



I Have Construction Defects? How Did My Home Ever Pass Inspection?

By: [Douglas W. Benson, Esq.*](#)

One of the questions that I am always asked by homeowners concerns why they are experiencing construction deficiencies when their home was inspected by the City or County Building Official and passed inspection. The next question invariably is always, “is the inspector liable?” or, “can we make a claim against the city or county?” The purpose of this article is to address these oft asked questions and more fully explain the building process to better understand the building inspector’s role in new construction.

The Building Process

Most jurisdictions provide for a building process that includes a plan check, obtaining building permits, and inspections by local building officials. The plan check process is when the City or County engineers determine whether the plans themselves are adequate for the planned construction. Once the plans are approved the permits are issued to build according to the approved plans. Once construction begins there are periodic inspections that occur at certain phases or milestones in the construction process such as when the framing is complete or when the rough electrical has been installed just to name a few. The inspection process culminates at the final inspection when a Certificate of Occupancy is issued and the homeowner can move into their new home.

So how is it that after going through this involved plan check and inspection process a new development can end up with construction defects? The answer comes from understanding how the process works and the responsibility of those involved.

Plan Check

One of the first opportunities the building department has to get involved in a new project is in plan check. Plan check is when the builder provides a copy of the proposed plans and specifications to the building department for approval. The plans are reviewed

by the City or County engineers for general compliance with building code and city and county standards and are approved or changes are requested to come into compliance.

So what happens if your project makes it through plan check and you still end up with design defects? Is the City or County liable for approving the plans? The short answer is no. The builder's engineer or architect may be responsible for design defects, but the City and County engineers are not. They are just checking the plans for general compliance with the City or County standards. They are not guaranteeing to the homeowner that the plans are fully compliant with all codes and standards. The City and County engineers rely on the builder's design team to make a detailed analysis. The governmental entities do not have the time or resources to make the detailed investigation it would take to make sure the plans are fully compliant with all codes and standards.

After the plans are approved by the engineering department of the City or County in plan check, permits are issued and construction begins. The next phase the building officials are involved in are the inspections.

Inspections

After construction begins the City or County perform their periodic inspections. These inspections are somewhat standardized but do vary a bit from jurisdiction to jurisdiction. For instance, many jurisdictions do not even perform a roofing inspection other than looking from the ground to see if a roof is in place, while other jurisdictions may still require building inspectors to get on the roof. But what is the purpose of the inspection? Isn't it to make sure all of the construction is as it should be? Again, the short answer is no.

While having your home go through the series of inspections discussed above gives the impression that your home was built according to the plans and specifications and the minimum building code requirements, that is not necessarily the case. In a recent case our office had that went to trial, the Chief Building Official for a City testified that the building inspector cannot be the guarantor of good construction, and that it is not the building official's job to make sure the entire home is built according to plans and code. So if it is not the inspector's job to make sure the home is built correctly who's job is it? A review of the logistics of the inspection process holds the answer.

That same building official testified that while construction may go on for 10-14 hours a day, his inspectors were at that same job about 30-40 **minutes** a month performing inspections. His point was that the building officials while trying to do their job well are only on the project a very small percentage of the time during construction. So what is the point of the inspection if they see so little? The answer to that question discloses the problem with how the process is set up.

The Chief Building Official explained that because the building officials are on the project for such a short amount of time the building official relies heavily on the builder to follow the plans and specifications and to know what the building code requires and comply with its requirements. This has been consistent with the many building officials I have dealt with in many different jurisdictions, from the mountain towns to Boulder and down to Colorado Springs.

Although you may feel like this is like the fox guarding the hen house, this is how the system is set up. As in operation today, the construction inspection procedure does not contemplate that the builder does not care, or does not have the integrity to build the way a home should be built. If I have not convinced you why the building official should not be held accountable for any construction defects, maybe this will...a building official is immune from prosecution for any mistakes they make in executing the responsibilities of their job.

*** Mr. Benson founded the law firm of Benson & Associates PC, which represents homeowners and homeowner associations with construction defects along the front-range and mountain communities of Colorado.**

For more information concerning issues relating to construction deficiencies, please call Douglas W. Benson, Esq. at 720-898-9680 or email doug@bensonpc.com.