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FLORIDA CONSTRUCTION LAW ADVISORS

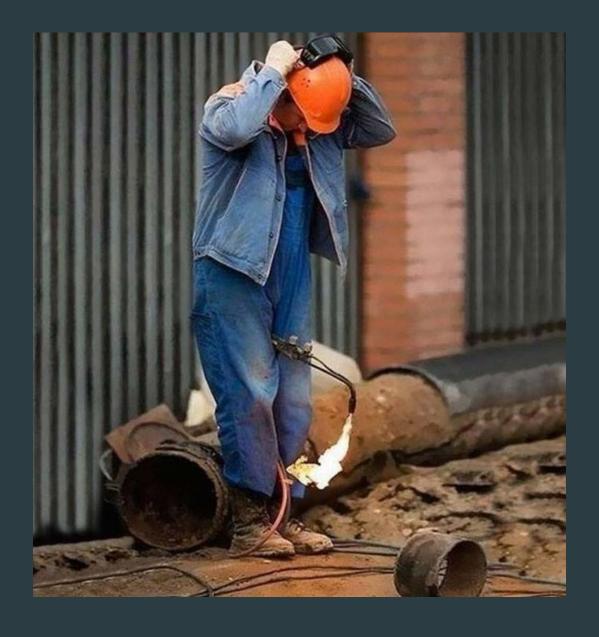
Agenda

- Should You Fix That Mistake?
- What Can Go Wrong?
- 6 Steps to Protect Yourself?
- Questions

















Who's Fault is it Anyways?

- Is the accident really your fault?
- Types of defects that may cause accidents:
 - Design Defects
 - Material Defects
 - Workmanship Defects
 - Human Error (who's human?)





- If you ignore the problem you risk future liability
- If you fix the issue you risk destroying evidence
 - Evidence must be preserved or you could be at risk of "Spoliation of Evidence"





- What is Spoliation?
- Spoliation occurs when a person or company, either intentionally or negligently, withholds, alters, hides, or destroys evidence that's relevant to a court case.
- Spoliation can arise even when good-faith efforts are made.





- Intent: The court's primary concern is the contractor's intent.
- Did the contractor act specifically to destroy evidence?
- Or was the spoliation necessary to prevent harm and address safety concerns on the jobsite?





Notice: Contractors who properly notify owners, potentially responsible parties, and other involved persons before acting generally fare better than those who don't.





- Injury to the Case: Courts try to determine just how much the spoliation may have hurt the case.
- If other evidence exists that provides insight regarding the defect, it lessens the effect of the spoliation.





- 1. Gather Information: When a defect is discovered, gather as much information as possible.
 - Identify all parties involved, both responsible parties and witnesses.
 - Gather correspondence (emails, texts, ...).
 - Gather and continue to take lots of pictures and videos.
 - Pull copies of agreements with responsible parties (check indemnity provisions, ...).
 - Pull copies of all relevant bonds/insurance policies (are you an additional insured?).





- 2. Notify Responsible Parties: Prior to repair, notify all who may be responsible and give each an opportunity to inspect the defect and assemble evidence.
 - The earlier the notice the better.
 - Notice should be in writing, ideally via certified mail and email.
 - Include notice to insurance carriers and bonding companies (including yours).
 - Ask all responsible parties to preserve evidence.





- 3. Ask an Expert: Contractors well-versed in litigation retain experts early regarding the defect or claim.
 - Subject-matter experts can assist in crafting repair protocols.
 - Experts are familiar with documentation standards.
 - Consider retaining an expert through legal counsel to protect the expert's work product and report.





- 4. Announce the Repair: Notify all parties involved that the repair will take place.
 - Notice should be certified mail and email.
 - Indicate the location, date and time of the repair.





- 5. Allow Monitoring: Every potentially responsible party should have a chance to monitor the repair.
 - Request waivers from people visiting the site to monitor the work.
 - Be prepared to allow parties to take reasonable photos, videos and samples.
 - Be very careful on what is said during any meetings.





- 6. Document The Repair: Document your repairs and the costs involved.
 - If you can submit the claim for reimbursement, documenting the cost is critical.
 - Include your supervision time.
 - Track schedule delays. How did this impact the rest of the project (or not)?





You Dropped What?



















Questions?









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