

HFw

DECENNIAL LIABILITY/ INHERENT DEFECTS

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DECENNIAL LIABILITY / INHERENT DEFECTS

- What is the origin of decennial liability
 - Who owes the duty
 - Who is the duty owed to
 - What property does it relate to
 - What are the triggers for liability
 - What is the extent of liability
 - Are there any exceptions
 - What is the relevant period / time bar
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- Other legal responsibility for defects (in design, material or workmanship)?
 - Contractual / Building codes
 - Statutory obligation on supplier under civil codes – current custom / practice
 - Abu Dhabi – contractor/engineer liable for structural defects for 10 years from handover
 - Dubai – Developer liable for structural defects for 10 years from handover
 - KSA – contractors liable for structural defects for 10 years from handover
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WHY IS SPECIFIC COVER REQUIRED?

Insurance	Period	Type	Risk	Insured
CAR/EAR	Project duration plus defect liability period / maintenance period	Property and liability Defect Exclusion	First Party and Third Party	Employer / Contractors
PI	Annual	Professional negligence	Third Party	Engineers / architects
PAR	Annual	Property Defect Exclusion	First Party	Owner / Occupier
Inherent Defect	10 years from handover	Structural Defects	First Party	Owner / Occupier
Decennial	10 years from handover	Decennial liability	Third Party	Engineer / architects / contractor

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SAUDI ARABIA

UAE?

MANDATORY COVER





DECENNIAL COVER

INHERENT DEFECTS COVER

WHAT KIND OF COVER



Country	Legal Provisions	Who is liable?	Scope of liability	Liability period	Claim limitation period	Comments
Abu Dhabi	Article 13 of Abu Dhabi Law No. 4 of 1983 on Organizing Building Works in the Emirate of Abu Dhabi	Contractor	Any malfunction or defect in the core parts of the building, whether foundations, bearing walls, concrete structure or any other parts as a result of fraud or negligence, and any damages caused by said malfunction/defect	Ten (10) years	Three (3) years from collapse or discovery of defect (Article 883, UAE Civil Code)	<p>No strict liability – fraud or negligence will have to be demonstrated</p> <p>Duty owed to anyone who suffers a loss as a result of the malfunction or defect</p>
	Article 11 of Abu Dhabi Law No. 4 of 1983 on Organizing Building Works in the Emirate of Abu Dhabi	Engineer	Any damages which prejudice the building and its safety	Ten (10) years	Three (3) years from collapse or discovery of defect (Article 883, UAE Civil Code)	<p>No strict liability – damages will have to emanate from a mistake in the design or have to be due to instructions given to contractors over the course of supervising the construction.</p> <p>Duty owed to anyone who suffers a loss as a result of the mistake.</p>

Country	Legal Provisions	Who is liable?	Scope of liability	Liability period	Claim limitation period	Comments
Bahrain	Articles 615 to 620 of the Bahraini Civil Code (Decree-Law No. 19/2001)	Architect/engineer and contractor	Total or partial collapse or fault and any defect which threatens the sturdiness and safety of a building or fixed construction	Five (5) years	Three (3) years from collapse or discovery of defect	<p>Strict liability – contractor and engineer are jointly liable even if collapse arises from a defect in the land</p> <p>Contractor not liable if it had nothing to do with the design and defect is due to design (Art. 616 & 617)</p>
Dubai	Article 40 of Dubai Law No. 6 of 2019 on the Ownership of the Jointly Owned Properties in the Emirate of Dubai	Developer (any person licensed to practice real estate development works in Dubai) and sub-developer	Any defects in the structural parts of the property	Ten (10) years from the date of obtaining the completion certificate	Three (3) years from collapse or discovery of defect (Article 883, UAE Civil Code)	<p>This liability is in addition to the one under Federal Law No. 5 of 1985</p> <p>Developer is also liable for repairs or replacement of defective installations in the property (such as electrical or plumbing) for a year after selling a unit to a third party</p>

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<p>Kuwait</p>	<p>Articles 692 to 697 of the Kuwaiti Civil Code (Law No. 67/1980)</p>	<p>Architect/engineer and contractor</p>	<p>Total or partial destruction or damage and any defect that threatens the strength and safety of a building or fixed construction</p>	<p>Ten (10) years</p>	<p>Three (3) years from collapse or discovery of defect</p>	<p>Architect/engineer's liability is limited to errors in the design if its involvement was limited to preparing said design (Art. 694)</p> <p>If both architect/engineer and contract are responsible for defect, they are jointly liable (Art. 695)</p>

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<p>Oman</p>	<p>Article 634 of the Omani Civil Code (Royal Decree No. 29 of 2013)</p>	<p>Architect/engineer and contractor</p>	<p>Total or partial collapse or fault and any defect which threatens the sturdiness and safety of a building or fixed construction</p>	<p>Ten (10) years</p>	<p>Three (3) years from collapse or discovery of defect</p>	<p>Strict liability – contractor and engineer are jointly liable even if collapse arises from a defect in the land</p> <p>Architect/engineer will only be held liable for defects in design if it did not supervise the construction (Article 635)</p>

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<p>Qatar</p>	<p>Articles 711 to 715 of Law No. 22 of 2004 (the Qatar Civil Code)</p>	<p>Architect/engineer and contractor</p>	<p>Total or partial collapse or fault and any defect which threatens the sturdiness and safety of a building or fixed construction</p>	<p>Ten (10) years</p>	<p>Three (3) years from collapse or discovery of defect</p>	<p>Strict liability – contractor and engineer are jointly liable even if collapse arises from a defect in the land</p> <p>Design consultant will only be liable for defects attributable to the design if it had no involvement in the execution or supervision of the works</p> <p>Contractors will not be liable for defects due to design if these were not obvious to a competent contractor</p>

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Saudi Arabia	Art. 76 of the Government Tenders and Procurement Law (Ministerial Decision No. 223/1427)	Contractual parties to a government construction project (i.e. anyone from an architect to an engineer or contractor)	Partial or full collapse of the construction if due to a construction defect	Ten (10) years or shorter period if agreed by both parties	No limitation period	
	Art. 99 of the Implementing Regulations of the Government and Procurement Law (Ministerial Decision No. 1242/1441)	Contractual parties to a government construction project (i.e. anyone from an architect to an engineer or contractor)	Total or partial destruction that occurs to the construction if destruction results from a defect in the implementation	Ten (10) years or shorter period if agreed by both parties	No limitation period	<p>The word 'contractor' in the regulation is misleading since the correct translation of the Arabic version is 'contractual party'</p> <p>The 'contractor' is required to review architectural design of the project (Article 98)</p>

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<p>United Arab Emirates</p>	<p>Articles 880 to 883 of the UAE Civil Code (Federal Law No.5 of 1985)</p>	<p>Architect/engineer and contractor</p>	<p>Total or partial collapse and any defect which threatens the stability or safety of a building or other fixed installation</p>	<p>Ten (10) years</p>	<p>Three (3) years from collapse or discovery of defect (Article 883, UAE Civil Code)</p>	<p>Architect/contractor are strictly liable for all defects, including joint and several liability for design defects, even if caused by something outside their control (like a defect in the land)</p> <p>Design consultant will only be liable for defects attributable to the design if it had no involvement in the execution or supervision of the works</p> <p>Does not apply to sub-contractors (the main contractor is liable)</p>



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