

# Watch Your Language: “Absolute Compliance”

Contributed by Victor O. Schinnerer & Company Inc.

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The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to contractual agreements.

## SUMMARY

“All” is a little word with a considerable ability to create unreasonable contractual obligations for an architect, if misused. To avoid this possibility, Victor O. Schinnerer & Company recommends modifying the use of absolute language (e.g., “all”) in contracts by choosing wording that reflects an architect’s compliance with codes and standards without placing excessive expectations on the architect’s professional duty.

## COMPLIANCE WITH CODES AND STANDARDS

Client-drafted agreements and other nonstandard contract forms often require the architect to design in compliance with “all laws, regulations, codes, and standards.” Such absolute language (e.g., “all”) regarding compliance may also be found in the construction-phase service provisions of such agreements and in related certification forms.

Inclusion of absolute language in a written agreement might be construed as a performance guarantee. Short of a guarantee, it may raise the measure of the architect’s performance above the professional standard of care. It often establishes a responsibility on the architect’s part for the acts of others.

Such language often indicates an unsophisticated client who does not understand the principle of equitable assignment of risk. Clients who are unfamiliar with appropriate design and construction agreements often become dissatisfied due to unreasonable expectations. Finally, unqualified language may imply an obligation on the architect’s part to comply with laws that are enacted during the design or construction phases of a project without additional compensation.

## UNDERSTANDING “PROFESSIONAL DUTY”

Architects have a professional duty to employ sound design practices and to comply with those federal, state, and local laws, regulations, codes, and standards applicable to the project at the time the architect renders services. Whether or not a contract obligates the architect, the architect will be held liable for designing a project in conformance with the codes and standards of the specific jurisdiction in which the project is built as well as applicable state and federal laws. Failure to do so may be prima facie evidence of negligence. In fact, designing to code is the very least an architect must do. Under certain circumstances, merely designing to minimum code requirements may be negligent if the standard of care dictates a design that exceeds code. Clients must recognize that, in any case, architects already have a professional obligation to comply with codes and regulations.

## CHANGES DURING A PROJECT

If an architect learns of a change in laws, regulations, codes, or standards that may affect a project, the architect has a professional duty to inform the client of the change. The architect must also report the impact of the change on the services performed and the construction work already done or to be done; the fees and costs that would be involved in changing either the construction documents or work in place; and the impact on the project schedule. If the owner-architect agreement does not already acknowledge such redesign as a contingent additional service, the contract should be amended to permit the architect to continue to meet the client’s needs.

However, while architects have a duty to be aware of such legal changes during the design process, they do *not* have a professional duty to assume the risk that *during the construction process*, some applicable law may change that may require the client to decide to bring its facility into compliance.

**“ALL” IS NOT WELL**

The sticking point in compliance provisions often can be found in the word “all.” Thousands of laws, codes, and regulations relate to design and construction. All are subject to change, and many are open to interpretation.

Sometimes one regulation conflicts with another, which may require the architect to exercise expert judgment concerning the applicability of the conflicting laws. Absolute language can put the architect in the untenable position of being contractually obligated to comply with two conflicting requirements. If the design can comply only with one and the architect has agreed in the contract to comply with “all,” the architect may be unable to fulfill a contractual obligation. It is important that clients understand the potential for conflicts between codes.

If an architect cannot persuade a client to remove the word “all” from the compliance provisions of an owner-architect agreement, it may be helpful to fix the architect’s obligation in time and tie the architect’s obligation to the standard of care. Such a provision might read as follows:

*The Architect shall review codes, regulations, and laws applicable to the Architect’s services and shall exercise professional care to design in compliance with all applicable codes, regulations, and laws in effect as of the date of \_\_\_\_\_.*

**RESOURCES**

**More Best Practices**

The following AIA Best Practices provide additional information related to this topic:

- 09.01.01 Risk Management Checklist
- 14.01.01 Quality Control: Managing the Top Five Risks
- 09.01.05 Controlling Exposure to Risk

**For More Information on This Topic**

See also “Construction Agreements” and “The AIA Documents,” by Dale R. Ellickson, FAIA, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 11, pages 299 and 308, respectively.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at [bookstore@aia.org](mailto:bookstore@aia.org).

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Two Wisconsin Circle  
Chevy Chase, MD 20815-7022  
(301) 951-9746  
[www.planetAEC.com](http://www.planetAEC.com)

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