



Chapp Law Firm, P.C.

Advantage Legal Services
32540 Schoolcraft Road, Suite 120
Livonia, Michigan 48150
(734) 266-3700

Quarterly Newsletter

spring 2005

Protecting Yourself from Construction Defects



Imagine you've found a site for your dream home in a beautiful new development just outside the city. The developer has built a model home on one lot, and it looks great. He tells you he can work with an architect and a builder to construct a new home for you on the block you've chosen. You sign on the dotted line and put down a deposit.

As you watch the house being built it seems like things are going well. But when you finally move in, you discover that the roof leaks and there are cracks in the floors. An engineer tells you there are some major structural problems with your new house. You have to spend a fortune straightening out the mess.

Many people are tempted by the idea of building a new home. The advantages are obvious: you can design a home that suits you down in a spot of your choice. But there are also pitfalls along the way. The

number of construction defect cases has skyrocketed in the last few years as houses are being constructed quickly to meet a high demand. Intense competition has led some builders to cut corners with dire results. Our firm can help you protect your rights, whether you make a decision to build your own home or buy a newly constructed home from a developer. A construction defect is any defect in a new home that exists as a result of a failure to construct the home in a workmanlike manner.

Construction Defects

Construction defects can be relatively minor—nails that stick out, shoddy fittings, or leaky faucets. But some defects are major and can cost thousands of dollars to remedy. Courts have generally placed construction defects into one of four categories:

- Design deficiencies are problems that arise from the

Continued on Page 5

IN THIS ISSUE	
Protecting Yourself from Construction Defect	1
Good News on Credit Reports	2
Avoid Telemarketers	2
Advantage Computer Consulting Services	2
Telecommuting and the Law	3
Life Insurance a Big Part of Estate Plans	4

Good News on Credit Reports

A new law, the Fair and Accurate Credit Transaction Act (FACTA), helps you make sure that your credit report is error-free. Under the law, you have the right to one free credit report a year from each nationwide consumer reporting agency.

The free annual credit report provision of FACTA is being implemented in a staged process over a nine-month period from December 1, 2004 to September 1, 2005, beginning in the west coast states and rolling across the country. The last region to get access to free annual reports will be the Northeast. In Michigan, you can get your free credit report **now** from the credit bureaus' centralized site: www.annualcreditreport.com (which also has the map showing when reports will be available in different regions of the county) or by calling 877-322-8228. The three nationwide consumer credit reporting agencies (Equifax, Experian and TransUnion) get their information from different sources, so credit reports from each agency may look a little different. Some financial advisors recommend staggering your requests over a year so that you see a report every four months or so.

The new law also gives you the right to know your credit score. Your credit score attempts to determine how likely it is that you will pay your debts. Your credit score may determine whether you are able to get a mortgage or the credit to buy a car or truck. Your score takes into account your payment history, the amount of your outstanding debt, and many other factors. FACTA requires consumer credit reporting agencies to give you, upon request and payment of a "fair and reasonable fee," your current credit score and related information. National consumer credit reporting agencies appear to be charging consumers between \$4 and \$8 for a current credit score (depending on the consumer's state of residence).

Another key change made by FACTA is that now you may dispute inaccurate information directly with the furnishers of information, as well as with the consumer-reporting agency, as was previously required. Under the new law, furnishers must investigate all disputes and can't report negative information while an investigation is pending.

AVOID TELEMARKETERS – JOIN NATIONAL DO NOT CALL LIST

In a few weeks, cell phone numbers will be released to telemarketing companies and you will start to receive sales calls on your cell phones. To prevent this you may go to the following website to register for the National Do Not Call list <https://www.donotcall.gov/register/Reg.aspx>. It blocks your number for 5 years. You can use this website to register your home phone.



(248) 376-0054

info@advantageccsi.com

- **Computer Repair and Upgrades**
- **Software and Hardware Installation**
- **New Desktop and Laptop Setup**
- **Virus and Spyware Removal**
- **Wired & Wireless Networks**
- **Server Setup and Design**
- **LAN/WAN Design & Implementation**
- **Network Administration Services**

Telecommuting and the Law

Telecommuting seems to be a wave of the future. Some employers are offering the option of working from home to employees, often in a bid to attract highly qualified women who seek flexibility in their work. Of course, any offer to an employee to telecommute cannot be discriminatory. As with all employment decisions, an employer cannot discriminate between employees on the basis of race, color, sex, national origin, religion, disability, or age when granting flexible work options.

You are not telecommuting if you are self-employed or take work home without getting extra pay (we all fall into this category!). But if you receive pay for work done off-site—which may be your home or a special telecommuting space away from your main office—then you are a telecommuter. If you telecommute, you probably do so one to three days a week, and you probably use your home computer and the Internet or e-mail access to do your work. A survey conducted by Telecommute America in 2001 reveals that more women than men telecommute and that they are most likely to be between the ages of thirty-five and forty-nine, which is also when they are likely to have young children at home. This poll also shows that the majority of telecommuters are satisfied with their work style.

Of course, there are also some pitfalls to telecommuting. Some unions oppose it because work from home is difficult to regulate and has the potential to become “sweatshop labor.” Critics have also pointed out that telecommuting can isolate workers. This can lead to a variety of consequences, from missed promotions to difficulties in undertaking collective bargaining. If your employer allows telecommuting, chances are good that you will be subject to the terms of a company telecommuting policy or telecommuter agreement. This should set out the terms of your telecommuting and state that your telecommuting should not affect your benefits, bonuses, or chances of promotion.

You may also need to investigate some of the following legal issues. These issues may also apply to you if you are self-employed and work from home. We can advise you about your particular circumstances.

Insurance

Your home insurance policy will not necessarily cover your home office. You’ll have to read your policy to be sure. Often, the policies exclude business use. You can probably upgrade yours to cover the increased risks caused by the business, and you’ll have to pay a little more for it. If you use your car in your work, you may also need to pay extra in automobile insurance.

Workers’ Compensation

Even if you work at home, your employer will still need to pay workers’ compensation insurance contributions on your behalf. This means that if you are injured at your home while you are working (e.g., if you suffer carpal tunnel syndrome), then you may be eligible for money to pay for medical expenses and to replace income lost as a result of injuries or illnesses that arise out of employment. There must be a causal connection between your injury and an employment requirement.

Occupational Safety and Health Laws

The federal Occupational Safety and Health Administration (OSHA) has issued a directive stating that it will not inspect home offices for violations of federal safety and health rules and it does not expect employers to do so either. The directive also states that an employer is not liable for the safety of conditions at an employee’s home office. If you complain to OSHA about your home office, it may informally let your employer know about the home office condition, but it will not follow up with you or your employer. However, to avoid possible workers’ compensation actions, many employers do provide telecommuters with ergonomic furniture and advice about home office setup.

Taxes

Working at home part of the time shouldn’t affect your federal taxes. However, if your company’s office is in one state but you do work from your home in another state, you may be liable for some state income tax in your home state. You also may be liable for local income taxes for any money paid to you for your work at home. The good news is that you may be able to claim some income tax deductions for non-reimbursed business expenses incurred for your home office.

Computers

Even if you’re working at home, your employer can access records of the websites that you visit and the e-mails that you send, just as if you were working in the office. Employers remain concerned about protecting proprietary information, preventing harassment, and ensuring that company time is devoted to company work. Breaching any of these employment policies remains cause for disciplinary action, even if you are working from the comfort of your home office. It’s also important to remember that your employer probably owns the software on your computer, and you do not have an automatic right to use it for non-work purposes.

Life Insurance a Big Part of Estate Plans

Life insurance is a unique estate planning tool, because you pay relatively little up front and your beneficiaries get much more when you die. When you name beneficiaries other than your estate, the money passes to them directly, without probate. Unlike money tied up in non-liquid assets like your company or real estate, life insurance gets cash into your beneficiaries' hands without their having to resort to a fire sale of other assets.

Though procedures vary by company, usually the beneficiaries receive their insurance proceeds promptly. Generally, the beneficiary informs the company in writing of the death, sends a copy of the death certificate, and receives a check, often within a few weeks.

Three Ways to Distribute Proceeds

If you own life insurance on your own life, you can have the proceeds distributed in three ways.

1. To beneficiaries. The company pays the proceeds directly to one or more beneficiaries named in your policy. This is the quickest way to get the money to your survivors, and the proceeds typically pass free of income tax. However, your estate may be liable for federal and state estate taxes if the proceeds, when added to the other assets in the estate, total more than the \$1.5 million threshold at which the federal estate tax presently kicks in.
2. To your probate estate. If you choose this route, the proceeds will be distributed along with your other assets according to the terms of your will. (If you die without a will, your state's intestate succession laws will determine where the proceeds go.) However, they will be tied up in the probate process, will add to the cost of probate by making the estate larger, and will be subject to creditors' claims. In addition, they may be subject to estate tax. You should do this only if your estate won't otherwise have enough money to pay debts and taxes.
3. To a trust. If you make the proceeds payable to a trust either one set up in your will or created during your lifetime they will be distributed like the other trust assets. Paying the proceeds to such a life insurance trust has several advantages: In many jurisdictions, your creditors can't get at them. If the trust is for the benefit of your minor children or anyone else who needs your protection, you can avoid the expense and court involvement of having a guardian manage this property. By having the proceeds paid to a trust, the trustee will have control over it. Generally, an estate tax will not have to be paid on the proceeds if certain rules are met (see below).

Who Should Own the Policy?

As noted above, if you own the policy, the proceeds payable on death will be included in your estate for estate tax purposes. If your insurance is payable to your spouse, it won't matter in the short run if it pushes the value of your estate above \$1.5 million—gifts of any size between U.S. citizen spouses pass tax-free. The problem comes in when your spouse dies—then his or her estate is liable for taxes on anything over the threshold, so in effect that estate is paying a delayed tax on the insurance proceeds.

To escape estate taxes on the proceeds, you must see that the policy is not owned by you or your estate. Life insurance trusts are a popular way of accomplishing this. Here's how they work. Let's say you set up an irrevocable life insurance trust in which the trustee owns the policy on your life not you. The trustee can buy a policy on your life, or you can transfer ownership of an existing policy to the trustee (though in the case of a transfer, you would have to live at least three years for the proceeds to escape estate taxation). Each year, you pay the premiums so the policy stays in effect. When you die, the policy pays death benefits to the trust, and these benefits are free of estate taxes. Your family, including your spouse, can live off the income from the trust and have certain rights regarding the principal. Upon your spouse's death, depending on how the trust is written, the trust can continue and benefit your children and grandchildren for many years, or the trust can terminate and the children take the principal remaining. This principal passes free of estate taxes, even if the estate were otherwise large enough to trigger taxes. Life insurance trusts are only one example of using irrevocable trusts to create a tax-free estate. We can explain many other options.

Continued from page 1

- design of a house by an architect or engineer. For example, if the design does not meet the relevant planning code in your area there could be a design defect.
- Material deficiencies arise as a result of a builder or developer using cheap or inferior building materials. For example, inferior drywall or cheap waterproofing membranes can create serious defects.
- Construction deficiencies are a result of poor quality workmanship, which can result in many different kinds of defects, including electrical or plumbing problems.
- Subsurface deficiencies occur when a developer has built on soil without the proper drainage or foundations, resulting in subsidence or shifting.

Some construction defects are immediately apparent; other may not appear until a home has been occupied for months or even years

Who is Responsible for Construction Defects?

Developers and contractors are liable for any breach of contract. This means that if one or both of them makes a promise to do something in the contract and doesn't do it, you are entitled to damages. Specific clauses in the contract may also make them liable for some construction defects.

Developers and contractors may also be responsible for defects under an express or implied warranty. Some

courts have held that builders and sellers of new construction make an implied promise that a building has been designed and constructed in a reasonably workmanlike manner and are liable for damages if there are problems with the home. You may also be entitled to damages if a developer or contractor was negligent, i.e. if he failed to exercise the reasonable degree of care, skill and knowledge ordinarily employed by building professionals. In order to show that there has been a construction defect in court, you will need to hire experts who can testify that there is a defect and make recommendations on how to repair it.

You may be entitled to damages to cover the cost of repairing construction defects and any decline in the value of your property. You might also be able to recover damages if you were not able to live in your home for a period of time. You will usually not be able to recover court costs.

Prevention is Better than Cure

You can do several things to ensure that you won't have to go to court because of problems with your house that are not your fault.

One important step you can take to protect yourself is to check out the people who are involved in building your house: that means the developer who owns the land, the architect who designed your home, and the builder who will build it. Ask for references, and check them carefully. You may want to contact the Better Business Bureau and ask whether any complaints have been lodged against a particular builder or developer. You might also get some candid information from local real estate agents or county planning staff who are familiar with local developers.

Remember that if things do go wrong, the person responsible for the

construction defects—the developer, the builder, or the architect—can only pay damages if he has the money. This may sound obvious, but imagine where you'll be if you try to sue your builder, only to find out that he has no insurance and no assets and is about to go bankrupt. Make sure that your developer, the builder, and the architect have insurance to cover negligent work. You may want to ask for a clause in the contract about insurance too.

You may also want to seek insurance yourself to cover any problems that appear in your new home. Some homes come with a new house warranty from an independent insurance company. These usually cover workmanship and materials for one year and major structural defects for ten years. If you buy new construction that does not include a warranty, you may need to spend some time to find a warranty that covers major construction defects.

The most important advice of all is to make sure all contracts protect you. Make sure that any promises that the developer made to you orally are included in the written contract. Before you sign, read the contract through with Our firm and ask what changes you could make to better protect your rights. Can you insert a penalty clause requiring the builder to pay you a set amount if the house is not completed on schedule? Can you stipulate that your own building expert be allowed to visit the building at least three times while it is being built? Is the builder obligated to fix any problems that you find (or refund the down payment) before you take title to the new house?

If you do some research and work closely with a lawyer to protect your rights, then you'll make it much more likely that your new place really will be a dream home.