

Maintenance Best Practices and Investigations

Related Professionals

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Practices

Construction Law

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The recent collapse of the Champlain Towers building is an unimaginable tragedy and likely the quintessential worst nightmare for all involved in the construction industry. Over time, there likely will be questions about the design, construction, and maintenance of the building. This article is not intended to address anything related to this tragedy. However, it is a good time for a reminder of the importance of building maintenance.

I think everyone would agree that buildings must be maintained – whether it is your house or the largest commercial or industrial building. But what does maintenance require? Most building owners are not in the business of maintaining buildings, so how do they know what to do? The best place to find that answer starts with the designers and builders themselves. Typically, the industry-standard construction contracts contain provisions requiring that the builder and subcontractors provide all warranty documents and operations and maintenance manuals for the building's systems and major equipment. Maintenance is also typically addressed more specifically in the specifications included in the contract documents. Using these maintenance manuals and related information as a start, owners then can plan and budget for the periodic maintenance activities of the buildings. For owners with a building service or maintenance staff, many of these activities may be handled in-house. For other owners without a dedicated staff, there are many outside services that can handle the maintenance. However, there may not be a one-stop-shop for all maintenance activities. Instead, the owner may need to assemble a team of several vendors to perform periodic maintenance of each building system. Along with ensuring that periodic maintenance is performed, owners should keep records of the maintenance performed, by whom, when, and what was done.

If your construction contract does not address these issues, you should consider what information would be helpful in planning for maintenance and including that in future contracts. Having that understanding early on can be helpful for all involved from designers to the owner.

Besides maintenance, what should owners do when unexpected and maybe atypical problems or failures arise? Owners should engage the services of a competent professional in the specific trade to investigate the issue. Ideally, the investigation should evaluate the extent of the problem, the cause of the problem, potential remedies for the problem, the cost of the potential remedies, the urgency of the problem, and likely outcomes if the problem is not remedied. This information should allow the owner to make an informed decision on how to address the problem.

What if the investigation suggests that the issue is a failure in the construction or design of the building? At that point, the owner needs legal help to navigate the process and evaluate potential avenues to address the problem, be it litigation or not. Owners should bear in mind that most states have both statutes of limitations and states of repose that restrict the time beyond which construction claims are time-barred. In both South Carolina and North Carolina, the statute of limitations for construction claims is 3 years, although it may not be clear when the statute begins to run. The two states differ as to the statutes of repose, however. North Carolina's statute of repose requires actions to be commenced within 6 years of the substantial completion of the project. In South Carolina, the statute of repose is 8 years. But again, it is not always clear when the statute begins to run. There are many things to consider in deciding how to address a potential construction claim or lawsuit. Our lawyers are ready and able to assist.