

# What to Consider When Dealing With the Unexpected

Contributed by Victor O. Schinnerer & Company Inc.

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## SUMMARY

When the firm of a sole practitioner closes because of the death of the design professional, there should be an understanding of the continued risk of professional liability claims.

## EACH SITUATION IS DIFFERENT

It is difficult to collate potential risk because each state has specific rules and legal precedents regarding the continuation of risk for a licensed design professional. Furthermore, if the firm has provided services in multiple states, the laws of the states in which the projects are located may be applicable to the firm's exposure. States also vary in regard to the exposure of the professional signing and sealing of documents, the estate of the professional who took responsible charge for the services, and others in an ownership or management position.

Some sole practitioners set up corporations. While corporations can cut off many business risks they usually do not cut off professional liability risks. The question goes beyond that, however, to whether there is continued financial responsibility applicable to the estate—or those who are beneficiaries of the estate.

Realistically, if the services were provided through other design professionals (as in a subcontracted situation) it is rare for exposure to reach beyond the professional's real assets. If services are provided directly to "consumers" and damages are egregious, courts may find a way through the corporation and beyond the licensed design professional.

It is highly unlikely, however, for anyone to pursue recovery after the death of the licensed design professional operating as a sole practitioner. Other professionals probably will not pursue claims, clients

probably sense there is not a realistic chance for compensation, and other plaintiffs (especially those who might be represented by attorneys with contingent fees) may not want to invest the effort in a problematic recovery.

## MULTIPLE CONSIDERATIONS

Tail coverage, while vital for a retired professional, is rarely invoked for a claim of this matter. All types of projects produce claims. Most (around 85 percent) of claims happen within the first three years after the substantial completion of a project. Claims after that time are rarely productive for plaintiffs. So while there may still be a possibility of exposure to the estate or its beneficiaries, the probability of a claim is low and the probability of significant defense costs or a recovery is extremely low in most cases.

Therefore while we cannot provide legal or financial advice, it seems that anyone assessing the risk of professional liability claims to the estate of a sole practitioner needs to consider the following:

- How does tort law and how do the professional registration and professional service corporation laws treat the continuing exposure of licensed design professionals? This is a legal question.
- How extensive is the estate and what is the likelihood that it would be a plausible target for a cost recovery effort? This is a financial advisor question.
- Based on the type of projects and the contractual relationships related to those projects, what kinds of aggrieved parties might seek recovery? To identify these risks formulate an analysis based on the estate's understanding of the firm's services.

It may be determined that the defense provided by tail coverage and the payment on behalf of the estate that tail coverage could provide are not necessary or cost-effective to protect the estate's assets or the beneficiaries of a sole practitioner.

## RESOURCES

### More Best Practices

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

- 09.01.10 Risk Management Basics
- 04.07.10 How Much Is Your Firm Really Worth?
- 10.01.09 Long-Term Preservation of Architectural Records

### For More Information on This Topic

See also “Insurance Coverage” by Lorna Parsons and Ann Marie Boyden, Hon. AIA, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 12, page 331.



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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### Key Terms

- Practice
- Legal management
- Firm liability



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

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