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# Fixing the blame in a fire mishap and moving on

Gaps in Dubai's owners' association mandates still pose a problem

By Shahram Safai, Special to Gulf News

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When I practised as a young professional engineer in North America, I remember waking up each morning and having the most important principle of our professional code of conduct — 'public safety is paramount' — inspire the rest of my daily interactions and work.

Years later, after I had studied law and became a partner in a law firm, this principle came sweeping back to my mind when I saw images of the burning Marina Torch tower in Dubai Marina.

Public safety is the call of every engineer and architect. There is no higher purpose for such individuals. In addition to their professional codes of conduct, the UAE Civil Code (Law 5 of 1985) imposes on an architect a 10-year period of liability from the date of delivery of a

building for any defects in design that threaten its safety or stability.

This law imposes the same liability upon the contractor for defects in construction.

Of course, the cause of the Torch fire is still under investigation. So we shall have to wait to see why such a horrendous fire started and spread. The Wikipedia page for The Marina Torch states that ‘witnesses said the fire started with a grill located on one of the building’s balconies ... external cladding was charred from the 50th floor to the top of the tower’.

Obvious questions include the design precautions against high winds and a grill on a balcony, which could result in a fire (a likely scenario), taken by the architect. Did the contractor use appropriate fireproof or fire retardant materials? Did he use appropriate fire stops and other fire control mechanisms?

### **Alarm trouble**

We have read there were fire alarm problems in the tower — was this a contributing factor? Was the facilities management company adequately performing its duties with respect to the fire alarm system maintenance?

The owners will need to investigate these matters to determine who is liable and to address safety of the tower going forward. At the end of the day, it is the owners of the units in Torch who are responsible for getting the tower repaired after such a disaster.

However, they can seek to blame and hold liable those who may be responsible as discussed above, in addition to the owner/tenant who has caused the fire. Of significant assistance is that the building was insured

and so the insurance policy should cover the damages and repairs and then, in turn, the insurer can claim against those responsible.

The Dubai Jointly Owned Property Law of 2007 deals with jointly owned property such as towers. It stipulates that a developer is also liable to the owners for all mechanical, electrical, plumbing, etc. installation problems for a year and for structural defects for 10 years. Hence if the occurrence of the fire or its spread were related to such installations or structural defects, the developer may also be liable.

The Dubai Jointly Owned Property Law also deals with the formation of an owners' association for a tower. However, the implementation has been partially delayed and, hence, most towers have Interim Owners' Associations (IOAs), which is a group of owners without legal standing. As a result, this also means that developers still remain in the picture to collect service charges on behalf of the IOAs.

However, under the law, it is the owners' association that is responsible for procuring insurance for the building. The fact that only IOAs exist creates a question as to who is responsible for procuring insurance? The likely answer is that the owners as a collective are responsible.

After all, they have to pay service charges to maintain the building, pay for a reserve fund and for prudent protection such as insurance.

This position would be true regardless of the application of the Jointly Owned Property Law. An owner of an asset is responsible for its upkeep and protection. In this instance, the developer is simply acting as a conduit for funds collected from owners and paid to the

facilities management company and the insurance company.

### **Development delays**

However, as the owners' association has not been officially created due to implementation delays, it can be argued that the developer is still liable under the law. But logic and fairness would dictate that once a building has been handed over to the owners for so long, they are responsible. The developer should not be liable for its insurance or maintenance of a building due to such a technicality as the non-creation of an owners' association due to staged implementation of the Jointly Owned Property Law.

The Dubai Land Department has been working on amendments to augment the Jointly Owned Property Law to address some of those issues.

Given all of the above, owners need to take proactive measure to assess the safety of their building. Commencing with its design and then its construction and use. This is not just an academic exercise. We are talking about the safety of men, women and children who live, sleep or work in towers ... it is a very real risk. There have been too many occurrences in too short a period.

Dubai has developed at an impressive construction rate since the early 2000s. However, the speed of construction (and stagnant construction works during the global financial crisis) have resulted in problems and, at times, inconsistent practices.

Every emerging market goes through growing pains. The question is how quickly can these issues be addressed before they become public safety concerns.

— *The writer is a Partner at the law firm of Afridi & Angell and a professional engineer. He can be reached on Ssafai@afриди-angell.com. The views expressed are his own.*