



AIA Best Practices: Forewarnings of potential legal claims—and best defenses against them

Contributed by Victor Insurance Managers and CNA

Summary

Victor has identified four warning signs, and ways to respond appropriately, to avoid a legal claim.

Know the signs

Not all claims against architects for errors and omissions can be anticipated, but awareness of a few common warning signs, and how to respond appropriately, may help minimize unwarranted claims.

The contractor is in financial difficulty

When a contractor is in financial difficulty, the likelihood increases that the contractor will assert claims for additional compensation (“extras”). This can lead the client, in turn, to claim that the extras are due to the architect’s errors and omissions. When a contractor’s financial trouble becomes apparent, strengthen the alliance with the client and lay the groundwork for a common defense.

The client is in financial difficulty

When a client is in financial difficulty, common strategies to save money include restricting or eliminating construction observation services or substituting cheaper materials for the originally specified materials without a thorough review of the substituted materials by the architect. Both may greatly increase the architect’s exposure to professional liability.

If the responsibilities of the architect enumerated in the owner–architect agreement include certifying the contractor’s applications for payment, it is appropriate to warn the client in writing that such certifications may not be possible without the requisite field observations.

Similarly, if cheaper materials are substituted, it is appropriate to warn the client in writing that the substituted materials may not conform to the original design intent and technical specifications.

Cost-cutting measures, such as the lack of professional construction observation or substitution of materials, may raise public safety issues. It is important to remember that design professionals are not liable only to their clients. In tort they are liable to the world at large. When issues of safety arise, the design professional has a duty to stop the project and report the situation to the proper authorities.

Unexpected site conditions

Whenever a contractor reports an unforeseen condition, brief the client promptly. The architect should insist that all parties discuss the situation and agree on a course of action, which should be documented in writing. If the unforeseen condition will result in additional cost or contract time, it should be documented by a properly executed change order. Allowing the work to continue with a promise to discuss “extras” later could result in a claim against the design professional.

Arguments with the contractor about quality

When the owner-architect agreement gives the architect the authority to reject improper work, the architect should do so, with the client's full knowledge. The architect should not assume responsibility for the situation and “protect” the client from confronting the responsible party. If the contractor tries to seek extra compensation for correcting improperly completed work, a client who receives such an unexpected claim from a contractor may attempt to hold the architect responsible as a third party.

About the contributor

Victor Insurance Managers and CNA work with the AIA Trust to offer AIA members quality risk management coverage through the AIA Trust's Professional Liability Insurance Program, Business Owners Plan, and Cyber Liability Insurance Program to address the challenges that architects face today and in the future. Detailed information about both these programs may be found on the AIA Trust website.

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This article corresponds to:

Architect's Handbook of Professional Practice, 15th edition Unit 1 – The Profession
Chapter 16 – Risk Management
Section 01 – Risk Management Strategies