

Legal Elements of Contracts

Excerpted and adapted from *The Architect's Handbook of Professional Practice*, 13th edition

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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 contracts and agreements.

SUMMARY

Contract law varies from state to state. A basic understanding of legal elements will help an architect craft a contract in correct legal form (in consultation with an attorney). A review of basic contractual elements and legal entities is outlined.

BASIC CONTRACT ELEMENTS

Architects enter into many contractual agreements, some related to projects and others for general business purposes. It is important to prepare contracts in the correct legal form. Laws regarding contracts may vary from state to state. Architects and their attorneys should examine the provisions of the laws of the states where the building is to be constructed as well as the states where the architect's and owner's firms are located. State-by-state differences notwithstanding, the following are essential elements of a legally binding agreement:

Competent parties. The parties to a contract must be competent—of legal age and not mentally incapacitated. In addition to persons, legal entities that may enter into contracts include corporations, partnerships, and joint ventures, among others. Care must be taken, however, that the person executing the agreement on behalf of the entity is authorized to do so.

Subject matter. The agreement must demonstrate a "meeting of the minds" of the contracting parties with respect to the subject matter and their respective obligations.

Consideration. Each party must provide and, in turn, receive something of value from the agreement. Consideration may involve payment of money, the performance of an act, the provision of a service, or an agreement to forego an act a party otherwise has the right to perform. The parties must

be free to enter or not enter into the agreement and not already obligated by a prior agreement to perform an act or provide other consideration that the new agreement would allow the parties to forego.

OPTIONAL ELEMENTS

Witnesses. Although witnesses are not legally necessary for a contract to be valid, it may be helpful to have someone present who can verify that the contract was signed by the contracting parties, such as a notary public.

Legal seal. The practice of sealing contracts can be traced to the English common-law tradition in which parties to an agreement impressed a wax seal of their coat of arms to signify its solemnity. Today, contracts are sealed by simply writing the word "seal" or the letters "L.S." after the signatures on a contract under seal. In many states, sealing contracts is merely a vestige of the English custom, and has no legal significance. In nearly half the states, however, a contract under seal has increased significance, such as creating a binding obligation even though no consideration or value is to be received in return for the obligation, and extending the time during which a legal action may be brought. In these jurisdictions, both parties should sign under seal. The seal is the firm's business seal (or the word "seal" written after a signature) and not the architect's professional seal or stamp.

LEGAL ENTITIES

Partnerships. Professional services contracts are usually entered into in the name of the partnership and signed by at least one of the partners. The signing partner must be a licensed architect in the jurisdiction where the project is located. Contracts signed by one partner are nearly always binding on the partnership and all the partners. If the authority of a partner to bind the partnership is in doubt, the situation should be resolved before the contract is signed.

Corporations. Corporations enjoy many of the rights and obligations of persons before the law. When a corporation enters into an agreement, the exact corporate name, including punctuation and abbreviations, should be used on both the front and signature pages. The signature page should also include the name and title of the officer authorized to execute the contract, the corporation's seal, and attestation by the proper corporate officer. Inclusion of the officer's corporate title makes it clear that the officer is signing on behalf of the corporation and not as an individual.

When entering into a contract with a corporation, it is advisable to confirm that

- The corporation is authorized by its corporate charter and bylaws to make such a contract.
- The corporation is making proper use of its authority, such as by a proper resolution of its board of directors.
- The officer who executed the contract was authorized to do so.

Failure to clarify these points may shift liability from the corporation to the individual signing the agreement.

Public entities. When entering into a contract with a public agency, such as a school board, it is advisable to confirm that the public body making the contract has the authority to do so by requesting that a copy of the authorizing resolution be attached to the contract. It is also advisable to confirm that the funds to pay for the architect's services have been appropriated and are available.

ABOUT THE AUTHOR

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RESOURCES

More Best Practices

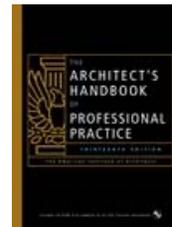
The following AIA Best Practices provide additional information related to this topic:

- 18.02.01 Owner-Architect Agreements for Small Projects
- 18.02.03 Before You Sign: An Owner-Architect Agreement Checklist
- 17.01.01 Reviewing Owner-Supplied Agreements

For More Information on This Topic

See also "Agreements with Clients," by Edward T. M. Tsoi, FAIA, *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 11, page 275.

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.



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Keywords

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- Project administration
- Project agreements
- Design services agreements