



R.E.A.C.H.

Real Estate And Construction Highlights

***A Newsletter For Real Estate
and Construction Professionals***

GCA LAW PARTNERS LLP
By Kenneth R. Van Vleck

Construction Defect Symptoms

THIS ISSUE: Finding and understanding the symptoms of residential construction defects.

FACTUAL SCENARIO: A buyer is considering the purchase of a new home on a hillside. The polished granite countertop, European range and gleaming fixtures are overshadowed only by the spectacular view of the ocean through the kitchen window. Everything looks perfect, and even the real estate agents seem awed by the attention to construction detail apparent in every room, from inlaid hardwood floors to built-in, ceiling-high shelves in the library.

But within the first year, there are some small signs that not everything is as it seems. There is a recurring puddle under one window. Doors in several rooms are difficult to close completely, and in one case, a door gently, persistently, swings open by itself. Windows don't open and close easily, as they used to (maybe it's the weather, which has been particularly wet?) and some of the floor tiles in the entryway have come loose.

The contractor/developer, re-hangs the doors, replaces one window and “fixes” another. And those tiles in the entryway? Well, he simply cements them back in place, and fixes the grout. Simple enough and problems are solved. But are they really?

IN BRIEF: Not all symptoms of construction defects will predict catastrophic failure. But in the scenario above, there is a good possibility that there is something far greater at issue than doors and windows that don’t close. When presented with these symptoms, a licensed professional engineer discovered that the foundation of the home was not properly designed or constructed, resulting in differential movement of the entire home. The results were catastrophic, with one part of the house rising while the other was falling, and the entire house was twisted from end to end like a dishrag. A deeper investigation of the problem suggested that the developer knew about the deficiencies during construction yet continued to build the home on top of its deficient foundation, looking for a quick sale, and hoping for the best.

What to Look For: Even minor symptoms may foretell a substantial problem. It is impossible to create a complete list of defect symptoms. But the symptoms in this list might suggest at least a further review by an expert.

Dampness indicates water intrusion. Look for dampness in carpets, walls, hardwood floors, and maybe just a “damp feeling” in a room. Some cases of moisture intrusion have been detected by the growth of mushrooms or other fungus inside wall spaces, or grass growing at the base of walls. A stain in the ceiling may indicate moisture in the wallboard, and “melting,” bubbling, or sagging paint is an indication of a moisture problem.

Water intrusion may be caused by a defective roof, windows or doors not being installed properly, missing flashing or other hardware on the exterior of the building or even conditions entirely concealed from view, such as improper installation of a moisture barrier material under the exterior stucco. Some cases of water damage can be caused by faulty plumbing, such as when a plumber forgets to attach a drain pipe and water runs into a wall, or under the

house. Water intrusion can be devastating, entirely destroying interior structural members by dry-rot or termite infestation, not to mention aesthetic damage to floors, walls, ceilings, fixtures and cabinets.

Poorly fitting doors and windows indicate foundation movement. You may notice a draft, suggesting that windows or doors are not closing tightly. Doors and windows that do not close easily, or swing open or closed on their own are an indicator that the foundation has moved. Out-of-level floors, cracks in walls, especially around windows and doors, or even cracks in the foundation itself, may be an indicator of foundation movement. In the factual scenario above, the “popping off” tiles in the entryway suggested that the house was twisting, and stress was built up in that area.

One easy way to test if the floor is level is to place a marble on a countertop, floor or other smooth level surface. If the marble begins to roll on its own, the floor may be out of level in that spot. Testing in several locations with the same results is a good indicator that the floor is not level. While that may not by itself indicate that the foundation has moved, it would certainly justify seeking the opinion of a soils engineer.

Foundation movement may be caused by any number of conditions. If the house is on a hillside, as in our scenario above, it is possible the hillside may not be stable. Additionally, if moisture builds up on one side of the home, while the other side (usually the downhill side) remains dry, then differential soils movement (expansive soils) may raise one part of a home’s foundation, while leaving other parts untouched. This causes flexion of the home, and may result in foundation failure. Finally, it could be that the house was simply built out-of-level, and the foundation, though imperfect, is stable. A soils engineer should be able to determine the cause of the symptoms in this case.

CONCLUSION: In the scenario above, a professional engineer or soils engineer would likely conclude that there had been some movement of the foundation. Whether that will continue, whether it is an indicator of a bigger

problem, or whether it leads to the discovery of still more construction defects requires a case-by-case analysis.

New homes are rarely perfect. And most contractors and developers do an excellent job of remedying defective construction as soon as they hear of it. But when symptoms of construction defect are present, a homeowner should consult an expert qualified to make a determination about the nature and severity of the problem. A good first step is to consult an attorney who practices in construction defect litigation.

NEXT ISSUE: When can a burdened landowner prevent a valid granted easement from being used?

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