

## Construction developers' duties

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In a week, we have witnessed yet another two unfortunate construction site accidents, both involving structural collapse.

There could be a multitude of reasons why a building structure gives way, particularly when excavation works are ongoing.

Once a site is excavated, the foundations of the adjoining building could be too weak to sustain the overlying load, especially if the dividing unbraced walls are not resting directly on solid ground or because the exposed ground has destabilised itself due to external conditions (this is common for exposed soil foundations experiencing wetting/drying cycles) or because of fissures in the less contained terrain.

Moreover, building collapse could ensue because the exposed party walls are not strong enough to take the load redistribution regardless of the foundation characteristics. Another possibility is that workers make mistakes, either because they are not trained or due to the fact that they are misled not to take the appropriate action.

In this contribution, it is not my intention to try and delve into what could possibly led to the said unfortunate events for one cannot reach a sound conclusion without undertaking a thorough appraisal.

From my hands-on experience as an architect and a lawyer, what is very concerning – and in no way I am attributing this to the incidents which happened this week – is that developers, contractors and, sometimes even, professional persons, are not fully aware of what is expected from them by law. Unfortunately, our building laws, including health and safety statutes, were enacted in a piecemeal fashion along the years and this only served to complicate matters.

Having said that, there are certain statutory norms which all developers ought to know and which, if you ask me, the not so regular developers could be unaware of. The following is a list containing the salient duties which all developers, including those who commission one-off constructions, ought to know.

It is the primary duty of a developer to engage competent persons who have the necessary knowledge and skill to carry out the works. That being said, the developer is obliged to take all reasonable precautions to ensure that the construction activity will not result in any damage to contiguous properties, including damage that may result from the infiltration of water.

What is considered as ‘reasonable’ is however not defined in the law, but I would say that the developer should make sure to exercise utmost diligence in line with good practice or policy after considering all relevant circumstances, including the proposed construction methodology, quality of terrain, the condition of adjoining buildings and the likelihood of adverse weather.

Prior to commencement of any demolition/excavation works, the developer is obliged to ask his architect to prepare a method statement incorporating a condition report with photographs of the properties which are contiguous to the site as well as a statement outlining excavation, demolition and construction procedures to be undertaken.

It is also the duty of the developer to engage a “site manager” whose role is to ensure that the development on site and the construction activities carried within it are in conformity with Legal Notice 72 of 2013 (these are regulations concerning the avoidance of danger to third parties which are distinct from health and safety regulations which fall under the Occupational Health and Safety [OHSA] legal regime).

The role of this site manager, as held clearly in Legal Notice 72 of 2013, is, therefore, distinct from that of the health and safety supervisor who reports to the OHSa by virtue of Legal Notice 88 of 2018.

If the developer fails to appoint a site manager to follow the works, then the developer shall ipso facto be deemed to be the site manager.

Professional responsibility insofar as the technical content of the method statement vests with the architect who prepares it but the ultimate responsibility for adhering to the method statement rests with the site manager and the contractor. In other words, if it is found that the instructions given by the architect were not followed, the responsibility is fully shifted to the site manager and the contractor. But, if the developer does not appoint a site manager, then he is himself held responsible for the adherence of the method statement.

If the site is sold to another developer, or the responsibility to carry out the works is transferred to a new developer independently of the site ownership, the original developer is bound to inform the Building Regulations Office about the details of the new developer.

Regardless of the above duties, including that to appoint a site manager in terms of Legal Notice 72 of 2013, the developer is also obliged to appoint a health and safety project supervisor for the design and execution stage who then reports to the OHSa.

Should the developer fail to appoint this 'second supervisor', all pertaining responsibilities are once again transferred to the developer by law (Legal Notice 88 of 2018).

As one can see, the legal responsibility of those who commission construction works is more than one could possibly think. It is, therefore, imperative that these obligations are seen into at the very outset and duly costed when a developer is planning his way forward. Failure to do so is only a recipe for the possibility of an unwanted disaster.