Theories of Owner Liability for Earthquake Losses

A debate by lawyers for non-lawyers

Joel B. Castro
Kim Rodgers Westhoff
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Sean B. Hecht
David Bonowitz, moderator

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Los Angeles
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Our panelists

- John Nockleby
- Joel B. Castro
- Kim Rodgers Westhoff
- Sean B. Hecht
## Retrofit program scopes

<table>
<thead>
<tr>
<th>City</th>
<th>Pre-1980 concrete</th>
<th>Wood “soft story”</th>
<th>URM</th>
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<tr>
<td>San Francisco</td>
<td>3200</td>
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<td>Los Angeles</td>
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<td>Santa Monica</td>
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<td>1600</td>
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Myrick v. Mastagni
When does liability begin / end?

- Purchase
- Alteration (TI, Refi)
- Publicly listed in study
- Noticed for mandatory retrofit
- Retrofit deadline

EQ: Much sim dmg

Code change

Neighbor city mandates retrofit

EQ: Some sim dmg
When does liability begin / end?

- Purchase
- Publicly listed in study
- Noticed for mandatory eval, retrofit
- Evaluation deadline
- Retrofit deadline

EQ: Some sim dmg

Some sim dmg

Code change

EQ: Some sim dmg

EQ: Some sim dmg

Code change

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Code change
Our panelists

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What do I need to do to avoid tort liability if my building collapses during an earthquake and injures someone?

John T. Nockleby
Professor of Law & Director,
Civil Justice Program
Loyola Law School
1. What do I need to do to avoid tort liability if my building collapses and injures someone?

- Distinguish tort liability from liability to a municipality for failing to comply with earthquake standards.
2. General principle of tort law:

- If you are aware of a particular hazard within your control that has a strong possibility of injuring another, you are generally required to take steps to reduce or eliminate that hazard.
If someone is injured by a building collapse after an earthquake, lawyers will ask this key question:

3. Is the hazard foreseeable?
4. Two ways to evaluate the foreseeability of hazards you need to protect against (i.e., retrofit):

A. **Municipal standards**, advice, or analysis of your building or buildings of similar description.

B. **General Tort Law**
   - *Time permitting*

- Softstory?
- Unreinforced Masonry?

People aren’t thinking about this, but it’s also an important, potentially-expansive liability ...
5. For tort liability, municipal standard is a floor not a ceiling

- All building owners whose buildings are identified either by address or by general description must retrofit within a reasonable period of time to comply with tort law.
- Myrick v. Mastagni -- Joel Castro will discuss
6. **When** must I retrofit using the municipal standards?

- **Within a reasonable period of time**, much shorter than the municipality has afforded.

- *Once you become aware that your building is at risk, you must promptly take steps to remedy the hazard.*

- *If standards change* either (a) b/c municipalities increase the standards; or (b) the general standards (caselaw) changes, then you must engage in further retrofitting.
7. Could general principles of tort law impose higher or different standards of care than the municipal standard?

- YES! Potentially higher (not lower)
Apart from municipal standards, if someone is injured by a building collapse after an earthquake, lawyers will ask this key question:

8. Is the hazard foreseeable?

- Is my building likely unstable if a particular kind of earthquake occurs?
- What particular kind of earthquake (e.g., 6.0, 6.8? 7.2? Different types of tremors?) is foreseeable?
- What must I do to protect others in light of those risks?

There is not a clear answer to these questions as answers will evolve as your understanding of EQ preparedness increases.
If I retrofit to comply with municipal standards today, why is that not sufficient retrofitting for the future?

- Because municipal standards set the floor, not the ceiling of standards of care.
- Because as our knowledge of building resilience becomes more developed, owners need to keep up with the standards in the industry.
- Because if someone is injured down the road, an expert may conclude that reasonable building owners would have gone further than municipalities in setting standards for building resilience.
Caveats to this presentation
[You knew there would be some, right?]

- This ppt is designed to introduce the subject and to make it accessible to a general audience.
- That means that subtleties, nuances, exceptions, and refinements have been left out.
- Although this ppt is based on general California law, the California Legislature has the power to change these general principles, and therefore the general principles must give way to any state statutes that contradict anything in this ppt.
- This ppt is not legal advice! Every situation is different, so don’t assume that you can take general descriptions and “apply” those general descriptions to a particular situation. The process of “application” is called practicing law and is what lawyers do. Therefore, if you want legal advice, hire a lawyer.
- Engineers, architects, and other professionals often set the standards of care on which lawyers rely. So don’t assume lawyers have all the power!
When does liability begin / end?

- **Purchase**
  - EQ: Much sim dmg
  - Code change

- **Alteration TI, Refi**
  - Neighbor city mandates retrofit

- **Publicly listed in study**
  - EQ: Some sim dmg

- ** Noticed for mandatory retrofit**
  - New retrofit standard

- **Min retrofit complete**

- **Sale**