building. Typically, the individual unit owners own the finished unit, and the homeowner's association owns the remainder of the building. Homeowners are obligated to care for and maintain the portions of the building the association owns. Because the association typically owns the exterior of the walls, the roofs, and other

exterior components, the association often needs to bring a lawsuit against the builder for defects in these parts of the building.

11. What duty does a homeowners' association have in relation to construction defects?

The directors that make up a homeowner's association's board owe certain legal duties to the residents who are the members of the association. Specifically, the directors owe a fiduciary duty to the members which means that the directors have a duty to properly manage the association including investigating and addressing any building defects.

12. Who can sue for a problem in a townhome or condominium?

Determining who can sue for a problem in a multi-family building—a townhome or condominium building—requires determining who owns that portion of the building. Sometimes the building's homeowner's association owns that portion and is the only party that can pursue the claims. Sometimes the unit owners own that portion of the building and they are the only party who can pursue claims. Other times one of the two—homeowner's association or owners—owns the defective portion of the building but both can bring claims. Determining who can sue and what they can sue for is a legal issue that varies from cases to case and requires analysis by a lawyer.



CONSTRUCTION DEFECT

The design and construction of safe buildings is something that we tend to take for granted. After all, we have an expectation of safety that is based upon the presence of extensive regulations of building standards and laws intended to punish those who violate them.

But profit can be a powerful motivator, and occasionally a contractor or construction company makes the decision to take chances with the welfare of a building's future occupants so that they can make money in the present. This negligence may be represented by the use of poor quality materials, substandard methods of construction, or even accepting a job for which one is not qualified.

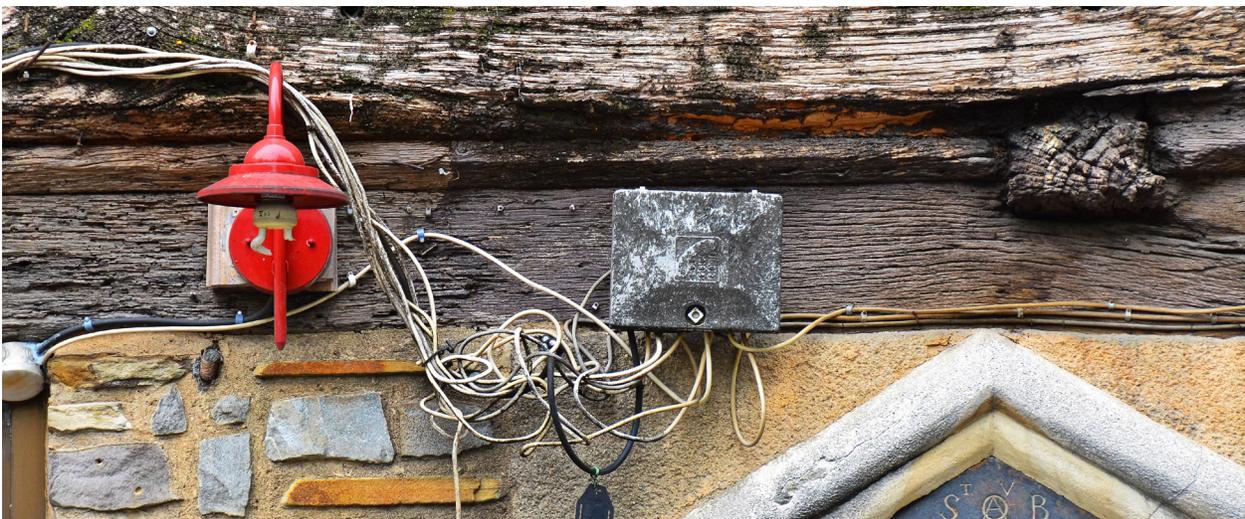
If you or a loved one has been injured in an accident caused by a [construction defect](#) then you may be able to file a civil lawsuit against either the builder or the property owner, depending upon the specific details of the situation.

POTENTIALLY HAZARDOUS CONSTRUCTION DEFECTS

+ Building inspectors are supposed to identify these dangers, but sometimes it is simply impossible for them to do so, and the following hazardous consequences may arise as a result:

- Stairway collapse
- Uneven stairs
- Roof collapse
- Floor collapse
- Instability of walls
- Dangerous wiring errors

It is truly regrettable yet unavoidable fact that a property owner may have little reason to suspect the presence of a [construction defect](#) until an accident associated with a particular flaw has occurred. If you or a member of your family has been harmed by a poorly built structure, you may have grounds for legal action.





WHAT IS ARBITRATION?

A lawsuit is typically decided in a court. The plaintiff and the defendant litigate the case and then present evidence and arguments at a trial conducted by a judge and then a jury decides the case. Courts are part of our government, and the judges in our courts are public officials who work for and are paid by the citizens through the government.

Arbitration is an alternative to having a lawsuit decided in a court. In arbitration, the parties pay a private person, an arbitrator, to decide the dispute. The arbitrator who decides the dispute is usually a lawyer who still practices law and represents clients in addition to serving as an arbitrator.

Arbitration is used as an alternative to deciding a dispute in a court where the parties to the dispute (the plaintiff and the defendant) agreed in advance to arbitrate any claims they may have against one another.

Often, a contract the plaintiff was required to sign to purchase a house or condo will have language the defendant inserted into the contract with claims to require the plaintiff to engage in arbitration for any claim the

plaintiff may have against the defendant. Defendants also often like to insert language providing for arbitration in warranty documents.

In arbitration the parties litigate using different procedures and rules than those used in court. The parties presents evidence to the arbitrator under those procedures and rules. There is no jury in arbitration. The arbitrator both conducts a hearing at which the evidence is presented and decides the case.

The arbitrator's decision is typically binding on the parties meaning that whatever the arbitrator decides, whether correct or incorrect, fair or unfair, is the final decision that the parties have to live with.

Parties have very limited abilities to appeal and challenge an arbitrator's decision as incorrect. The limited ability to appeal is different from when a dispute is decided in court where parties have the right to appeal a decision and ask a higher court to correct any mistakes.

Arbitration is usually administered by a private organization like the American Arbitration Association or JAMS (Judicial Arbitration and Mediation Services, Inc.). The organizations that administer arbitration have their own procedural rules that they created and which govern the arbitrations they administer. The organizations also function like a clerk of court by accepting filings and scheduling hearings. The organizations also provide methods for selecting an arbitrator from a list of lawyers they provide. The organizations charge large fees for providing these services, which are in addition to the fees charged by the arbitrator for the time spent deciding the dispute.



WHAT ARE THE BENEFITS OF AND DRAWBACKS OF ARBITRATION?

The potential benefits and drawbacks of arbitration vary from case to case, but generally the two claimed advantages of arbitration are:

1) Speed: Arbitration is claimed to be a faster way of resolving disputes than having them heard in court. However, in our experience and many others agree, arbitration of larger or more complex claims, like construction claims, often are not resolved any faster in arbitration than they would be in court. Defendants often like to claim that arbitration will be a faster way to resolve a claim, but once in arbitration, those same defendants do everything they can to delay the claim.

2) Cost: Arbitration is claimed to be a cheaper way to resolve a claim than having it decided in a court. Arbitration supposedly is cheaper because it is faster and because the parties' ability to engage in discovery (the process of the parties obtaining information, documents, and testimony from one another and others prior to a trial or hearing) and the parties' ability to appeal are limited. Again however, in our experience and many others agree, arbitration of larger or more complex claims, like construction claims, often are resolved for roughly the same costs in court as in arbitration. In

arbitration, the arbitrator and the organization administering the arbitration both charge significant fees for their services, whereas in court, the judge who conducts the case, the jury who decides it, and the clerk of court who handles filing and scheduling are all part of our judicial system and are provided free of charge to the parties.

There are a number of serious drawbacks to having a claim decided through arbitration:

1) Fairness: In court, a plaintiff gets to have his or her claim heard by an impartial judge who works for the citizens and a jury of impartial everyday citizens. In arbitration, the arbitrator is usually a lawyer who in addition to serving as an arbitrator also represents clients in other cases. The lawyer may favor defendants or may be biased or partial in some other way. The arbitrator or arbitration organization also may rely on the defendant for business because the defendant gets sued regularly and as a result may, intentionally or unintentionally, show favoritism to the defendant. Whereas the plaintiff may never file another lawsuit for the rest of his or her life and does not present the same business opportunity to the arbitrator and arbitration organization. In court there are fewer concerns about a judge not being impartial than for a private arbitrator.

2) Appeal: Parties have very limited abilities to appeal an arbitrator's decision. The availability of having a decision corrected on appeal is so limited that arbitrators often can make blatantly incorrect decisions and a court will not do anything to correct the decision.

3) Discovery: In arbitration the parties' ability to engage in discovery, i.e., to obtain information, documents, and testimony from the other side or witnesses prior to the hearing, is limited. This is in contrast to court where

parties have much broader ability to engage in discovery to obtain the evidence they need. In construction cases this is particularly significant because the defendants (the contractors who built a house or condo) have all of the information and documents about how the home or condo was constructed and the plaintiff needs discovery to obtain that information and those documents.

4) Cost: Arbitrators and arbitration organizations charge significant fees for their services.

5) Unfair Terms: In contracts, defendants often combine language providing for arbitration of claims with other unfair language limiting how a plaintiff can bring a claim against a defendant. For example, defendants like to add in language providing that a plaintiff cannot bring claims through a class action or cannot combine together with neighbors to all bring their claims in one lawsuit. Other examples are that defendants like to insert language providing for three arbitrators to hear a dispute which is three times as expensive for plaintiffs, language limiting the types of claims a plaintiff can bring, and language limiting the damages, i.e., money, a plaintiff can receive in compensation for claims.

6) Location: The language in a contract providing for arbitration may also specify where the arbitration hearing must take place and often specifies that it must take place where the defendant corporation's headquarters are located. The result may be that the plaintiff has to spend significant amounts of money to travel across the country to a hearing in a location far away from the location of the plaintiff's claim.

7) Confidential: Arbitration is confidential. The evidence presented in an arbitration and the arbitrator's decision are not available to the public.

Defendants love this because it keeps their failures from becoming known to the public, avoids media attention, and keeps others from knowing they may have a potential claim. In other words, it allows defendants to keep engaging in the same wrongful conduct without anyone knowing about it.

8) Lack of Agreement: The language in a contract providing for arbitration is usually hidden away in the document and written in language the average person cannot understand. The average person has no idea that a contract gives up the right to have claims tried in court before a jury until arbitration is unfairly forced on them by a defendant years later. In other words, a defendant may force a plaintiff to arbitrate on the basis that the plaintiff agreed to arbitration when in reality the plaintiff agreed to no such thing.

■ **Is Arbitration Mandatory?**

Builders will often place language in contracts purporting to require a homeowner to resolve disputes through arbitration, but arbitration is not always mandatory even when a contract contains that language. Whether arbitration is actually mandatory depends on the particular agreement and case, and a homeowner should consult with a lawyer about the issue.



WARRANTIES FROM BUILDERS

Why should I worry about construction problems when my builder gave me a warranty?

In our experience, the written warranties provided by builders cover very few of the many problems that can exist in a new home, townhome, or condo.

These warranties are often written very narrowly and unfairly to cover as few of the potential problems in a home as possible.

For example, the 10 year “structural” warranty in many builders’ warranties often does not cover many issues that are plainly structural issues.

In responding to a warranty request, the builder may not deal with the underlying problem. The warranty may provide that the repair for a problem is a temporary or cosmetic repair—like painting over a crack or placing sealant at a leak—when the real problem is more serious and requires more serious repairs. These temporary or cosmetic repairs can actually worsen the problem by allowing it to continue. We have also seen numerous instances where a builder claims to have fixed a problem, and the problem later reappears.

Also, if the builder was the one who did the work improperly the first time, it may not make sense to trust that builder to do it right the second time.

Finally, builders have a history of ignoring warranty claims or delaying dealing with them. Because the law provides time limits on how long a homeowner

has to bring claims against a builder, homeowners should not just wait around for a builder to do the right thing and fix a problem.

For all of these reasons, it is usually smart to consult a lawyer to see what legal options exist to address a [construction defect](#) other than relying solely on the builder's written warranty.

If my warranty has expired, does that mean I no longer have a claim against the developer or contractors?

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