

Gratuitous Advice: All Risk, No Pay

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SUMMARY

To avoid possible liability, an architect should exercise caution before offering gratuitous advice.

RESPONSIBILITIES OF THE CONTRACTOR

On or off the job site, it can be very easy for an architect to inadvertently assume some of the responsibilities, and the attendant risks, contractually assigned to the contractor by providing advice or information beyond the scope of the architect's contractual responsibility.

It may go against an architect's instincts to know a solution to a problem and not express it, but many aspects of construction on a job site are the contractor's, not the architect's, responsibility.

When communicating with contractors in any place and at any time during a construction project, it is advisable for architects to be mindful of the limits of advice or information to offer.

ON-THE-SPOT SOLUTIONS

If an architect recommends a solution for a nonconforming detail that was not explicitly depicted in the contract documents, the architect likely assumes responsibility for the detail. The contractor can later claim that responsibility for the detail shifted to the architect, and that the contractor may then be entitled to additional compensation for following the architect's advice. If a redesign is intended, it should be authorized by the client and processed as a change to the contract documents.

MAINTAIN CLARITY OF OVERSIGHT ROLES

An architect's construction field services should always be characterized as *observation* for the sole purpose of determining general conformity with the design concept and the contract documents. These services should never be characterized as *supervision* or *management*.

FREE ADVICE IS NOT FREE: THE ARCHITECT MAY PAY

The absence of a contractual relationship or compensation to the architect does not absolve the architect of liability. When architects give professional opinions, they are fully exposed to liability, regardless of the remuneration they receive.

Some architects give advice without a contract, without compensation, and, possibly, without even knowing they are providing a professional opinion for which they may be liable. For example, an architect who sketches some details on a piece of paper at a neighbor's request may be held liable years later for a faulty design over which the architect exercised no other control.

RESOURCES

More Best Practices

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

- 09.01.07 Emerging Risks in Practice
- 09.01.09 Pro-Bono Risk Management
- 09.01.03 Warning Signs of Potential Claims

For More Information on This Topic

See "Risk Management Strategies" by Richard B. Garber, ASLA, and Charles R. Heuer, FAIA, Esq., *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 12, page 319.

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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Key Terms

- Practice
- Insurance management
- Liability insurance
- Architect professional liability



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