

IT SHOULD NOT BE A PROBLEM, I GOT SIGN OFF!

When a floor fails and the consumer signed off on a waiver, who is responsible?

First, let me make it clear...I am not an attorney and have no plans to offer legal advice in this blog regarding “release of liability” as it pertains to the installation of hard surface flooring, or any flooring as far as that is concerned.



Let's start with any resilient flooring product. A close look at products on the market reveals two detailed documents that accompany any brand of resilient flooring and are critical to the long-term expectations, defining responsibility and indicating exclusions as it pertains to the flooring material. These documents are the Manufacturer's Warranty and Flooring Installation Instructions.



Manufacturer's Warranty defines, in detail, parameters, terms and exclusions including liability limitations of the flooring maker and the process for a consumer to submit a complaint during the time that the flooring is covered by the warranty. This document can sometimes be confusing due to the legalese embedded in the body of the warranty, but nonetheless, it is the blueprint for expectations for that flooring product.

Printed Installation Instructions is the second important document for flooring products and should be considered a road map, that shows the most direct route for long-term performance and success after the flooring is installed. Manufacturers of floor covering put a great deal of effort into creating floor covering install directions. They collaborate with flooring industry associations in order to adhere to guidelines established by governing bodies within the flooring industry. Through laboratory tests and field installation trials, they are able to create a



set of procedures in compliance with industry best practices and best for installing their specific flooring product. Everyone involved in the process of buying, specifying or installing a new floor, commercial or residential, should read and become familiar with the flooring manufacturer's Installation Instructions before the floor is put in place. Depending on the size of the flooring job, involved parties might include a General Contractor, Architect, Interior Designer, End User Consumer, Facility Manager, Flooring Installer and/or Flooring Contractor. Flooring Installation



Pattern of existing floor shows through the new floor even though the underlying material should have been removed according to flooring manufacturer instructions.



Excessive moisture coming up from the slab beneath the floor due to vapor emissions that exceed allowable level.

Instructions should be considered the Holy Grail as it pertains to handling, installing and maintaining a new floor. Now why would anyone think that getting "Sign Off" would remove the burden of liability and responsibility for conditions that don't adhere to the flooring warranty or installation procedures?

As I work as a troubleshooter for major resilient flooring manufacturers to resolve problems that arise on large jobs, I find, after discussing project details regarding moisture, slab preparation, pre-existing flooring removal, ambient conditions, job site conditions, etc., that more often than not, a critical step or steps of the flooring manufacturer's printed literature has been modified, compromised or totally ignored. When the flooring contractor or installer is questioned about such omissions or changes, the response is often, "I got sign off", indicating that it was, from their



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viewpoint, ok to proceed with the job even though they could not adhere to flooring installation requirements.

“Gambling and expecting a waiver to absolve anyone of any liability is not a path you want to travel. The guys who make out on that deal when arguments ensue are the attorneys and us.” This statement, by Lew Migliore, flooring industry veteran and inspector, is spot on! (The Commercial Flooring Report, Volume 64, Waivers and Liens, October 2013)

In a story, Do It Right or Walk Away by Michael H. Dean, published in Hardwood Floors Magazine (December 2010/June 2011), a flooring installer’s failure to address subfloor deviation of 3-6 inches on a residential job created major problems post-installation even though the Installer felt comfortable completing the job because he had the homeowner sign a release of liability. The release cited face defects on the value-grade flooring material, deficiencies in the home’s subfloor and that directions for installing the floor were not packaged with the engineered wood material.

You guessed it, off to court they went. The Flooring Installer and the firm that hired the Installer came to court with an attorney. The homeowner, who was suing the Installer for the cost to remove the problematic floor, level the subfloor and install new engineered hardwood, represented themselves in court.

The outcome? A set of flooring installation instructions, located online by the homeowner, clearly stated that the subfloor should not deviate more than 3/16 of an inch in ten feet. The judge ruled that the homeowners, who were not experts in flooring, hired a professional to do job and the professional flooring installers wre thereby liable. The Installation company was instructed to pay \$16,000 in damages to the homeowner and they were not to collect \$2,000 remaining on the installation fee from the homeowner. The judge emphasized that no matter what the owners said, signed or authorized, they were NOT experts in flooring and the installer should have done the job the right way or walked away.

