Who's Liable When a Subcontractor's Work Fails? A Guide for General Contractors on Multi-Family Projects

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On a multi-family project, a general contractor (GC) may manage a dozen or more subcontractors at once. These subcontractors might be overseeing site work, framing, roofing, windows, waterproofing, plumbing, electrical, HVAC, and finishes. When one of those trades gets it wrong, the problem is rarely minor. A failed window flashing detail can mean water intrusion in dozens of units. A plumbing defect on an upper floor can damage every unit below it.

When that happens, the owner, developer, or homeowners' association usually looks to the GC first. Whether the GC ends up paying for the subcontractor's mistake depends on three things: the contracts, the insurance, and South Carolina construction law.

Why the Owner Comes After the GC First

In most cases, the owner signed a contract with the general contractor, not with the subcontractors. That contract usually makes the GC responsible for all of the work, including work performed by subs. Standard industry forms, such as the AIA A201 general conditions, typically state that the contractor is responsible to the owner for the acts and omissions of its subcontractors.

South Carolina law also gives owners and later purchasers ways to pursue builders. Under *Kennedy v. Columbia Lumber & Manufacturing Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989), courts in this state recognize an implied warranty that construction will be performed in a workmanlike manner.

As held in *Terlinde v. Neely*, 275 S.C. 395, 271 S.E.2d 768 (1980), the South Carolina Supreme Court has also allowed purchasers to bring negligence claims against builders for latent defects, even without a direct contract. For condominium and other for-sale multi-family projects, that means a GC may face claims from an HOA or unit owners years after turnover.

So the owner's claim against the GC is often the simple part. The harder question is how much of the loss the GC can push down to the subcontractor who caused it.

Contractual Indemnity Can Be Your First Line of Defense

A well-drafted subcontract is often the GC's best tool for shifting responsibility. Key provisions of these contracts include:

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- **Indemnity:** The subcontractor agrees to indemnify and hold the GC harmless for claims arising from the sub's work.
- **Duty to defend:** The sub agrees to pay for the GC's defense, not just reimburse damages at the end.
- **Flow-down clauses:** The sub takes on the same obligations to the GC that the GC owes to the owner, including warranties and schedules.
- **Insurance requirements:** The sub must carry specific coverage and name the GC as an additional insured.

There is a limit. Under S.C. Code § 32-2-10, a construction contract provision that requires a party to indemnify another for losses caused by that other party's *sole* negligence is void and unenforceable. A clause that tries to make a sub cover the GC's own mistakes entirely will not hold up. Indemnity provisions should be drafted to fit within that rule.

Equitable Indemnity and Contribution

If the subcontract is silent or poorly written, a GC may still have options. South Carolina recognizes equitable indemnity, which allows a party held liable for another's wrongdoing to recover from the party actually at fault. The catch is that the party seeking equitable indemnity generally must be free of fault itself. If the owner can show the GC was negligent in supervising, scheduling, or inspecting the sub's work, that claim can fail.

GCs may also seek contribution from subcontractors under South Carolina's Uniform Contribution Among Tortfeasors Act. Under S.C. Code § 15-38-15, a defendant found less than 50 percent at fault is generally responsible only for its own share of damages, rather than the full amount. How fault is allocated between the GC and its subs at trial can make a large difference in what each party pays.

The Money Usually Comes From Insurance

In practice, most construction defect claims are resolved through insurance coverage. Commercial general liability (CGL) policies held by the GC and its subs are central to almost every multi-family defect case.

For years, South Carolina courts debated whether faulty workmanship counts as an "occurrence" under a CGL policy. In 2011, the legislature answered that question in S.C. Code § 38-61-70, which provides that CGL policies issued to contractors define "occurrence" to include property damage resulting from faulty workmanship, though not the cost of repairing the faulty work itself.

GCs should also understand:

- A certificate of insurance is not proof of coverage. Get the actual additional insured endorsement.
- Additional insured endorsements vary widely. Some cover only ongoing operations, not completed work, which is when most defect claims arise.

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- Late notice to an insurer can jeopardize coverage. Tender claims to your carrier and to each responsible sub's carrier as soon as possible.

Deadlines That Apply to Defect Claims

South Carolina generally allows three years to bring a construction defect claim (S.C. Code § 15-3-530), measured from when the claimant knew or should have known of the problem (§ 15-3-535). Separately, the statute of repose in S.C. Code § 15-3-640 bars most claims filed more than eight years after substantial completion, regardless of when the defect was discovered, absent a finding of fraud, gross negligence or recklessness.

For residential projects, the Notice and Opportunity to Cure Construction Dwelling Defects Act (S.C. Code § 40-59-810 et seq.) requires a claimant to give the contractor written notice and a chance to inspect and offer repairs before filing suit. GCs who receive these notices should respond within the statutory timeframes and notify the responsible subcontractors right away.

Practical Steps for General Contractors

Protecting your company starts long before a claim arrives:

1. **Review subcontract forms:** Make sure indemnity, defense, insurance, and warranty terms are current with South Carolina law.
2. **Verify insurance before work begins:** Collect endorsements, not just certificates, and confirm completed operations coverage.
3. **Document supervision:** Keep inspection records, photos, daily logs, and correspondence about deficient work.
4. **Act quickly when a claim arrives:** Notify subs and insurers in writing, and preserve physical evidence before repairs.
5. **Coordinate repairs carefully:** Fixing a defect without giving responsible parties a chance to inspect can weaken your claims against them.

Speak With Our Charleston Construction Litigation Team

Multi-family defect claims often involve the owner, the GC, several subcontractors, design professionals, and multiple insurers, all with different interests. Determining who pays requires careful contract analysis, a clear understanding of South Carolina law, and the right experts.

Rosen Hagood represents clients in business and construction disputes throughout South Carolina. Our attorneys have experience before South Carolina courts and with the experts these cases require. Whether you are responding to an owner's claim or pursuing a subcontractor whose work failed, we can help you evaluate your contracts, your coverage, and

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your options. Contact Rosen Hagood to discuss your project.

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