



AIA Best Practices: Offering free advice: big risks, no pay

Contributed by Victor Insurance Managers and CNA

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 assume inadvertently some of the responsibilities, and 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.

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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