

1022.4 NEGLIGENCE: BUILDING CONTRACTOR

A building contractor has a duty to exercise ordinary care in the construction or remodeling of a building. This duty requires such contractor to perform work with the same degree of care and skill and to provide such suitable materials as are used and provided by contractors of reasonable prudence, skill, and judgment in similar construction.

COMMENT

The instruction and comment were originally published in 1974. The comment was updated in 1989 and 2016.

A building contractor is liable for injury or damage caused by his or her negligence either to the owner or to third person after completion and acceptance of the work where the defect is concealed or latent in character and is held to the same rules of liability as a manufacturer or vendor. A. E. Inv. Corp. v. Link Builders, Inc., 62 Wis.2d 479, 214 N.W.2d 764 (1974).

An owner is held to a waiver if he or she knowingly accepts a defective performance. Fisher v. Simon, 15 Wis.2d 207, 112 N.W.2d 705 (1961); Restatement, Second, Torts § 385 (1934).

A building contractor may be negligent in using materials which a contractor of reasonable prudence, skill, and judgment would know were defective. Colton v. Foulkes, 259 Wis. 142, 47 N.W.2d 901 (1950); see also 25 A.L.R.3d 403 (1969); 61 A.L.R.3d 792 (1975).

Architects and Engineers. Architects and engineers have an analogous duty. See Barnes v. Lozoff, 20 Wis.2d 644, 650, 123 N.W.2d 543 (1963). A. E. Inv. Corp. v. Link Builders, Inc., supra at 489:

An architect has the duty of using the standard of care ordinarily exercised by the members of that profession.

Construction by Private Homeowner. The court of appeals has held that alleged negligence by a private homeowner occurring in a private home building project should not be judged by the standard of a commercial builder B vendor. Bagnowski v. Preway Inc., 138 Wis.2d 241, 405 N.W.2d 746 (Ct. App. 1987). A "builder B vendor" is defined as "one in the business of building homes upon land owned by him, and who then sells the houses together with the land to the public." Bagnowski v. Preway, Inc., supra. In Bagnowski, the trial court instructed the jury that the private homeowner who had installed a woodburning stove was responsible only for defects that he knew, or reasonably should have known, existed when he sold his home.

Negligence; Standard of Care. See the comment to Wis JI-Civil 1005.