



**MICHAEL K. WILSON**

**BROAD AND CASSEL ATTORNEYS AT LAW**

*Mr. Michael Wilson is a Partner in the Orlando office of Broad and Cassel. He serves as chairman of the Firm's Construction Law and Litigation Practice Group. He specializes in multimillion dollar complex claims, representing primarily public and private owners, developers, and contractors in the areas of project impact and delay claims, project defect claims and payment disputes among project participants. He can be reached at 407-481-5213 or by email at [mkwilson@broadandcassel.com](mailto:mkwilson@broadandcassel.com).*

## **AVOID LEGAL TROUBLES WHEN BUILDING**

---

Real estate and construction-related disputes are serious issues faced daily by construction and architectural design firms, contractors, subcontractors, governmental agencies, real estate development companies, and real estate owners. Anytime you have a complicated construction project, problems are bound to occur. While it is most common for parties involved to amicably resolve construction disputes without resorting to filing lawsuits, it is important to be aware of issues that can arise during the building process that warrant special attention. Mike Wilson, a partner at Broad and Cassel's Orlando office who focuses his practice in construction law and litigation, shares the following insights.

Prior to the start of a building project, it is important to spend time preparing detailed contracts in anticipation of potential snags along the way. Include dispute resolution mechanisms in contracts which detail components of the building project - what will happen if there are delays or problems? Who is responsible - the owner or contractor/subcontractor? Make sure the documents are appropriate for the type of project being undertaken and that they address the typical problems that commonly plague the commercial building industry: time-related issues; defects in design or construction; or payment problems.

### **Time-related Problems**

When a construction estimate is prepared and reviewed, it is essential to understand that the contractor has prepared the schedule based on an assumption of time. Many projects will take longer than originally planned. Time is money. Once again, since many construction projects do not finish on schedule, it is important to address the sharing of the risk of potential delays in the contract beforehand.

From an owner's perspective, if the contractor takes longer than originally stated, damages may include lost rental revenue, increased interest payments for financed projects, and additional architectural fees. Before a project has even started, it is important to study all bids as the contractor with the lowest bid may not always be able to finish on time and will end up costing more in the long run.

From the contractor's perspective, it is vital to have a carefully prepared construction schedule. This is very significant and can determine a project's success or failure. Proper scheduling can determine whether your company comes out ahead or ends up spending more money on the project.

**PHONE:** (407) 839-4200 **FAX:** (407) 425-8377

**EMAIL:** [MKWILSON@BROADANDCASSEL.COM](mailto:MKWILSON@BROADANDCASSEL.COM) **WEBSITE:** [HTTP://WWW.BROADANDCASSEL.COM](http://WWW.BROADANDCASSEL.COM)

**BOCA RATON • FORT LAUDERDALE • MIAMI • ORLANDO • TALLAHASSEE • TAMPA • WEST PALM BEACH**

Prudent scheduling also can help avoid future/potential damage claims and may help secure necessary extensions in the project. If a contractor delays a project, it can hold up the work of other contractors and subcontractors working on the project or subsequent projects. As a matter of quality, contractors must have sufficient time to complete the project. If not, then it could lead to the next most common problem: defects in design or construction.

### **Defects in Design or Construction**

An owner contracts with an architectural firm that designs the project following building codes and standards. The contractor is then charged with constructing the building as drafted. Conflicts often come into play when the requirements of the design versus the work done by contractors differs. Defective installation or operation of mechanical systems also can happen. It can be difficult to allocate risk without extensive analysis, a process that can cost more valuable time and money. When this happens, it is necessary to enforce contract rights. Owners usually have insurance to protect themselves and cover expenses for fixing defects. However, in some instances costly delays or defects impact the flow of money on the job, leading to the third most common problem: payment problems.

### **Payment Problems**

Due to a complicated and expensive project - or most likely, poor pre-existing financial situations - an owner could run out of funds to pay contractors, or the contractor could run out of money to continue paying employees or subcontractors. Construction lien law then comes into play, which enforces lender rights against the property. Other financial considerations could include filing for bankruptcy or requesting additional financing for the project. To avoid payment problems, owners should check the history of contractors bidding on the project and ask for references, and in turn, contractors should request assurances of adequate funding, and do business with those they know have the financial backing to see a project through to completion.

### **ADA Compliance**

Other factors a property owner should be aware

of include making sure buildings are compliant with the Americans With Disabilities Act (ADA). New or old, they must be accessible to individuals who are wheelchair-bound. There are 'watch-dog' groups, which have filed suits against owners for owning buildings that are not compliant. Laws pertaining to the ADA have changed throughout the years and owners need to be aware of them and bring their buildings up to code.

### **Indoor Air Quality**

Ensuring healthy indoor air quality is also a hot topic. As a result of toxic mold and mildew, air quality can be dangerous. This could be due to poor construction and design - faulty installation of materials - compounded by Florida's hot and humid climate. Buildings must be healthy suitable for use, which at times unfortunately means significant modifications to building systems and in some cases demolishing a building or portions of it and rebuilding from scratch. Liability insurance premiums for builders and owners also has increased because of the threat of toxic mold litigation

In the majority of cases, problems faced during construction are resolved through informal arbitration instead of lengthy legal proceedings. Problems usually get bigger if they are not anticipated and documented in contracts. Regardless of who causes the problems, disruptions can wound and sometimes kill a project, hurting both the owner and contractor. Attorneys in the Construction Litigation Group at Broad and Cassel can help owners and contractors avoid legal issues by reviewing construction documentation, plans and schedules, assist in dispute resolution proceedings, and more.

*The Broad and Cassel Construction Law and Litigation Practice Group can guide clients through matters such as: Contract drafting and negotiations; Project dispute resolution procedures including dispute resolution boards, mediation and arbitration; Breach of contract claims; Claims alleging design and construction errors and omissions; Claims for extras, delay, acceleration, disruption, loss of productivity, and out-of-sequence work; and Construction lien and bond disputes. With the client's business and financial interests in mind, Broad and Cassel is prepared to provide a full range of legal services in construction disputes. For additional information about Broad and Cassel's Construction Law and Litigation Practice Group, visit our website at [www.broadandcassel.com](http://www.broadandcassel.com) or contact Mike Wilson at 407/839-4200.*