



## Defective work: What to do when the roof leaks?

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There is water dripping through the ceiling tiles. Or there are puddles on the floor in the conference room. Something is obviously wrong. But what do you do?

Some experts estimate that 75 to 80 percent of all construction defect disputes are related to roof failures. They're unfortunately a very common occurrence, and they can occur with new building construction and renovation projects alike.

We have seen water streaming through holes in a newly installed roof and mold growing because of water infiltration through the roof system. In some cases, newly installed roofs have had to be completely torn off and replaced with a new roof system.

What should you do when a building has a leaking roof?

1. Take pictures, or even video, if the leak is ongoing. Document the situation with times and dates of when the pictures and video were taken. Keep a log of leaks (where, when, how much, outside weather conditions including temperature and precipitation) with photos and a description of damages caused by the leaks.
2. Report the leak to those in charge of building administration and maintenance. Work with them to take appropriate steps to address the situation.

As important as it seems to take immediate action to "fix" the problem and stop the water infiltration into the building, that may

not be the best approach. The natural instinct is to contact the company that installed the roof and ask for help. This may result in a short-term fix; but often, when heavy rains come or snow melts, the leaks return. Since a quick fix might also void a warranty on the roof system or destroy evidence of the cause of the problem, you must exercise caution and ensure that the real party responsible for the situation is put on notice and provided with an opportunity to fix it.

It is important for building administrators and maintenance staff to understand the process for identifying and correcting a leaky roof situation. The following information provides an overview of that process.

### **What is the defect?**

In most cases, the underlying problem that resulted in the leak cannot be corrected with a “band-aid” approach. So, the first step is to determine the nature of the defect. Is the defect a design flaw, an installation flaw, a material flaw or some combination thereof?

### **Hire an expert**

The most efficient way to determine the nature of the defect is to retain an independent third party expert to observe and analyze the situation. Hiring an independent expert is important, because each of the parties that helped design and construct the building, or that provided materials for the roofing system, could be responsible for the leak and might attempt to deflect responsibility by pointing to others. For example, the contractor might argue that it installed the roof in the exact manner designed by the architect and that the design caused the failure of the roof system. The architect may argue that the contractor failed to install the roof according to the design. Another common argument is “poor maintenance,” where the material supplier argues that the warranty has been voided by action taken by the owner to correct the problem without providing appropriate notice.

While there is an expense associated with retaining an expert, the value provided by the expert is a worthwhile investment. An expert will help gather all the pertinent documents, including the design services agreement, owner-contractor agreement, surety bond, product warranties, contract documents, specifications, design drawings, as-built drawings, and related documents relied upon for the roofing system installed on the building. Then the expert will investigate the problem, explain what caused it, and identify the responsible party. An expert can also help identify a scope of repair to fix the problem and provide an initial estimated cost and timeline for the remedial work.

### **Notify the responsible parties**

Once the nature of the defect is understood, the next step is to put the responsible party (or parties) on notice of the defect consistent with the applicable agreement or warranty. The available time for giving notice of a defect will depend on the contract provisions and warranties. But keep in mind that the current statute of limitations in Ohio for breach of contract is eight years. So, the common theory in the construction industry that there is only a “one-year warranty” on defective work is not universally true. The outcome of the timing issue will depend squarely on the language in the agreements and warranty and also upon whether the defect was caused by workmanship or a material defect.

### **Repair the defective conditions**

The next step is to consider repairing the defect. Moving towards a repair has a number of benefits. It will correct the condition so the building can operate normally (without buckets to catch water or “caution” signs). It may also motivate the responsible parties to participate in the repair process, once they see commitment to repairing the defect. Finally, it will reduce the defect to a specific repair cost that can be requested from the responsible parties and eliminate any dispute over the value of the repairs.

### **Summary**

Whether you notice spreading water stains on the ceiling or a “rainstorm” in the hallway, it is important to notify those responsible for facility maintenance and operations of the problem as soon as possible. By following the steps summarized above and consulting with experts and counsel experienced with construction defects, you can weather the “internal storm” and return to a

safe and dry building environment.

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