

# Building Code inspections

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The *Buildings and Mobile Homes Act* provides that each municipality shall adopt and enforce the building construction codes. This is accomplished by means of building permits and construction site inspections. While all municipalities are responsible for Part 9 (Residential construction), others have also taken on responsibility for part 3 (Commercial construction).

This “shall adopt and enforce” wording makes municipalities have ultimate responsibility for liability or loss arising from improper building construction. While contractors who have built buildings that do not comply to the code would have liability for such non-compliance, often such non-complying contractors are the type that go bankrupt or disappear when a claim arises, rendering the municipality the only party the

aggrieved owner can go to. The municipality ends up 100% liable even for the contractor’s negligence due either to “joint and several” liability, or due to the strict wording of the *Building and Mobile Homes Act* that says municipalities shall “adopt and enforce” the building codes.

Building permits for developments are a significant source of revenue, but also present a major potential liability exposure if not followed up with timely and thorough site inspections by qualified inspectors, or by contract with the Office of the Fire Commissioner (OFC).

Even municipalities that contract with OFC to administer building codes on their behalf still retain responsibility for liability under those agreements.

The building and fire codes have been developed to protect the public from

property damage, injury and even death as a result of shoddy or even dangerous building practices.

Cases have been found where builders have installed services improperly or cut corners to save time and money. These non-standard construction practices have resulted in large property and liability losses.

Some homeowners and builders who are not aware of the potential problems (or choose to ignore them) may feel that the codes are too strict because it costs more to build to code.

However, in the event of heavy damage from a collapse, sewer or water line malfunction, they are often the first to blame the municipality for not making sure construction was completed properly.

Some may argue that the codes are enforced too strictly, but in the aftermath of a large loss, especially one where lives are lost, all areas will be examined very closely by investigators and subsequently by the courts. The courts have never ruled that the codes were enforced too strictly, but liability is often assessed because the codes were not enforced properly.

## Case study

There is often confusion about whether or not insurance will respond in the case of a lawsuit and, if so, what type of coverage is needed.

Consider this simple example – a municipality, in error, grants a building permit in a location that the Development Plan prohibits construction due to flooding. The construction is well underway or completed before the mistake is realized and, as a result, an occupancy permit is refused.

A lawsuit results because the contractor has spent a lot of money in developing the project and now is unable to recover his costs from the use or sale of the property.

The municipality’s commercial general



liability (CGL) policy responds to claims for bodily injury and property damage. In this case, there was no bodily injury or property damage, only financial losses; therefore the CGL policy would not respond.

The Errors and Omissions (E&O) policy *would respond* to such claim for financial damages that the municipality may be found legally liable for.

In another case, bad construction (not detected by the building inspector) results in bodily injury. The CGL policy would respond to cover the bodily injury claim. If the building cannot be rented and has to be repaired because it is considered to be dangerous due to serious flaws (not detected by the building inspector), the E&O policy would cover the necessary repairs.

## Consequences

Some unscrupulous contractors are taking advantage of jurisdictions that do not inspect or strictly enforce the codes by cutting corners to save money. *Why follow the law if you know you are not going to get caught?*

This also makes it difficult for legitimate contractors to compete.

They don't know what they are competing against if the building codes are not being enforced.

What happens when contractors bid on a project to meet all the applicable codes and come up against a contractor that cuts corners to reduce costs?

1. The legitimate contractor is underbid and loses the job.
2. The legitimate contractor may stop trying to work in your municipality.
3. The municipality may end up with only unscrupulous contractors willing to work in their jurisdiction.
4. The developer or owner gets an inferior building that may result in problems.
5. The municipality may be found liable for injuries and damages.

## Proper procedures

1. Examine all information including development plans and environmental studies before issuing the permit.
2. Follow up with prompt inspections at all stages of construction.
3. Ensure that contractors and engineers are reputable. Check references if unfamiliar with their work.
4. **Remember: Check all work – The issuing authority is ultimately responsible for ensuring proper construction methods are followed. ●**

