

Codes and Standards Responsibility Checklist

1. Are the standards you seek to enforce/utilize a part of the law?
 - A. There must be a current, applicable statutory enactment for this to be true
 - “Standards” alone are not enough
 - Guidelines, rather than requirements don’t result in a direct legal obligation, but they can still trigger “negligence”
 - B. If the standards are not the law, should they be a part of your contract?
 - The danger of “silence” is that responsibility will not be the consequence of agreement, but the result of a later liability assessment
2. Does your contract clearly identify who is responsible for compliance?
 - A. The contract can change the statutory “target”
 - B. For “buyers,” silence can result in an assumption in the risk
 - C. For “sellers,” the level of expertise may mean that silence transfers responsibility even without a contract clause
3. If compliance is a “team effort,” be as detailed as possible with respect to each team member’s obligations
 - A. If you are expecting to rely on someone else’s analysis, say so
 - B. This applies “downstream” among separate team members
 - Architect/Code Consultant
 - Owner/Separate Consultant
 - Design/Build Joint Venture Members
4. If you want your responsibility to be “limited,” the contract should say so
 - A. Disclaimers and waivers are generally enforceable
 - B. Silence will not act as a limitation and “non-contract” documents may not be admissible under the parol evidence rule
5. Document all decisions, discussions and assessments
 - A. Regularly maintained records are the “best evidence.”
 - B. Difficult decisions and/or subtle distinctions are best made in writing
 - C. “Management” and direction are sources of responsibility
6. Representations should be written and precise
 - A. Expertise is a responsibility, not a reward

