

Before You Sign: An Owner-Architect Agreement Checklist

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CONSULT YOUR ATTORNEY

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.

SUMMARY

The checklist below presents a list of issues to consider before you sign an owner-architect agreement.

CONTRACT TERMS

Properly written contracts are essential to protect design professionals. The following checklist, while not intended to be exhaustive, may help you craft good contracts:

- Is the contract in writing? A standard form issued by a professional association is preferable.
- Have the parties agreed to modify standard contract forms? If so, it should be done with care and only on the advice of an attorney.
- Is the contract a nonstandard contract form? If so, be sure to consult your attorney and professional liability insurer.
- Could any provisions in the agreement affect your professional liability insurance coverage? Check with your insurer; some provisions may be uninsurable.
- Are you familiar with (and prepared to perform) the duties and responsibilities assigned to the architect by the contract pertaining to the relationship between the client and contractor?
- Have the terms of agreement changed after the initial agreement? Any changes to the services to be performed should be agreed upon in advance in writing, in the form of an amendment or supplement to the original agreement.
- Does the contract realistically and definitively describe the project?
- If the project is based on a feasibility study, does the contract relate it to the feasibility study?
- Does the contract clearly and realistically define the architect's services, particularly construction phase services?
- Is the contract compatible with the contracts of other parties involved with the project?
- Does the contract contain any inconsistencies or duplication concerning duties and responsibilities?
- Does the contract accurately define the architect's responsibilities for commissioning, with realistic targets and an acknowledgement of those elements beyond the architect's control?
- Does the contract include express warranties or guarantees that the architect's professional liability insurance would not cover?
- Does the contract include indemnity clauses that require the architect to assume the liability of others? In law, architects are responsible for their breach of contract, negligent acts, errors and omissions, and those of their sub-consultants and employees. They should not assume other liabilities through the contract.
- Does the contract clearly describe the client's responsibilities, including any relevant information and data that the client will supply to the architect?
- Does the contract provide for an equitable adjustment of fees if the client suspends and later resumes the project?
- Does the contract set a financial penalty for termination at the client's convenience?
- Does the contract contain a nonpayment clause? If so, can the architect stop work without liability for consequential or other damages?

- Does the contract distinguish between basic and separately compensable additional services, and does it stipulate adequate levels of remuneration in each case?
- Does the contract allow the architect to control substitutions and reasonably limit the time spent evaluating substitution requests?
- Does the contract clearly state the limitations on the architect's ability to predict construction costs?
- Does the agreement clearly state that the architect is not responsible for how the contractor builds the project or manages safety on the site?
- Is the architect's responsibility for reviewing submittals limited to those required by the construction contract?
- Does the contract clearly state that the architect can reasonably rely upon, but cannot be held responsible for, information provided by others such as site surveys, geotechnical data, or (in the case of renovation or adaptive re-use projects) as-built record drawings?
- Does the contract address the question of partial or total transfer of ownership (assignment of copyright or limited license of use) of the architect's documents and protect the architect against the consequences of misuse by others in the present project and any subsequent projects?

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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RESOURCES

More Best Practices

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

- 18.02.02 Owner-Architect Agreements for Small Projects
- 17.01.01 Reviewing Owner-supplied Agreements
- 17.01.06 Steps for Reviewing a Contract

For More Information on This Topic

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

