

TECHNICAL SPECIAL INFORMATION 14

The duty to mitigate damage

Unfortunately, the importance of this topic is usually only recognised when a major property damage has occurred and contractual partners or insurers argue with policyholders about the amount of compensation.

Then however "the child lies already in the well" and this so-called "turning away and reduction obligation" to the additional problem point. Therefore we would like to draw the attention of our customers and partners in this form.

What is to be understood by "averting and reduction obligation"? An example from practice:

A parquet layer coats the newly laid parquet of a 3-family house in 3-fold roll construction with water seal. With the second layer of the first dwelling it determines beyond doubt that many small bubbles distribute themselves over the dried sealing surface. This is an unmistakable alarm signal! Is there a processing fault on the part of the customer or is the sealing material defective?

Instead of interrupting the work and calling the seal manufacturer immediately, the employee carries out the last job with the same material after intermediate sanding. In addition, he allows colleagues from another column to start the next apartment at a later date using material from the same batch, because, as always, you are under time pressure!

The end result: the entire house was sealed and there were bubbles everywhere. The water seal had, as it was discovered afterwards, got frost during transport, which destroyed the defoaming. Without being able to go into the reasons for the behaviour here in more detail, it becomes clear that the damage could have been averted if one had stopped after the second shift in the first apartment. The damage could also have been minimized if the work had been stopped at least after the first apartment.

Even the argument of "time pressure" put forward by the parquet layer didn't convince anyone, because now everything that takes longer than an express shipment of new sealing material has to be sanded and resealed! But who will pay for the damage?

To this question §254 BGB ("Eigenes Verschulden") becomes very clear. Accordingly, a liability for damages for the avoidable part of the damage is excluded. Also § 62 of the insurance contract law (VVG) takes off on these obligations.

Unfortunately, this example is not an isolated case. Difficulties often emerge relatively early and yet time pressure, unfounded optimism ("that will still go away") or underestimation of the final inspection ("the client will already accept it") are carried through to the bitter end.

Please tell your employees over and over again that there is an obligation to avert and reduce damage and that the rule of thumb applies:

In the event of any abnormalities in the sealing material, perhaps in connection with signs of surface defects, interrupt work and consult your staff! In this way, some damage can be reduced or even avoided.