I was leading an ASFE *Professional Practice 101* seminar a few years ago, and, as is my wont, I was waxing poetic (or is that apoplectic?) about liability issues, in hopes of imbuing attendees with an appropriate amount of fear. The examples I was citing seemed to be doing the trick for all except one fellow sitting in the front row, who seemed utterly bored. At the first break, he smiled knowingly and said, "You're really scaring these guys."

"You're not scared?" I asked.

"No reason to be."

"And why's that."

"I'm a civil engineer. All I do is subdivision layouts for developers."

"But what about your duty of care," I asked, somewhat surprised. "You have a duty of care to everyone who buys a home in the subdivision."

"I don't worry about duty of care," he said. "The developers are all my friends."

And with that, he left the seminar, secure in the false knowledge that, somehow, having a developer as a friend would shield him from a lawsuit filed five years later by a homeowner who alleged that, because of faulty subdivision planning, water got into the plaintiff's home causing a mold infestation that led to illness, lost work, diminution of the home's value, and any number of other costly problems.

You need to know about duty of care, because – when all is said and done – it can be even more important than the duty you owe to a client.

As a professional engineer, you benefit from a government-sanctioned monopoly that forbids unlicensed people from performing your kind of engineering. Which is a good thing. After all, competition is tough enough as it is. Imagine if anyone could claim the necessary expertise to do what you do. But they cannot: P.E.s have the monopoly. But there's a catch.

In return for their monopoly, licensed engineers are duty-bound to preserve and protect public health, safety, and welfare. Loosely translated, this means you owe a duty of care to anyone who foreseeably could be harmed by what you do.

Is it foreseeable that the developer would use the civil engineer's plans, then build houses that people would buy? Of course. Is it foreseeable that, if the civil engineer committed an error or omission, one of the homeowners would be injured or damaged? Of course. As such, civil engineers need to consider the needs of homeowners and other third parties when developing and implementing a scope of service for a single-family residential subdivision.

Because you are duty-bound to preserve and project public health, safety, and welfare, "The client made me do it" is not an excuse for failing to implement your duty of care. Why? As often is the case, the question answers itself when you ask, "What should a physician do?" For example, let's say you are about to undergo open-heart surgery and, in order to keep expenses down, you instruct the physician, "Rather than sew me up, just close with some Super Glue" The physician fulfils your request and, predictably, you die. How would the courts react to the defense, "All I did was what the patient asked"?

One of the cases I use in explaining duty of care involves an older couple who decided to use their savings to build a quadplex. They would occupy one unit for the rest of their lives, they told their architect, and use the income from renting the other three to pay all the bills. Their budget was limited, so they told the architect that, above all, they needed low first cost. The architect obliged, and also made it a point to document everything, just

in case. Which was a good thing because, about five years after the quadplex was first occupied, the owners condominiumized the place and left for warmer climes.

It didn't take long for the new unit owners to experience buyer's remorse. Because of cheap materials and workmanship, the roof began to leak, the paint began to peel, banisters fell off railings, and so on. The homeowners filed a claim against the architect on the ground that it was foreseeable that the couple would condominiumize the building and, as a consequence, the architect owed the potential unit owners a duty of care, and that he ignored that duty by agreeing to satisfy the "developer's" low-first-cost request.

The architect countered with documents showing that the couple clearly intended to live in the quadplex for the rest of their lives, and, as a consequence, condominium conversion was not foreseeable. That being the case, the only party to whom the architect was liable for quality issues was the client. And the court agreed.

It doesn't always work out that way, however: Foreseeability is established on a case-by-case basis. Consider the case of the young man who was taken to jail and committed suicide by hanging. He fashioned a noose from his athletic shoe laces, putting his head through one end and tying the other end to a coat hook in the cell. The young man's family sued several parities, among them, the architect. The family alleged that the architect failed to meet his duty of care because it was foreseeable that someone who's arrested may be depressed enough to commit suicide and, as a result, specifying a coat hook for a jail cell was negligent. Foreseeable? Yes, said a judge.

So there you have it: Yet another issue you didn't know anything about before you decided to become a civil engineer. But did your teachers owe you a duty of care?