

**ILLINOIS STATE BAR ASSOCIATION  
SPECIAL COMMITTEE ON CONSTRUCTION LAW**

CONSTRUCTION LAW -- WHAT'S NEW IN 2010

RECENT CONSTRUCTION LAW CASES

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## **RECENT CONSTRUCTION LAW CASES**

### **Standard of Care**

*Thompson v. Gordon*, --- N.E.2d ---, 2009 WL3969619 (Ill.App. 2d Dist. 2009)

It is well-settled in Illinois that standard of care for all professionals is the same degree of knowledge, skill and ability as an ordinarily careful professional would exercise under similar circumstances. In professional negligence cases, the Plaintiff proves a breach of the standard of care through expert testimony. In this case, the Court changed the standard of care. The contract the parties entered into indicated that Defendants would “design a roadway interchange and replacement for a bridge deck” for the existing Grand Avenue Bridge over I-94. The Court’s interpretation of the standard of care turned on the word “replacement” within the parties’ contract. The Court relied on Webster’s Dictionary for the meaning of replacement, which was defined as “replace,” “take the place of,” or to “serve as a substitute for or successor of.” The Court acknowledged that Defendants had not contracted to modify or redesign the median barrier for the bridge. However, the Court noted that, in applying the standard care, the Defendants “more probably than not” would have designed a barrier that would have prevented the accident. Moreover, the Court found that it was possible the Defendants would have been put on notice that their proposed work was dangerous and likely to cause injury.

### **Duty of Care**

*Diaz v. Legat Architects, Inc.*, 920 N.E.2d 1203 (Ill.App. 1st Dist. 2009)

An individual who hires an independent contractor is not liable for the acts or omissions of the independent contractor. Under the “retained control exception,” if the individual who hires the independent contractor retains any control over any part of the work, then that individual is subject to any liability for the negligence of the independent contractor. However, if the individual hiring the independent contractor only retains

supervisory control, such as the order in which the work must be completed, then that individual is not liable for the negligence of the independent contractor.

*Madden v. Paschen*, 916 N.E.2d 1203 (Ill. App. 1st Dist. 2009)

A possessor of land is liable for the injuries of invitees if the possessor of land (1) knows or by the exercise of reasonable care would discover the condition, which involves an unreasonable risk of harm to invitees, and should expect that the invitee would not know of or would fail to protect against the existence of the dangerous condition; and (2) fails to exercise reasonable care to protect the invitee against the dangerous condition. In addition, a defendant who creates a dangerous condition on land on behalf of the possessor of the land can be held liable for injuries caused to third parties, even if the defendant is not the actual possessor of land.

*Aguirre v. Turner Construction Co.*, 582 F.3d 808 (7th Cir. 2009)

As a general rule, a general contractor is not liable for the injuries of a subcontractor’s employee that is caused by the negligence of the subcontractor. However, when the general contractor assumes a degree of responsibility for the safety of the work performed by the subcontractor, or that responsibility is imposed by law, then the general contractor owes a duty of care.

*American Family Mut. Ins. Co. v. Fisher Dev.*, 391 Ill. App. 3d 521 (1st Dist. 2009)

A general contractor entered into a construction contract with a retailer in which the contractor provided labor and materials for improvements at the retailer’s store. A subcontractor was hired to perform the work. The subcontractor’s general commercial liability policy provided exclusion for liability for bodily injury which stated, “for which the insured is obligated to pay damages by reason

of the assumption of a liability in a contract.” That exception was an “insured contract” for the purposes of the contractual liability exclusion. The insurer argued that it owed no duty to defend because its policy excluded coverage of the indemnity agreement between the retained and the general contractor. The trial court agreed with the insurer’s argument. The Illinois Appellate Court affirmed.

*Ioerger v. Halverson Constr. Co. Inc.*, 232 Ill. 2d 196 (2009)

This case involved injuries to three workers and the death of one worker when a platform collapsed and four employees plummeted into the river below them. Under Illinois law, the immunity afforded to an employer by virtue of the provisions of the Worker’s Compensation Act extend to both co-venturer of the employer, as an agent of the employer, and to the joint venture itself. The Worker’s Compensation Act immunity protects an employer from liability by precluding injured workers from bringing a negligence claim after filing for worker’s compensation. The only requirement for an employer to receive the immunity is to pay the worker’s compensation insurance premium. When two or more enterprises enter into a joint venture, each of the enterprises and the joint venture receives the immunity. However, if the employer does not provide the injured worker with worker’s compensation benefits, then the employer does not receive the benefit of immunity under the Act.

### **Construction Defects**

*CMK Development Corp. v. West Bend Mut. Ins. Co.*, 395 Ill. App. 3d 830 (1st Dist. 2009)

Purchasers entered into a contractor with the developer for the construction of a new residence. The purchasers gave a list of alleged defects to the developer. The developer’s insurance company refused to obtain counsel to represent the developer. The purchasers and developer eventually settled. The developer sued its insurance company for failing to obtain counsel

and to pay for the damages. If the application of an exclusion results in denying the duty to defend, the language of the exclusion must be clear and free from doubt. It is well-settled that construction defects that damage property other than the project itself constitutes an “occurrence” under a general commercial liability policy. Examples of other property include:

- (1) homeowner’s furniture, clothing and antiques;
- (2) cars in the parking garage built by the insured; and
- (3) carpets, upholstery and drapery in schools constructed by the insured.

Damage to other property does not include:

- (1) a sag in the house, a leak, and cracks in the footings and walls by purchasers of a new home against the carpenter who built it even though his poor workmanship led to the breaking of a bathtub;
- (2) water damage to the basement, damaged concrete work, and cracked floors; and
- (3) collapse of a masonry wall due to inadequate bracing during construction.

The court noted that there must be damage to something other than the structure, i.e. the building, in order for coverage to exist. Further, there is no coverage for contract liability that arises when a contractor fails to deliver the home that the purchasers bargained for.

*Western World Ins. Co. v. Penn-Star Ins. Co.*, 2009 WL 1609509 (S. D. Ill. 2009)

City awarded a contract to McCoy to demolish a building. When McCoy performed the demolition, he intentionally destroyed part of a common wall to the building next to the one he was demolishing not knowing it was a common wall. He

immediately stopped demolition once he realized the wall was common to both buildings. The demolition caused over \$100,000.00 in damage. Defendant paid for the repairs and brought a subrogation suit against City and McCoy to recover the amount it paid. McCoy tendered defense of the suit to Plaintiff which declined to defend or pay for any resulting liability. Plaintiff brought a declaratory judgment action seeking a declaration that the commercial general liability policy issued to McCoy did not cover the property damage, and as a result, there was no duty to defend or indemnify McCoy. Plaintiff alleges the damage was an occurrence and fell within the liability exclusion exception for damage to common walls. The City argued that the damage was an accident. Under Illinois law, an insurer has an obligation to defend its insured in an underlying lawsuit if the underlying complaint alleges facts potentially within the coverage of the insurance policy. An accident is an unforeseen occurrence “usually of an untoward or disastrous character or an undersigned sudden or unexpected event of an inflictive or unfortunate character.” The natural and ordinary consequences of an act do not constitute an accident. In determining whether an occurrence is an accident, the inquiry is whether the injury is expected or intended by the insured, not whether the acts were performed intentionally. Where an intentional act has an unintended and unforeseen consequence, the event may be an accident constituting an occurrence in an insurance policy. Here, the Court found that the insured’s act of demolishing the common wall was an accident covered under Plaintiff’s policy, which required Plaintiff to defend.

### **Targeted Tenders**

*River Village I, LLC v. Central Ins. Companies*, 919 N.E.2d 426 (Ill.App. 1st Dist. 2009)

Plaintiff was a general contractor on a building project with Harleysville as its primary insurer. Plaintiff hired First Choice as a subcontractor. As part of the contract between Plaintiff and First Choice, First Choice was required to name Plaintiff as an additional insured for defense and indemnification purposes. First Choice named

Plaintiff as an additional insured under its policy with Defendant. The insurance policy contained an “other insurance” excess provision. An employee of First Choice was injured on the job site. Plaintiff tendered its defense in the suit to First Choice. The Court noted that insurance companies utilize “other insurance” provisions to require that the insured exhaust the policy limits of other co-insurers before triggering a defense and indemnification duty in that insurer. The presence of “other insurance” excess provisions does not defeat an insured’s right to target tender defense to one particular insurer. However, when the insurers do not stand in the same position regarding a potential duty of coverage, it is clear that the insured cannot use his targeted tender right to choose to impose a coverage duty on an insurer with an “other insurance” provision to the exclusion of other co-insurers with which he holds primary policies. In this case, the Court found that the targeted tender doctrine was inapplicable.

*State Auto Property & Cas. Ins. Co. v. Springfield Fire & Cas. Co.*, 394 Ill.App.3d 414 (4<sup>th</sup> Dist. 2009)

In August of 2003, Swearingen Brothers obtained a general commercial liability policy from Plaintiff, which contained an “other insurance” provision. In March of 2004, Swearingen Brothers obtained additional coverage from Defendant for the “Montgomery Project.” Matthew Swearingen was injured and Wayne Boruff was killed when attempting to demolish a building at the Montgomery project. Swearingen and Boruff’s estates sued Swearingen Brothers to recover for their respective injuries. Plaintiff sought a declaratory judgment to have its coverage deemed excess to that of the general coverage. Because Swearingen Brothers was a named insured on both policies, Swearingen Brothers had the right to deselect its coverage under the Defendant’s policy in favor of the Plaintiff’s policy. Essentially, Swearingen Brothers targeted Plaintiff’s policy as its primary coverage. Moreover, Plaintiff’s “other insurance” provision did not supersede Swearingen Brothers right to deselect coverage because Swearingen Brothers never triggered Defendant’s policy.

*Statewide Ins. Co. and Westfield Ins. Co. v. Houston Gen. Ins. Co.*, 920 N.E.2d 611 (Ill. App. 1st Dist. 2009)

In September of 2001, JCC was named as an additional insured on the Westfield and Houston General policies. JCC advised both Westfield and Houston General that although JCC's insurer, Statewide, was given notice of the claim, JCC did not seek indemnification from Statewide. In fact, the 3/25/2003 and 3/27/2003 letters JCC sent to Houston General indicated that JCC specifically targeted Houston General to defend and indemnify JCC. In October of 2003, JCC, Statewide and Westfield reached a settlement agreement that resolved Westfield's declaratory judgment action. The Court found that, due to the deactivated tender of Westfield, Houston General could not seek equitable allocation of coverage or contribution from Westfield. Moreover, JCC had exclusively targeted Houston General as JCC's sole insurer, and deactivated its tender to Westfield. The Court noted that an insured has the right to choose or knowingly forego an insurer's participation in a claim. However, there are exceptions: (1) if the defense and indemnity requested exceeds the primary limits of the selected insurer's policy, the primary policy of the deselected insurer(s) must be responsible for the loss before the insured can seek coverage under an excess policy; and (2) targeted tender does not apply to automobile policies. The Court further noted that when multiple insurers are involved who provide concurrent coverage, the insurers may seek equitable contribution from each other.

### **Misrepresentation**

*Linhart v. Bridgeview Creek Dev., Inc.*, 391 Ill. App. 3d 630 (1st Dist. 2009)

The builder and seller of a four-town home building allegedly concealed and misrepresented information regarding the foundation of the building. When the homeowners began to experience problems with the homes, the developer claimed no liability and refused to fund the repairs. The court found that the developer committed common law fraud. The elements of common law fraud are: (1) a false statement of

material fact, (2) the defendant's knowledge that the statement was false, (3) the defendant's intention to induce a party to act, (4) the plaintiff's reliance on the false statement of fact, and (5) the plaintiff's damage resulting from reliance on the false statement. In this case, the developer made a series of misrepresentations concerning a structural engineer report never provided to the homeowners, and that the basement and foundation had a 20-year warranty.

### **Home Repair and Remodeling Act**

*Fandel v. Allen*, --- N.E.2d ----, 2009 WL 184076 (3rd Dist. 2010)

Plaintiff performed construction work for Defendant on her home. After the work was complete, Plaintiff recorded a claim for lien and commenced suit to foreclose the lien. In order to foreclose a mechanics lien, the lien must be based upon a valid contract. If there is no valid contract, the lien is unenforceable. Failure to provide the homeowner with a consumer right's brochure and failure to secure a written contract violates the HRRRA. However, these violations do not automatically invalidate an otherwise enforceable agreement between parties. The attorney general may seek penalties against the contractor in cases of violation. Moreover, HRRRA provides that any violations of this act constitute violations of the Consumer Fraud and Deceptive Business Practices Act. The Court noted that Defendant could recover actual damages through the CFA. Based upon the Court's reading of the HRRRA and CFA, the legislature did not intend to provide homeowners with a private right of action under HRRRA. Moreover, homeowners cannot use HRRRA as an affirmative defense to a mechanics lien.

*Roberts v. Adkins*, 921 N.E.2d 802 (Ill. App. 3rd Dist. 2010)

Plaintiff performed work on Defendants' property. When Defendants failed to pay for services rendered, Plaintiff recorded a mechanics lien on Defendants' property. Plaintiff filed suit to

foreclose on the lien. Defendants raised the HRRRA as an affirmative defense. The Act requires the builder to provide the homeowner with a consumer's right brochure. If the contract is over \$1,000.00, the homeowner must sign a form acknowledging receipt of the brochure. The Act further requires the parties to sign a contract for work over \$1,000.00. The Court found that there is no exception to the Act for contracts that are initially less than \$1,000.00. Once the builder discovers that the contract will exceed \$1,000.00, the builder must obtain a written contract. Because Plaintiff did not secure a written contract and did not provide the homeowner with a consumer right's brochure, there was no valid contract between the parties that could form the basis for Plaintiff's mechanic lien. Therefore, the lien was unenforceable and the court had no authority to enter judgment on the mechanics lien claim.

*Kunkel v. P.K. Dependable Constr., LLC*, 387 Ill. App. 3d 1153 (5th Dist. 2009)

The Defendant installed a new roof for the Plaintiffs, homeowners. Plaintiffs sued when the roof began leaking, and the contractor was unable to stop the leak after approximately 20 to 25 repairs. The homeowners hired another contractor to install a new roof and repair the water damage. The Plaintiffs sued Defendant for breach of contract and warranty, and violating the Consumer Fraud Act. Specifically, the Act requires a contractor who fails to finish work on a home to return the homeowner's down payment and any other money paid for the work within 10 days. Plaintiff also alleges that Defendant failed to provide Plaintiffs with a consumer right's brochure. The Appellate Court found that Defendant breached its contract and warranty by installing a roof that continually leaked. However, Defendant did not violate the Consumer Fraud Act. The court found that, despite Defendant failing to provide the brochure prior to entering the contract, the Defendant did not knowingly fail to provide the pamphlet as required by the CFA. Further, there was no evidence that the Plaintiffs suffered any damages from not having the pamphlet.

*Miller Constr. Co., Inc. v. McGinnis*, 394 Ill. App. 3d 248 (1st Dist. 2009)

The homeowners and contractor entered into an oral agreement to remodel the homeowners' home for approximately \$187,000.00. The homeowners paid the initial invoice of \$65,000.00. At the request of the homeowners, the scope of the project expanded, and the ultimate construction price exceeded \$500,000.00. After receiving the second invoice, the homeowners refused to pay and demanded the contractor complete the project before any further payments. The homeowners did not allege that the contractor engaged in deceptive practices. The homeowners refused to pay more than \$177,580.33, and the contractor sued to recover payment. On appeal, the contractor argued that even if the oral agreement was unenforceable, *quantum meruit* should still be available to prevent the homeowners' unjust enrichment. To recover under *quantum meruit*, the contractor had to prove:

- (1) he performed a service to benefit the defendant,
- (2) he did not perform this service gratuitously,
- (3) defendant accepted this service, and
- (4) no contract existed to prescribe payment for this service.

The Appellate Court held that, under the plain language of the HRRRA, oral contracts for more than \$1,000.00 were unenforceable. However, the Court found that *quantum meruit* was still available to the contractor to recover the reasonable value of the services rendered.

*Artisan Design Build, Inc. v. Bilstrom*, --- N.E.2d ---, 2009 WL 3052362 (Ill. App. 2nd Dist. 2009)

Defendants entered into a written contract with Plaintiff for home improvements totaling \$534,970.00. The parties agreed to eight change orders, which significantly increased the contract price. Defendants paid six draws that Plaintiff submitted, but failed to pay the seventh. Plaintiff

alleges that it provided materials and labor pursuant to the contract and change orders until September of 2006 at which time the project was “substantially complete.” Defendants locked Plaintiff out of the project in September of 2006, and advised Plaintiff they hired a new contractor to complete the project. Plaintiff was not given the opportunity to cure any defects, and alleges Defendants owe in excess of \$208,695.69. Plaintiff appeals from the trial court order dismissing its complaint for failing to furnish a consumer rights brochure in violation of HRRRA. The Court indicated when the language of a contract is clear and unambiguous; they must apply the contract as written. For a private right of action to exist under the Act for failure to furnish a consumer right’s brochure, the plaintiff must prove that the failure to provide the consumer rights brochure proximately caused his damages. A contractor’s failure to provide a consumer right’s brochure does not vitiate the contractor’s right to recover either in equity or in law. However, failure to furnish a brochure may give the consumer a cause of action under the Consumer Fraud and Deceptive Business Practices Act. Here, the brochure only advised defendants of their rights, but did not embody their rights. Further, the brochure was not made part of the contract. The Court noted that holding a failure to provide the brochure allows the consumer to defeat all equitable and legal claims by the contractor would lead to “mischief” and a result the legislature could not have intended.

### **Mechanics Liens**

*Weydert Homes, Inc. v. Kammes*, 395 Ill.App.3d 512 (2d Dist. 2009)

The general contractor filed a complaint against the homeowner: to enforce a mechanic’s lien, for breach of contract, and alternatively *quantum meirut*. The Defendant argued that the contractor failed to provide a “current” sworn contractor’s statement, and the statement that was given to Defendant was not notarized as required under the Mechanics Lien Act. The Court held that because of this omission the contract did not have a valid lien.

However, the failure to provide a sworn statement did not preclude the contractor from asserting a breach of contract claim. The court noted that the homeowner received the benefit of contractor's work and was aware of the subcontractors' liens within the 90-day period allowed by the Act. The homeowner was aware of the subcontractors' liens prior to his demand for a sworn statement. The *quantum meirut* claim was also not barred.

*Crawford Supply Co. v. Schwartz*, 919 N.E.2d 5 (1<sup>st</sup> Dist. 2009)

The subcontractor’s failure to provide the homeowners with a notice of agreement to furnish services or materials to the general contractor within sixty days of furnishing the services or materials did not render the subcontractor’s claim invalid as a matter of law. The court noted that in this case the homeowners had not been prejudiced by lack of notice. The homeowner’s had not made payments to the general contractor due to the subcontractor’s failure to provide a Section 5(b)(ii) notice. Accordingly, the legislature did not intend homeowner’s to receive a “windfall” and pay nothing for valuable services if a subcontractor failed to provide notice when the owner had not already paid the general contractor.

*LaSalle Bank, N.A. v. Cypress Creek et. al.*, 2010 WL 273042 (3d Dist, January 15, 2010)

Priority between a mechanics lien claim and a mortgagee’s claim is determined by first looking at whether the lien claimant’s underlying contracts were executed before or after the mortgage was recorded. In this case, because the mortgage predated the underlying contracts, the liens are preferred as to the extent of the value of the improvements and the mortgage as to the value of the land. Because the proceeds from the sheriff’s sale were insufficient to cover all claims, the trial court was correct in crediting the lien and mortgagee claimants based on its proportional share.

The court further held that the bank that supplied the funds that were used to pay the contractors did not subrogate the bank to the position of a

mechanics lien claimant for the purposes of determining the parties' proportional shares. The evidence did not show that there was a perfected lien. The bank instead obtains the benefit of the improvements it financed via the enhanced value by the mortgage.

*Cordek Sales v. Construction Systems, Inc.*, 394 Ill.App.3d 870 (1<sup>st</sup> Dist. 2009)

The bank that financed a construction project contested the validity of both the sub-subcontractor's mechanic's lien and the subcontractor that hired the sub-subcontractor's lien. The court held that the subcontractor's lien contained a sufficient description of the property even though it did not include the most recent legal description. Under Section 7, the description must be sufficient to identify the affected land. In this case, the subcontractor included the street address and property index number to identify the property.

The court also held that a failure to complete the work within three years from the time of commencement pursuant to Section 6 of the Act was not an affirmative defense. It is an element of the cause of action because compliance is required by statute. Further, the fact that the contractor's work took longer than three years to complete did not invalidate the mechanics liens. The Section 6 timeline relates to the work for which each lien is sought. Under Section 6 "the work" that it refers to is not necessarily the work of the general contractor. For purposes of determining the timeline for a subcontractor or sub-subcontractor "the work" is their own work and must be completed within three years.

The sub-subcontractor's amendment of its complaint to reduce the amount it sought in recovery was insufficient to establish that the original lien was intentionally overstated and did not constitute constructive fraud.

*Weather-Tite, Inc. v. Univ. of St. Francis*, 233 Ill.2d 385 (2009)

An owner has a duty to retain funds due to a subcontractor as shown on the general contractor's sworn statement pursuant to Section 5 of the Act. The owner was on notice of the amount due to the subcontractor. Thus, even though it paid the general contractor the amount due, the owner was still liable to the subcontractor for the amount it was owed.

*Springfield Heating & Air Condition, Inc. v. King Drive at Oakwood*, 901 N.E.2d 978 (1<sup>st</sup> Dist. 2009).

If a subcontractor overstates the amount of money that it can legally collect from a mechanics lien, whether or not the subcontractor will be precluded from enforcing the lien is dependant upon whether the subcontractor's overstatement was intentional or merely accidental. The court noted that in order to invalidate the lien there must be an express showing of an intent to defraud established by the evidence in addition to and apart from an overstatement included in the lien.

*Inter-Rail Systems, Inc. v. Ravi Corp. et al*, 387 Ill.App.3d 510 (1<sup>st</sup> Dist. 2008)

A mechanics lien filed based upon the removal and disposal of waste pursuant to an order by the United States Environmental Protection Agency (EPA) was not proper under the Act because there was not improvement to the property. Illinois courts have held that services that merely maintain rather than improve property are non-lienable acts under the Act. Further, a contract that includes both lienable and non-lienable work without delineation between the two will fail under the Act.

## **Statute of Limitations**

*Burbach Aquatics, Inc. v. City of Elgin*, 2009 WL 1940787 (N.D.Ill., July 7, 2009)

The four-year statute of limitations in Section 13-214 is not applicable to a landowner unless that landowner is actually engaged in the professional planning, supervision, or management of a construction project or the construction of an improvement to the property. The court held that a failure to pay construction expenses did not fall within the statute where the complaint does not relate to acts or omissions in the exercise of supervisory and managerial powers. Thus, the ten-year statute of limitations applies and begins to run when the breach of contractual duty occurs. In this case the cause of action began to accrue when the defendant was contractually obligated to make a payment.

*Federal Insurance v. Konstant Architecture Planning, Inc.*, 388 Ill.App.3d 122 (1<sup>st</sup> Dist. 2009)

The four-year statute of limitations for the construction of improvement to real property applied in an action against an architecture firm for allegedly failing to properly design the insured's residence, failing to properly supervise installation, and failing to warn the insured's of potential risks. The four-year statute of limitations was more specific to the particular instance than the 10-year breach of contract statute of limitations. Additionally, the provision in the standard form agreement between the owner and architect provided that the statute of limitations would begin to run on the date of substantial completion of the project or final payment of the owner. Thus, application of the "discovery rule" was precluded.

## **Arbitration**

*Illinois Concrete-I.C.I., Inc. v. Storefitters, Inc.*, 2010 WL 298565 (2d Dist., January 20, 2010)

The court held that by filing a demand that a subcontractor bring suit on its mechanics lien

claim pursuant to Section 34 of the Mechanics Lien Act, the general contractor acted in a manner inconsistent with its right to seek arbitration. The contractor was not compelled to make the demand and could have sought arbitration. The contractor acted in derogation of the contract terms by demanding litigation, and thus waived its right to seek arbitration.

## **Green Buildings Act. 20 ILCS 3130/1 et. seq.**

The Act created new "green building standards" and requires that all new State-funded building construction and major renovations of existing State-owned facilities seek LEED, Green Globes, or equivalent certification. Additionally, all construction and major renovation projects, regardless of size, must achieve the highest level of certification practical within the project budget. New buildings and major renovations of less than 10,000 square feet must meet the highest standard under LEED or an equivalent standard. New buildings and major renovations of 10,000 square feet or more must achieve the silver building rating under LEED, or an equivalent standard. State agencies and the project design team may, however, apply for a waiver. Waivers may be granted if documentation demonstrates the following:

- (1) An unreasonable financial burden, taking into account the operating and construction costs over the life of the building and the total cost of ownership of the building.
- (2) An unreasonable impediment to construction.
- (3) The standards would impair the principal function of the building.
- (4) The standards would compromise the historic nature of the structure.