

Pro Bono Risk Management

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SUMMARY

Pro bono projects are worthy endeavors for all architects. Although they do not produce a fee, risk and potential liability remain. Consequently, architects should employ many of the same best practices they use for fee-based projects to manage the risks associated with pro bono projects. Using written contracts, evaluating cost and quality controls, and keeping senior personnel involved are but a few ways to manage risk. For suggestions specific to a project or if questions arise, consultation with an attorney is always recommended.

BACKGROUND

Pro bono projects have played an important public interest role in architecture professional practice for many years. With efforts to build awareness of the benefits of pro bono work among nonprofit organizations and communities, as well as to increase the number of hours architects contribute to these worthy projects, it is important to acknowledge and effectively manage risks associated with these endeavors.

Not receiving a fee for services rendered does not eliminate or reduce the liability inherent in pro bono work. Pro bono work shares many of the same risks as fee projects, and has unique risks too. The following suggestions are intended to assist architects when undertaking pro bono work, while helping them avoid some of the common dangers.

USE WRITTEN CONTRACTS

While a formal American Institute of Architects (AIA) owner-architect agreement may seem like overkill for pro bono services, it is important for many reasons. These include identifying service phases and scopes, limiting liability or indemnifying the architect, defining owner responsibilities, maintaining intellectual property protection, establishing dispute resolution mechanisms, and clarifying other aspects of the owner-architect relationship.

AIA B151–1997, *Abbreviated Standard Form of Agreement Between Owner and Architect*, effectively and concisely identifies the most

likely professional services for a pro bono project. A well-defined scope of services avoids misunderstandings about expectations and assumptions for both owner and architect.

Contract provisions governing owner and architect responsibilities that are otherwise inapplicable to the pro bono project (e.g., payments to the architect) can be removed or modified as needed. Additionally, for those projects where bidding and construction phases are contingent upon successful fund-raising, the AIA B151–1997 termination provisions allow an unfunded project to simply stop.

The waiver of consequential damages contained in AIA B151–1997 is an important tool to safeguard architects but additional measures are recommended. For example, provisions limiting the architect's liability for negligence to a specified amount can ensure he or she pays little or nothing, regardless of the client's actual damages. The limitation of liability is a way to allocate risk in proportion to the architect's monetary reward. That is, if the architect is not receiving a fee from the owner for professional services, he or she should not accept the risk and possible liability otherwise expected in a fee-based relationship. Some states will not allow this type of liability limitation, so consultation with an attorney is recommended when drafting the agreement.

An architect may also ask the pro bono client to indemnify him or her against claims. However, pro bono clients are unlikely to be in a financial position to effectively do this. Therefore, the architect should not expect such a provision of protection against outside claims. Nevertheless, an indemnification provision can help align the owner's interests with those of the architect in avoiding liability-creating problems or situations.

The architect's design and documents are protected as instruments of service under AIA B151–1997. Expressly retaining the copyright to any design—even those for which the architect is not receiving a fee—safeguards the intellectual property and the inherent value of standard details and other widely used portions of the construction documents.

AIA B151–1997 also provides that mediation is a condition precedent to arbitration and other dispute resolution proceedings. Using this agreement wisely keeps this effective and efficient process in place, should a dispute with the owner arise. The architect can also choose to either keep the default arbitration provision in the agreement or substitute with another mandating litigation.

In instances where more sophisticated pro bono clients have written or altered their own contracts, the same care and scrutiny should be used as with other modified agreements. It may be helpful to review these provisions with an attorney and the architect’s professional liability insurance broker.

It is also recommended that the architect enter into agreements with consultants for the pro bono project. Like the owner-architect agreement, the architect-consultant agreement establishes the expectations of service and gives notice to the parties of their responsibilities before disputes arise.

EVALUATE COST AND QUALITY CONTROLS

For many pro bono projects, cost concerns abound and budget restraints are inflexible, due to grant and fundraising amounts or other rigid controls.

Accordingly, there may be additional pressure to deliver the project at a set cost with few or no change orders. The architect should carefully evaluate and use processes to ensure a quality product, while monitoring costs during design and construction.

The architect should be conservative and thorough when asked to provide an estimate of probable construction cost. Regardless of the excitement and feeling of goodwill for the pro bono project, the architect should not be unduly optimistic about this amount. No one likes to be surprised when a project bids too high, especially the owner. A professional cost estimator can provide a highly accurate and reliable approximation of construction cost and distance the architect from potential claims related to inaccurate cost estimates.

Further, avoidable cost overruns due to poor quality control will also test the limits of even the most congenial architect-owner relationship. The same quality control procedures used on fee projects should be implemented on their pro bono counterparts.

KEEP SENIOR PERSONNEL INVOLVED

Pro bono projects provide great experience for intern architects. However, insufficient oversight by senior personnel can lead to problems. From a business perspective, having an intern architect or

draftsperson work on a pro bono project makes sense—the billing rate sacrificed to a project that does not produce a fee is minimized.

However, if this motive is overextended, a project and its budgets can quickly go off-track. As with any other project, architectural firms should assign sufficiently skilled personnel to pro bono work. While intern architects may have more opportunities to make decisions influencing the design of the pro bono project, senior architects can also assist to provide sound guidance and leadership, while reducing the risk.

ABOUT THE CONTRIBUTOR

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RESOURCES

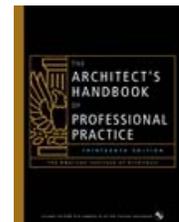
More Best Practices

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

- 09.01.07 Emerging Risk in Practice
- 09.01.04 Gratuitous Advice: All Risk, No Pay
- 09.01.08 Practice Management Problems

For More Information on This Topic

See also “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
- Business planning
- Quality control programs
- Risk management