

The Myth of Governmental Responsibility

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Urban legends are often fascinating in their resilience. Some have a grain of truth, while most are complete flights of fancy. Some legends are entertaining, while others can be quite damaging if taken seriously. The construction industry is not immune. There are a number of urban legends widely accepted by builders, contractors, judges and the general public.

One of the most pernicious myths to plague the industry regards governmental responsibility. The myths take a number of forms, but all center around a misunderstanding of the legal effect of a building permit, a Certificate of Occupancy, or the building official's approval of construction in the field.

Belief in the myth of governmental responsibility is embodied in a number of common statements such as: "how can it violate code, since it was signed off by the inspector?"; or "the Certificate of Occupancy was issued, so any technical Code violations are approved"; and, when all else goes wrong and construction errors are found, "we paid for our permits so the building department must be held responsible." The dispatch of these myths begins in the International Building Code (IBC).

Does the inspector's "okay" means the work is okay?

Can we rely upon building department inspections to prove that construction work is free of defect, or that the apparent code violation was authorized? Not according to IBC §109.1, formerly UBC §108.1, which states, in part, that "approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction."

Doesn't the Certificate of Occupancy mean it is okay?

At least we can count on a C of O for some defense from liability, right? Not according to

IBC §110.1, formerly UBC §109.1, which states that "issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction."

Building departments have some accountability, right?

Building officials cannot be held accountable or failing to catch defects. As per Government Code Section 818.6, "a public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection ... for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety." This is reaffirmed by the code itself, at IBC §104.8, formerly UBC §104.2.6.

Building inspectors do not have the resources to accomplish more than spot inspections, and cannot fairly be expected to substitute for proper project management and quality control. Their shortness of resources often means that inspectors have to make decisions on where to allocate their time. In fact, inspectors often rely upon a professional developer for major developments, and pursue a far less rigorous inspection.

In summary, building officials have immunity, and cannot be held accountable to the building industry for inadequate or even careless inspections. Such inspections do not provide a defense for negligence claims. So where does the industry look for protection from deficient work? Look right in the mirror. We can-not blame the building department. Try as we may, we can't blame the insurance carriers, trial lawyers or construction lenders. Quality control, like charity, begins at home.

The answer lies in increased quality control, and an abandonment of some of the tired old urban legends that give the false sense of security. Instead of relying upon an understaffed and immune building and safety office, rely upon a properly staffed project management team. Instead of criticizing the plan checkers for failing to catch design flaws, employ a high quality design team. And instead of venting frustration at sub-contractors who fail to properly interpret sparse design, obtain fully detailed construction documents.

Lastly, instead of an industry in retreat, advance to a "new"--though truly old--model of construction and development.

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