



A lawyer discusses what you need to know about construction defects upon your building

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Any time a neighbor is about to embark on either a major renovation or actually building a new building, there is a substantial likelihood that damage may occur. If you can picture a little old building next to a soon-to-be built new building, it can be daunting. There is a lot of potential for the new construction causing problems in the existing building, even if the developer is being as careful as possible. We are living in a crowded city and buildings are very close together, sometimes too close. Construction is an inherently noisy, dangerous process. A developer should never take neighboring property owners for granted.

As a construction attorney, I can say that the issues that can arise are different depending on which side of the issue you are on. From the existing building's point of view, they want to protect themselves from the perceived enemy. I sometimes get calls from buildings wanting to know what they can do to protect themselves against potential damage before it occurs. From the developer's perspective, they want advice on how to minimize the number of problems and related expense. It is in both parties' best interests to independently document the state of the existing building before any work is started. This is separate and apart from any requirements by any building department about notice to neighbors. Rather than keeping neighbors in the dark, it can be helpful for the developer to be forthcoming about plans. However, the extent of such dialogue should be discussed with knowledgeable legal counsel.

The neighboring buildings may be quite old and not have been well-maintained. In those cases, it would be easy for the property owners to claim that whatever problem they are pointing out was caused by the construction work being done next door. Without documentation of the condition before the work was started, it can be difficult to prove one way or the other. Damages can vary from property damage, such as leaks and cracks to nuisance and noise complaints. Lately I have seen a lot of claims about damage due to underpinning. Cracks can be due to settling of old, wood frame buildings and not due to construction, but the building department takes such complaints very seriously and can issue stop work orders and require the installation of crack monitors.

Before the work begins and while the parties are still on good terms with one another, access to the existing building is likely to be freely granted. This is the time when photographs and videos can be taken and engineers working for both sides can look around. Once the work has started and problems arise, the parties are likely to be more cautious of one another and protecting themselves against the possibility of a lawsuit.

Some experts say that some cracking is inevitable from underpinning work. The key is how cooperative the developer is when this happens. Remember that the developer has a crew of contractors at his disposal to assist in repairing things at no charge to the neighbor. Sometimes this can resolve the problem. Other times either the neighbors are asking for too much or there is so

much damage that the developer cannot or will not offer to do the work. This is when people pull out their insurance policies and call construction lawyers, such as myself.

Knowing that neighbors are about to engage in construction is a good time to review your insurance policy. It is short-sighted to think that if a neighbor causes damage to your building that you can rely on their insurance policy to make you whole. These issues are very complicated and sometimes the end result can be that there is no insurance coverage at all. This would require a separate article to discuss.

The same issues and concerns are applicable when neighbors are renovating in a co-op or condominium building. Not only is there potential for cracks, but water leaks are a major concern. A water leak in one apartment can result in water trickling down and damaging five apartments.

Always consult legal counsel knowledgeable in this area before any problems arise.

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