

# The Building Regulation Act before the Senate. Liabilities and Guarantees

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Although it may seem surprising, the construction of homes in ancient Babylon was already subject to third-party liability concepts as a way to en-

struction third-party liability was already legally regulated. Without any doubt, at that time, as indeed at the present, housing was one of the most impor-

and those taking part in the construction process have developed considerably.

At the present time the liabilities with respect to building col-



## HAMMURABI CODE (1792 - 1750 BC)



**228: If a mason constructs a house for a man and has finished it, for each SAR of the house (constructed) he will be given two shekels of silver in remuneration.**

**229: If a mason has built a house for man, but the construction is not solid and the house which was built collapses and causes the death of the owner of the house, this mason will be put to death.**

**230: If it was the son of the owner of the house whose death he has caused, then this mason's son will be put to death.**

**231: If it was the slave of the owner of the house whose death he has caused, then he will give the owner of the house a slave for this slave.**

**232: If goods have been destroyed, then he will pay for everything destroyed. And given that he did not solidly construct the house which he built and it collapsed, he will reconstruct the house which collapsed at his own expense.**

**233: If a mason has built a house for a man and did not carry out his work following the regulations and a wall has inclined, then this builder will reinforce the wall at his own expense.**

sure the greater safety of its inhabitants:

Quite apart from the present-day view which we may have with respect to the articles of the Hammurabi code given above, one cannot but admire the fact that in the year 1792 BC con-

stant and most appreciated goods for the majority of people, and for the purchase of which the largest part of their economic resources would be destined.

Since that time, and up until the present-day, this legislation

lapse are detailed in article 1591 of the Civil Code (table 1) which sets a ten-year liability for the contractor for construction defects, and for the architect for defects in the building land or in the management of the building. Jurisprudence has extended

  <h1>ARTICLE 1,591 C.C.</h1> <p>THE CONTRACTOR OF A BUILDING WHICH HAS BEEN DESTROYED DUE TO CONSTRUCTION DEFECTS IS LIABLE FOR ANY DAMAGE CAUSED IF THIS EVENT TAKES PLACE WITHIN TEN YEARS FROM WHEN CONSTRUCTION WAS COMPLETED. THE ARCHITECT WHO SUPERVISED THE CONSTRUCTION WILL BEAR THE SAME LIABILITY AND FOR THE SAME PERIOD OF TIME IF THE EVENT WAS DUE TO DEFECTS IN THE GROUND OR THE SUPERVISION.</p> 
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Table 1

these liabilities to promoters and other involved parties.

Bearing this legislative protection for the purchaser of a house in mind, it might be asked what can be done in the case of the destruction of the purchased house due to those construction defects?

Let us suppose that the house suffers serious structural damage obliging its abandonment four years after completing the construction; the perspectives for the owners may be bleak, as they may have been left without a home and still have to pay the high monetary obligations which are generally acquired in the form of the mortgage used to buy the house.

The traditional lines of insurance however (fire, homeowners' multi-peril policies, owners' associations, etc.) do not cover damage due to construction defects except in special cases (e.g. water damage due to broken pipes).

The only possible solution for the affected parties lies in suing the seller/promoter and other possible responsible parties, as

provided for by article 1,591 of the Civil Code.

This solution, in addition to involving additional expenses, does not solve the problem with the speed required by such a situation, as judicial actions are generally long and in many cases uncertain as to the restitution of the damages caused.

It is for this reason, amongst others such as the setting of obligations and liabilities of those involved in the building process and the establishment of a general framework in order to promote quality, that the Spanish government, in response to social needs, passed the Building Regulation Bill on March 5 of this year. This bill aims to solve problems such as those given above through the setting up of a system of guarantees permitting the restitution, with the required promptness, of property losses which have been suffered by house buyers.

The Building Regulation Bill which was published in the **official Gazette** on March 15, submitted for urgent enactment, and for which 170 amendments

by parliamentary groups were presented, underwent some changes whilst it was before Congress, it was finally passed at a full session on July 1. It is at present before the Senate. Barring unexpected circumstances, it is expected to be enacted in the last quarter of this year.

The most relevant aspects with respect to liabilities and guarantees are as follows:

## LIABILITIES

The Building Regulation Act states that **all parties** (physical or legal entities) will be liable to owners and third parties who have acquired the damaged property within the following terms, which are calculated from when the works are handed over, if no reservations are made, or from the time that these reservations are corrected:

### 10-year

Property damage due to flaws or defects which affect the foundations, supports, beams, the roofing, load bearing walls and other structural elements which directly compromise the mechanical resistance and stability of the building.

### 3-year

Property damage caused to the building due to flaws or defects in the construction elements or the installations which cause habitability requirements not to be met.

"Habitability" is considered to include:

- Hygiene, health and environmental protection.
- Protection against noise.
- Energy saving and thermal insulation.



## GUARANTEE EXCLUSIONS BUILDING REGULATION ACT

- ✓ BODILY INJURIES OR OTHER DETRIMENTS.
- ✓ DAMAGE TO CONTIGUOUS OR ADJACENT PREMISES.
- ✓ DAMAGE TO FIXTURES CONTAINED IN THE BUILDING.
- ✓ DAMAGE DUE TO MODIFICATIONS OR WORKS AFTER RECEIPT.
- ✓ DAMAGE DUE TO IMPROPER USE OR LACK OF MAINTENANCE.
- ✓ EXPENSES FOR MAINTENANCE AFTER RECEIPT.
- ✓ DAMAGE DUE TO FIRE OR EXPLOSION, EXCEPT FOR THOSE CAUSED BY DEFECTS OR FLAWS IN THE INSTALLATIONS.
- ✓ DAMAGE CAUSED BY FORTUITOUS CIRCUMSTANCES, ACTS OF GOD, ACTS OF THIRD PARTIES OR OF THE AFFECTED PARTY.
- ✓ DAMAGE WITH ITS ORIGIN IN THE RESERVATIONS UNTIL THEY ARE LIFTED.

Bill 5/03/99, B.O.C. 15/03/99. Passed by a full session of Congress 1/07/99.

Table 2

– Other functional aspects of the construction elements or the installations.

### 1-Year

The **constructor** will be liable for property damage due to flaws or defects in the execution which affect the finishing elements of the works.

The liabilities are attributable on a personal and individualised basis, except in the case of a combination of faults where it is not possible to specify the degree of liability of each agent, in which case liability will be applied as a whole.

The actions demanding liability are proscribed after a period of two years from when the damage occurs.



## BASIC COVER

- ✱ PROPERTY DAMAGE WHICH AFFECTS THE STABILITY OF THE WORKS CAUSED BY:

ERRORS IN THE PLAN  
DEFECTS IN THE IMPLEMENTATION  
DEFECTS IN THE MATERIALS

OF THAT PRIMARY WORKS.

- ✱ PROPERTY DAMAGE IN SECONDARY WORKS AND INSTALLATIONS AS A CONSEQUENCE OF LOSSES COVERED BY THE POLICY RELATING TO THE PRIMARY WORKS.
- ✱ EXPENSES INCURRED IN ORDER TO ELIMINATE THE THREAT OF SUBSIDENCE.
- ✱ EXPENSES INCURRED IN ORDER TO ELIMINATE THE THREAT OF SUBSIDENCE.

Table 3

## GUARANTEES

For the insurance of such damage, the Building Regulation Act sets a system of guarantees through property damage insurance or surety bonds.

When the law comes into force, 10-year insurance will be the only one which is compulsory in buildings primarily used for housing. The insurance should be taken out by the promoter or by the constructor in agreement with and on behalf of the aforementioned party, and the insured will be the promoter itself and succeeding purchasers of the building.

The sum insured should be 100% of the material implementation costs of the construction, including professional fees.

A future Royal Decree will establish the obligation to insure against property damage on a three-year and one-year basis, together with buildings for other uses. The sums insured will be set at 30% and 5% respectively. The one-year insurance may be replaced by a promoter retention.

The wording of the Act also sets the exclusions from the guarantees (table 2), amongst which are those which refer to the reservations which are made on receipt of the works.

Promoters who do not comply with the obligation to take out insurance, in addition to being personally liable, are not permitted to inscribe first transmission **public deeds** nor voluntary building tender deeds in the land register. Nor may they close the individual promoter's open file in the Mercantile Register nor record the settlement of the promoting companies.

When the building regulation Act comes into force six months after its publication in the official Gazette, the Spanish insurance market will already have various years of experience of

# O.C.T. RECOGNITION STANDARDS

LEVELS

C  
B  
A

EXPERIENCE						TECHNICAL AND PROFESSIONAL QUALIFICATIONS				THIRD-PARTY LIABILITY POLICY (Pts millions)		
BUILDING Technical Control			Technical Control \$10-year insurance		N°	SENIOR APPRAISER		MIDDLE-GRADE APPRAISER				
YEARS	AVERAGE VOL	ANNUAL VOL	YEARS	VOL		YEARS EXPERIENCE	No.	YEARS EXPERIENCE				
5	5,000	3,000	-	-	1	8	4	3		100		
8	10,000	6,000	3	-	2	8	8	3		200		
10	10,000	6,000	3	-	2	8	8	3		500		

VOL. FIGURES IN MILLIONS

IN GENERAL

1. SPECIALIST WITH MORE THAN 10 YEARS EXPERIENCE IN:  
GEOTECHNICS  
STRUCTURES  
WEATHERPROOFING  
FACADES AND MASONRY.

COMPANY ORGANISATIONAL STRUCTURE.  
TRAINING SYSTEM AND PLANNED RATING.

Table 4

COMPETENCE WITH REGARD TO OCT LEVELS										
LEVEL	BUILDING TYPE	USE	BUILDING CHARACTERISTICS							
			Work Vol (000000)	Floors	Basement	Light	Inclination	Ground		
C	TRADITIONAL BUILDING STABILITY + NON-PREFABRICATED WEATHERPROOFING	HOUSING	500	7	2	6	15 %	DIFFERENT FILLING		
B	TRADITIONAL BUILDING TECHNICAL CONTROL + NON-PREFABRICATED WEATHERPROOFING	ALL USES	1000	14	3					
A	NON-TRADITIONAL BUILDING TECHNICAL CONTROL + WEATHERPROOFING	ALL USES								
■ NO LIMIT										

Table 5

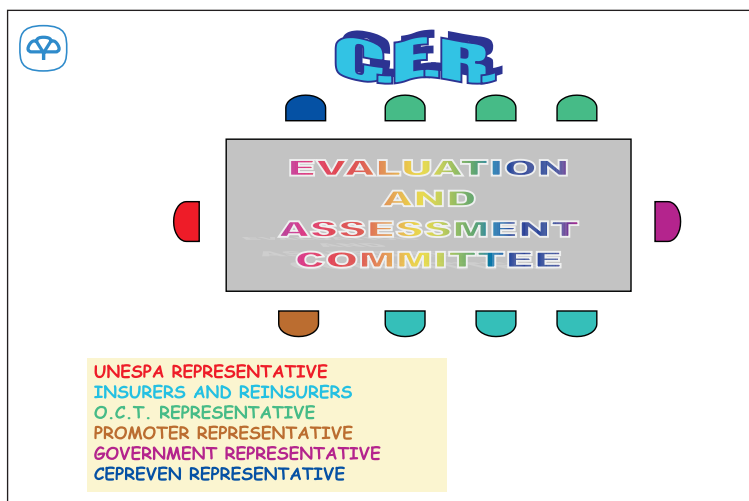


Table 6

10-year building damage insurance, as it has been requested by promoters on a voluntary basis in that it gave added value to their promotions (asset protection); although it is true that few insurance companies at present offer this product, and market penetration probably does not reach 10%.

During this time, these policies have primarily been aimed at new buildings, offering protection against structural damage as their principal guarantee (table 3) and protection against defects in the weatherproofing of roofs, facades and basements as complementary guarantees.

The requirement for technical controls for the underwriting of policies - carried out by a control agency independently of other parties taking place in the building process (table 4) - has been an indispensable requisite in policy underwriting, and will presumably continue to be so in the future. The control agencies must be accepted by reinsurers, and to this end a number of recognition and activity standards have been created which set various levels of activities which are recognised by the committee. (Tables 4, 5 and 6). The technical control is valued by many promoters as being beneficial to quality and a commercial inducement in the sale of their promotions.

The enactment of this law will bring with it new development possibilities for this line of insurance, with an approximate annual premium volume of Pts14 billion, assuming a housing construction volume of greater than Pts2,000 billion.

It is to be hoped that the entrance of the Building Regulation Act will in the future favour the principal objective of quality which is shared by all involved parties, and will benefit buyers and all others involved. ■