



Construction defects: Challenges after new construction

The purchase of a newly constructed property is a significant investment. It is highly important to identify potential construction defects correctly. In Switzerland, the rights and obligations of buyers and sellers are clearly defined.

Identifying construction defects

- **Careful inspection:** A comprehensive assessment is crucial at the time of property transfer. Create a detailed inventory of all defects you discover.
- **Seek expert guidance:** To obtain an in-depth evaluation of the defects, it may be necessary to seek the advice of independent construction specialists or certified experts.

Statutory framework conditions

- **Swiss Code of Obligations (OR):** The regulations governing work contracts (Art. 363 ff. OR) are particularly relevant in the context of rights and terms related to defects.
- **Warranty period:** According to OR, buyers generally have five years to make defect-related claims.

Notification of defects

A notification of defects is a critical process that ensures that you can successfully push through your claims. It helps to achieve a speedy and satisfactory solution for the problem.

- **Immediate notification:** Defects must be reported immediately upon discovery. This is key to not lose your rights. Delays can lead you to forfeit your claims. According to the Swiss OR, complaints about obvious defects must be made upon inspection, while hidden defects must be reported immediately upon discovery.
- **Written format:** Defects should always be reported in writing. This helps in documenting them and often is legally necessary for claims to be valid. Provide a detailed description of the defect, the date of discovery, and its potential impact.
- **Detailed description of the defect:** Describe each defect in detail and with clarity. Information such as the exact location of the defect, the extent of the damage, and how the defect impacts the usage of the property should be included. Photos and other supporting evidence can reinforce the notice of defects and are especially helpful in avoiding misunderstandings.
- **Setting a deadline for remedy:** It is advisable to set a reasonable deadline for the remediation of defects. The length of this deadline may vary depending on the type and severity of the defect. Familiarize yourself with industry-standard timeframes or consult a professional to determine an appropriate deadline.
- **Communication with involved parties:** In addition to informing the contractor or seller, notify other relevant parties such as architects, previous owners, or property management companies if they have been involved in the construction or management of the property.
- **Follow-up communication:** After the initial defect notification, maintain regular contact with the contractor or seller. Ensure that all communications are recorded in writing and document the progress as well as any responses you receive.



Rectification of defects

The remediation of defects identified during the building inspection often takes an extended period of time. This process can be challenging for both those responsible for the construction and the buyers, as the slow resolution of defects usually requires considerable persistence and patience until all identified issues have been fully addressed.

- **Right to remedy:** Contractors have the right to remedy the reported defects within an agreed-upon timeframe. This rectification is usually the first step before pursuing any further legal action.
- **Additional rights if remedy is unsuccessful:** If, despite all efforts, no progress is made in rectifying the defects, you should consider taking legal action to enforce your contractual rights.

The most common construction defects that can occur in building projects

1 Moisture-related damage:

Water intrusion caused by leaking roofs, faulty windows, inadequate sealing, or defective drainage systems can result in mold growth, wood damage, and other moisture-related problems.

2 Faulty insulation:

Insufficient or faulty insulation can lead to heat loss, which increases energy consumption and reduces comfort.

3 Cracks in walls or ceilings:

Cracks can be caused by settlement, material defects, insufficient reinforcement, or incorrect construction techniques and may result in structural issues.

4 Poor execution of construction techniques:

Incorrect execution of construction techniques such as masonry, concreting, or plastering can result in uneven surfaces, leaks, or structural instability.

5 Faulty electrical installation:

Faulty electrical installations can lead to short circuits, overloads, or safety hazards—particularly if the electrical systems do not comply with applicable standards and regulations.

6 Faulty sanitary installations:

Leaking pipes, clogged drains, or incorrectly sized sanitary fixtures can cause water damage, unpleasant odors, and hygiene issues.

7 Poor air quality:

Insufficient ventilation, inadequate air circulation, or air contamination can lead to poor indoor air quality, which can negatively affect the health and well-being of residents.

8 Inadequate fire protection measures:

Inadequate fire protection, missing or incorrectly installed smoke detectors, insufficient fire extinguishing equipment, or improper escape routes can compromise the safety of building occupants.

9 Insufficient soundproofing measures:

Inadequate sound insulation between apartments or rooms can lead to noise disturbance and reduced living quality.

10 Deficient construction planning and coordination:

Deficient construction planning, insufficient coordination between trades, or a lack of quality control during the construction phase can lead to a wide range of defects that may impact the overall performance of the building.

Conclusion

The proper handling of construction defects is indispensable to safeguard your rights as the buyer of a newly built property in Switzerland. A systematic procedure and the use of legal means can help to effectively get such defects repaired.



smzh-Tipp



Giau Nguyen
Builder Representative &
Real Estate Project Lead

“ Early detection and precise documentation of construction defects are crucial to the success of a defect claim. Carefully record the identified defects with photos and written reports, and notify the seller promptly and clearly – this is essential. I recommend carrying out this process in collaboration with a qualified expert to ensure that all relevant details are taken into account. This approach allows you to effectively insist on the remediation of defects, protect your rights as a buyer, and safeguard the quality, safety, and sustainability of your construction project, as well as the satisfaction of its occupants. ”

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