



Practice Management Digest

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by Dick Crowell, Guest Editor

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Extra Large

B103-2007: The Owner-Architect Agreement for Large or Complex Projects

by James B. Atkins, FAIA

The 2007 release of AIA documents included four agreements for any size or type project. Along with the changes came a new numbering system that is more logical and flexible and will accommodate future revisions and new documents. A bright and shining element in the 2007 documents is B103-2007 Standard Form of Agreement Between Owner and Architect for a Large or Complex Project. ... [Continue reading](#)

Follow These Seven Steps When an Owner Presents You With a One-Sided Agreement

by Michael Strogoff, AIA

I was recently asked by an A/E firm to review an owner-architect agreement given to them by a new client. The agreement consisted of eighteen pages describing the A/E team's responsibilities... [Continue reading](#)

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By Michael Strogoff, AIA

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Presentation Submission Deadline: March 13, 2009
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1.5 LUs

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PMKC Fall Conference Scholarship for Young Professionals



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Letter from the Editor

by Dick Crowell, AIA, Guest Editor

Some wag once likened a contract for design services to a marriage license that takes one sentence to say you are married, and then takes the next nine pages to set forth the circumstances and remedies for the divorce.

Another view is that an agreement for professional services is the last moment in which the design professional and client stand equal in power. Once the contract is executed, the professional must undertake many duties within a specified schedule for a limited fee with penalties for failing to meet these obligations. The client has only one duty: to pay for the services. And even that obligation is often difficult to enforce in a timely manner, as many architects have discovered.

This is perhaps an over-simplification but is not too far off the mark. Most architects understand the necessity of giving proper attention to the preparation and negotiation of a fair and balanced agreement. They know the importance of a thorough understanding of what the contract obligates them to do before they sign it.

Developing and negotiating a contract shouldn't be a bothersome hurdle to get past so you can proceed with the "real" project: designing something and shepherding it through construction. Instead, these are vital and integral parts of the whole project. You must allow adequate time, budget and attention for these tasks. If you want a successful project, you must get started under the right circumstances.

The process of developing a good agreement provides several benefits, including: 1) you get a chance to evaluate your potential client's attitudes toward fairness and collaboration, 2) you can identify the project's risks and assign them to the party best able to assume those risks, 3) you have an opportunity to establish some of your own rules to govern the relationship, and 4) you and the client can gain a better understanding of the other party's goals and motivations, develop a better relationship and learn how to best communicate with each other.

In the first article, [Jeff Cavignac](#) clearly explains the pitfalls of using a client-written contract without proper review and negotiation of the onerous terms and conditions so often encountered in such documents.

In [Jefferson Schierbeek's](#) article, we learn how one small firm deals with complex yet time-tested AIA standard agreements. In using this approach, you'll want to have your legal counsel review your proposal letter and attachments to ensure the enforceability of this method in the jurisdictions in which you practice. As a side note, as much as we sometimes dread involving our attorney in our business affairs, this is often money well spent. Remember the Fram filter commercial, "Pay me now, or pay me later?" Contract advice may be worth many times what you pay for it if it helps you avoid one lawsuit.

At the other extreme of the firm-size spectrum, [Jim Atkins](#) weighs in on the new 2007 edition of the AIA documents, particularly the new B103-2007 Agreement for a Large or Complex Project. Jim discusses the process by which the new documents were developed and points out a number of changes made in the 2007 series.

In the final article, [Michael Strogoff](#), AIA, discusses the benefits and strategies for negotiating a fair and balanced agreement with your clients. Ideally, you would use an AIA Standard Form of Agreement for all your projects. The reality, however, is that many clients will insist on using their own agreements. All the authors recognize this and I trust you will find in this edition of the Practice Management Digest some cogent ideas and suggestions

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to help you reach more equitable agreements. No one is suggesting that you walk away from a project every time a potential client hands you their lawyer's favorite contract form – especially not in this economy. Instead, our contributors urge you to review and understand the risks and obligations before you sign, and to negotiate, using the power available to you, for a reasonable and balanced agreement before you enter into the relationship.

Once you've got a good contract tucked away in your files, you may never need to refer to it again. But if you've got a bad contract –one you accepted under duress, knowing it was risky and unfair – you are stuck, and will likely curse the day you signed it. As in many things in life, listen to your gut or that inner voice telling you that things are not quite right. Step back and ask yourself, "How badly do I need this job? Would I be better off spending time marketing other projects, developing new skills or training staff, rather than take on an unreasonable client with a ten-pound gorilla of a contract in which I wager my livelihood and first-born for too small a reward?"

There is plenty of help available for the beleaguered architect. Your attorney and insurance broker-- assuming both are experienced and specialized in the business of the design professions-- are sources of valuable advice. Either or both may publish newsletters and give seminars and training on contracts and risk management topics. The AIA's "Architect's Handbook of Professional Practice" has an excellent Chapter on Risk Management which has a substantial amount of information on document selection and assessment of agreement forms in Chapter 9 (in the 14th Edition) and in prior editions as well. Many of the insurance companies who sell professional liability coverage offer a Contract Guide, educational programs, newsletters and seminars on contract-related subjects. If your carrier does not offer these services, talk to your broker to find out which ones do. In addition, your local and state component chapters of AIA frequently have seminars available at their meetings and conventions, and at every national convention of AIA there are numerous risk management and contract-related Continuing Education programs given. The bottom line: you are not alone when it comes to educating yourself and your firm on this subject. Dig into it. Become aware of the danger of unwittingly entering into a risky agreement and learn how to make your contract for professional services a working tool in your risk management toolkit.

Richard D. Crowell, AIACC/Hon.

After a distinguished 30-year insurance career, Dick Crowell retired in 2002 from Design Professionals Insurance Companies as the Senior Vice President of Marketing. Dick served as an insurance advisor on the AIA Contract Documents Committee, the Engineer's Joint Contract Documents Committee and the ACEC Risk Management and Business Practices Committees. Dick was the principal author of the DPIC Contract Guide and wrote a number of DPIC's loss prevention education programs. He was a frequent speaker at AIA national and state conventions and presented programs and seminars nationally on contracts and risk management topics.



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Negotiating Client Form Agreements

by Jeffrey W. Cavnagac

A contract is a legally enforceable agreement that sets forth the obligations of one party to another. In simple terms it is a communication tool that is supposed to spell out who is supposed to do what by when and what happens if they don't. If the project goes well, the likelihood is that you may never refer back to the contract again. If the project doesn't go well however, the contract becomes critical. In litigation the judge or jury will scrutinize every word of a contract to try and determine the intent of the parties.

There are numerous ways that an Architect may enter in to an agreement including Purchase Order Agreements, Industry Standard Agreements (AIA and EJDC for example) and ideally the Architects own Professional Services Agreement. By far however the most common contract an Architect will enter in to is a Client drafted agreement. It will not come as a huge shock that this agreement was crafted by the clients attorney to protect the client.

For the sake of discussion, lets assume that the Design Professional has made every effort to get their own Professional Services Agreement on the table. Unsuccessful they are now faced with the Negotiating the Clients agreement. As mentioned above a client form agreement is typically crafted to protect the client. Oftentimes these agreements attempt to transfer as much risk and responsibility as is legally possible from the client to the Design Professional. The problem is compounded by the fact that often times the owner will say:

- It's non-negotiable...if you want the job sign it! Or...
- Everyone signs this, if you don't want to sign it I'll get XYZ Design to sign it.

So what is a Design Professional to do?

Be prepared! Have a Contract Review Process and recognize that these may just be initial bargaining ploys.

Contract Review Process: The Contact Formation Process is an opportunity to discuss the project in detail and specifically the risk inherent to the project. It is also a chance to get a good read on your client and how reasonable they may be in the event of a problem. Although many perceive Negotiation as an adversarial procedure, it doesn't have to be. You are expected to serve as the client's trusted professional advisor, and the contract negotiation phase of your relationship gives you an opportunity to demonstrate your professionalism.

Your company should have a process that is followed every time a new contract is entered in to. Anyone in your company who negotiates contracts on your behalf should have a basic understanding of contracts. There are various sources for this, but it is imperative that they understand what the companies Deal Makers and Deal Breakers are. A Deal Maker provision is a provision that is so important that if it is not in an agreement then the agreement is unacceptable (lack of Construction Phase Services are a good example). A Deal Breaker provision is a provision that is so onerous, that unless it is deleted or modified the agreement is unacceptable (a poorly written indemnity for example).

Review the Contract: There are two basic parts to a contract, The Scope of Services and the Terms and Conditions.

Make certain the Scope is clear. A well written scope should include:

- What you will do and by when
- What you can do for an additional fee
- What you are not doing that someone else is doing

Terms and conditions are equally as important. These spell out everything else

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required in the agreement. It is imperative that you understand what the law requires of you and what your insurance covers. The law requires that you perform to the Standard of Care. The Standard of Care is basically that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The law does not require you to be perfect. It is understood that mistakes will be made. You should avoid any contractual wording that requires you to perform beyond the standard of care.

Your Professional Liability Insurance Coverage will protect you if your level of performance falls below the standard of care. If however you agree contractually to perform at a level above the standard of care then technically that would not be covered. Clients will attempt to elevate your required performance in any number of contractual provisions including timely performance, certifications and guarantees, estimates of cost and most importantly indemnity provisions to name a few.

It helps to have a Contract Review Checklist to make certain you are not overlooking something.

Seek Help: Everyone in your company should have clearly defined levels of authority when it comes to Contract Review. Ideally someone in the company is designated as the Contracts Officer, this principal will have ultimate authority and will be the resource for questions that arise in the contract review process. You should also work with both your risk management advisor or insurance broker as well as your attorney to make certain you understand the implications of the contract from an insurance and legal perspective. Often times these professionals may have worked with your client already and may be able to assist you directly with the negotiation.

Negotiate: It is imperative that responsibilities be clearly outlined at the start of a project. During this "Honeymoon Phase" your relationship is at its strongest. If you can't agree on who is supposed to do what at this time, when you are on good terms, you certainly won't be able to figure this out later in the project if there is actually a problem. This is the goal of negotiation. To generate an agreement that clearly spells out the responsibilities of each party.

Recognize that at the end of the day you may not be able to negotiate everything you want. In simple terms if you make a mistake that falls below the standard of care your Professional Liability will probably cover you. If you agree contractually to be responsible for more than your own negligence then the additional liability would not be covered. Forced to agree to a challenging agreement the design professional has a business decision to make. Do the rewards from the project exceed the risks.

Recognize as well however that it is only by going through the negotiation process and evaluating the pro's and con's of the proposed agreement that you will be able to effectively quantify the risks in order to make this decision.

If the contract is so poorly written and onerous that you have to walk away from the project, you may still not lose the job. Often clients with whom you are unable to come to terms will be sufficiently impressed by your professionalism to rethink their own position. On the other hand, you may never hear from them again. In the long run, not doing business with a questionable client with a lousy contract may have been the best decision.

Negotiation is as much a part of being an architect as design. Effective negotiation is a critical skill. There are a number of resources available to those who want to become better negotiators. Some of the better books I've come across that can help you improve this skill include Getting to Yes and the sequel Getting Past No. Bargaining for Advantage is also excellent as is anything written by Harvey Cohen.

Read your contract; understand what is fair and what isn't...and Negotiate Well.

Jeffrey W. Cavnac is the founder and President of Cavnac & Associates, a large independent insurance brokerage firm, in San Diego, CA. Jeff has spent over 28 years in the insurance industry, specializing in insurance and risk management for architects and engineers. He is an expert in helping his design firm clients analyze and negotiate services contracts, and serves on several professional association committees to assist in securing more balanced contracts. He speaks before professional groups and publishes a regular newsletter on risk management.



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Contracts: Necessary Evil for Your Own Good - Discussing Alternatives

by Jefferson Schierbeek, AIA

A Requirement

A contract between owner and architect is required by law in California and several other states prior to the initiation of architectural services. The following thoughts are the ramblings of an experienced practitioner of architecture in California for the last twenty years but should not be taken as legal advice.

Your Options

Given the legal requirement of a contract and the litigious society in which we live, we need to consider available contractual agreements and possible alternative documents. We are all aware of and have used the standard contracts available from the American Institute of Architects. I have used AIA contracts in my work many times and consider them strong tools, developed from many years of experience, well thought out in both detail and content. But they are also a daunting read and potentially frightening to an inexperienced prospective client. Many of our clients are small project owners or homeowners considering the largest investment they have ever made in their lives.

Gestalt (The Architect's Lament)

In a small practice the architect may be alone in his or her office, or with maybe only a few employees. Considering the cost of obtaining legal advice and the Byzantine complications of contract language architects in small practices often find themselves overwhelmed by all they are expected to know and what they must accomplish in a day. Design, drafting (yes in a small office everyone gets to put the pixels to the files we now call documentation) marketing, client and public meetings, accounting and everything else that needs to be done to keep a practice afloat and thriving. And of course through it all the over-arching worries; will it all get done and done correctly?

Good ongoing communications are key

We all have heard the phrase "a contract is only as good as the paper it is written on." In our experience a contract is only as good as the communication that goes on between you and your client as the agreement is developed and as the project progresses. We have been very conscientious in our practice and so far very lucky. We rarely have ever needed to refer back to the contracts we sign but if and when we ever do, we believe those documents will be clear and will be based on the same reasonableness that we try to use to reach agreement with all our clients. Part of the process is our continuous communication with our clients, and when glitches do appear it is the relationships we have formed and the openness of our communications that help us in working toward resolution. People sometimes communicate poorly and sometimes projects do not proceed according to everyone's expectations. And when that happens it is vitally necessary to have a solid contract in place. If you ever need to refer back to the contract, in the end it is up to the courts to decide what the parties intended. Lawyers will talk to lawyers and the legal process, love it or hate it, will grind out a solution. But having a good document in place that sets forth everyone's expectations, duties, rights and obligations is the best risk management tool you can provide yourself. That, and a solid trail of communications with your client, will make resolution of future disputes much easier and less costly.

I was a partner in a small firm designing mostly custom residential, retail and restaurant projects. We developed an alternative to meet our legal obligations and provide the necessary contractual protection for our services, given the possibility that any service or project may not go according to the expectations of the involved parties. I must admit the agreement for services that we used in our office was a living, evolving document which grew out of numerous contracts we had seen or worked on in the past. The terms and conditions we used in our agreement originated from the language used in

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those agreements that seemed to work; it clearly conveyed the intent of both parties as to their rights, duties and obligations under the agreement. As we gained experience, we made amendments to the contract language based on our experience in practice and in the profession, and our desire to protect ourselves from unreasonable risks insofar as it is reasonably possible.

Our expanded proposal letter

As a way of easing our clients in to the legalistic language of contracts and gently introducing the AIA contract, our office would create a proposal letter as the initial basis of our agreement. By obtaining our client's signature on that letter we would satisfy the state legal requirement for a written contract. Our state law requires at a minimum that certain items be included: names and addresses of the parties, a description of the scope of services, basis of compensation and method of payment, reimbursable expenses, a procedure to accommodate additional services, and provisions for termination by either party. All of these items were included in our proposal letter.

As a failsafe and catchall we added to our proposal letter a reference to the AIA B151(1997) and attached a copy of its terms and conditions to our agreement.

We also included certain terms and conditions in our proposal letter regarding limits of liability and the preferred means of resolving disputes, such as mediation and then arbitration, and even though there may have been a bit of redundancy or possibly conflict with the AIA Contract in the added language, we felt more secure having it in the signed letter agreement. A CAUTION: we were very careful not to commence our services before having first received the signed letter agreement back in our office. No exceptions!

Conclusion

As I said these thoughts, and experiences are not intended in any way to be legal advice but they have helped me as a practitioner to keep out of trouble so far. I urge you to become familiar with the AIA documents, to carefully review the agreement forms you are using in your firm and to spend the requisite time (and yes, legal expenses when necessary) to review and negotiate any client-drafted documents before you sign them. Developing and negotiating reasonable and fair agreements is probably the best risk management technique you can practice.

Jefferson Schierbeek, AIA is the Vice President of Design for CADFORCE, heading their design studio with a focus on commercial and retail architectural projects.

His professional career has included tenure in firms as diverse as Franklin D. Israel, Grinstein Daniels, RTKL, and his own firm; AddisonSchierbeek Architects. Mr. Schierbeek has taught design and construction at the University of Southern California and the Catholic University of America. Mr Schierbeek is a graduate of the University of Michigan, with a Master of Architecture and a Master of Urban Planning.



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Extra Large B103-2007: The Owner-Architect Agreement for Large or Complex Projects

James B. Atkins, FAIA, AIA Documents Committee – Task Group B

Introduction

The end of 2007 brought with it landmark improvements in the number and quality of AIA Owner-Architect agreements. The 2007 release of AIA documents included four agreements for any size or type project. Along with the changes came a new numbering system that is more logical and flexible and will accommodate future revisions and new documents. A bright and shining element in the 2007 documents is B103-2007 Standard Form of Agreement Between Owner and Architect for a *Large or Complex Project*.

A Virtual Smorgasbord

The AIA documents are revised on a ten year cycle, and the Task Groups within the Documents Committee began the process in January 2004 that resulted in the 2007 revisions. Four years may seem like a long time, but the busy schedule included extensive research and numerous meetings within the committee and with many outside industry groups. The AIA assigns the documents to task groups who manage the research and content drafting for ultimate full committee approval. The owner-architect agreements were assigned to Task Group B.

Industry feedback indicated a demand for a greater variety of owner-architect agreements for projects of varying size and complexity. The old 1987 abbreviated agreement was sorely missed, and also in demand was an agreement for larger or more complex projects. The emergence of mega-projects with more sophisticated and elaborate delivery approaches had finally outpaced the heretofore reliable documents that had served all projects so well for so many years.

Task Group B began their work without descriptive titles, so initially we used the operating titles of *small*, *medium*, *large* and *extra-large* to differentiate between the various agreements until the final titles were determined. The end result was the following:

Small - B105-2007 Standard Form of Agreement Between Owner and Architect for a *Residential or Small Commercial Project* (Formerly B155-1993)

Medium – B104-2007 Standard Form of Agreement Between Owner and Architect for a *Project of Limited Scope* (Formerly B151-1987)

Large – B101-2007 Standard Form of Agreement Between Owner and Architect (Formerly B141-1987 and B151-1997)

Extra-Large – B103-2007 Standard Form of Agreement Between Owner and Architect for a *Large or Complex Project* (Brand spanking new)

An Extra-Large Need

As the documents committee began the 2007 revisions, they gathered information from the industry regarding past AIA document performance and need. A strong demand arose from the AIA Large Firm Roundtable (LFRT) for an agreement better suited for their projects. They complained that many revisions were required to the existing documents to make them appropriate for larger projects, and these extensive changes tended to alarm clients and make for more difficult negotiations.

The roundtable is an independent entity organized to provide a forum for the discussion of matters of mutual interest to large architectural firms. Membership is limited to firms with a minimum of 150 total staff members and a minimum of 50 registered architects who are also members of the AIA. By definition, they are where rubber meets the road in large or complex project delivery.

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The LFRT worked interactively with the Documents Committee through three temporary liaison members participating in the 2007 revisions. Two of them sat with Task Group B. The end result is a document that better accommodates the owner and architect on a large or complex project. It is a meaningful response by the AIA to the evolving needs of the profession.

A Large Beginning

The initial assignment of Task Group B was to revise the "Large" document, which would later be known as B101. It was anticipated to be the most widely used agreement since it is intended for medium to large projects. As an initial guide we used B141-1987 and its reincarnated successor B151-1997, as a baseline. When B101 was essentially completed, we added to it to include clauses needed for larger projects, and voila, the extra large agreement, aka B103.

Since B101 was the core document, it is appropriate to first address its elements and then address the additions made to it that result in B103. The following recap lists those changes. For a more detailed description, please refer to the whole document and its instruction sheet.

- Incorporates A201-2007
- Restores the five phases of Basic Services
- Differentiates between Additional Services and Basic Services
- Liberalizes Owner's rights to use Architect's Intellectual Property
- Requires consideration of "green" design
- Requires Architect to carry insurance
- Retains B141-1997 requirement to design to cost
- Defines Standard of Care
- Provides option for Initial Decision Maker who is other than Architect

The Best of the Best

B101-2007 is an excellent document that should serve acceptably on most medium sized projects. Without question it stands head and shoulders above B141-1997 and B151-1997 of the past decade. However, in order to appropriately accommodate the larger or more complex project, it needed more ingredients; and that became the next step for Task Group B.

The following changes were made to B101 to create a more suitable agreement for larger or more complex projects; the Extra Large document now known as B103 Standard Form of Agreement Between Owner and Architect *for a Large or Complex Project*:

- Owner employs Scheduling Consultant
- Owner employs Cost Consultant
- Recognizes multiple bid packages/fast track scheduling
- Provides indemnity to Owner for third party claims
- Road Wear

This Extra Large agreement, or B103 as it is known today, should be well suited for its purpose, given the process employed in its development along with participation by its primary user group, the LRFT. But how is it really performing? We decided to ask.

A query of large firm users indicates that it is in frequent use in their work and meets their needs. Sure, they still encounter those mutant lawyer-generated monsters occasionally, but more often they successfully negotiate a B103.

We also asked if the users made revisions to the B103. Since there was so much input by the LFRT, we assumed that few if any changes would be made. The answers that came back indicated that changes are still being made, but not nearly as many as with the previous documents. In these days of specialty services and accumulating project experience, architects continue to hone their most effective risk management tool, the contract, to meet their individual service needs. Owners also hone their needs with negotiated changes as well. The reality is that use of a pristine standard form of agreement without some changes is a thing of the past.

Conclusion

The AIA has done a masterful job of responding to the needs of the membership and the industry by producing these landmark documents. Its users should be grateful to Director of Documents Suzanne Harness, AIA, Esq., the Documents Committee and the Large Firm Roundtable for accomplishing this arduous and time consuming task.

Yet the true test of the documents and their effectiveness is how they perform in the coming years. The revision cycle is ten years because it takes that long

to test them in the courts. Industry architect defense lawyers are quick to point out that at one plus years old they have not yet entered the litigation arena. Any perceived conflicting or ambiguous clauses will certainly be exploited by claims lawyers in their attempt to move risk toward the design professional, regardless of whether or not contract flaws actually exist.

So when the commission for that large project is finally won and you call up B103 in your computer to begin drafting the owner-architect agreement, take heart that an extra large effort was put forth by capable and experienced professionals to provide you with appropriate and beneficial protection from the risks inherent in the large or complex project.





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Follow These Seven Steps When an Owner Presents You With a One-Sided Agreement

By Michael Strogoff, AIA

I was recently asked by an A/E firm to review an owner-architect agreement given to them by a new client. The agreement consisted of eighteen pages describing the A/E team's responsibilities; three pages describing the owner's termination rights; a largely uninsurable set of indemnifications; a list of certifications and warranties required of the A/E team; and a set of lengthy appendices containing insurance requirements, schedule provisions and compensation terms. The agreement incorporated by reference the client's RFP and the A/E team's marketing proposal. The agreement also described, in sixty words, the owner's responsibilities:

The owner shall 1) attend all meetings with the A/E team that the Owner determines are necessary, 2) retain a construction manager to manage the project and perform a constructability review, the results of which the A/E team shall incorporate into the construction documents, and 3) promptly notify the A/E team of all claims the Owner intends to submit.

Where does one start in responding to such an unacceptable agreement?

Carefully Analyze Your Client's Proposed Agreement

Before reacting (or bemoaning how realtors or construction managers get paid comparable fees for far less work and fewer liabilities), carefully read through the entire agreement and highlight problematic clauses. Try to discern common themes, such as the client's lack of clarity about the project, confusion about the design professional's versus the contractor's responsibilities, or the desire to shift an owner's responsibilities to the design professional. Do any of the client's special concerns jump out, such as its funding being jeopardized if the schedule gets delayed?

Next, create a list of the problematic clauses and arrange these by categories. Categories might include Scope of Services, Roles and Responsibilities, Cost and Schedule Control, Insurance and Liability, Dispute Resolution, and Compensation. Keep the number of categories to a minimum—the intent is to gain an overview and coherently organize your concerns.

Take a Giant Step Back With Your Client

Meet with your client and determine the outcomes both parties want from the negotiation and from the owner-design professional agreement. For most clients, these objectives include: capitalizing on your team's capabilities and areas of expertise; documenting each party's roles and responsibilities, lessening the workload on your client; helping the client manage its risks; educating each other about your respective goals; establishing dispute resolution procedures; and streamlining the design and construction process. With progressive clients, the outcomes might also include instilling a spirit of cooperation, establishing a constructive dynamic for working through difficult issues; and negotiating fees that reflect the value your firm brings.

Make sure you document this list in meeting notes, a memorandum or a follow up letter. You will want to refer back to this list to measure the progress of the negotiation and the agreement revisions.

Put Your Contract Form On the Table

Don't accept the client's agreement as the only valid starting point. Try pointing out aspects of your client's agreement that are counter-productive to achieving its goals. For example, a client's right to withhold fees might compromise your ability to meet an aggressive schedule, or a clause that holds the A/E team partially responsible for job site safety might weaken the client's defense against a subcontractor's claim resulting from a construction accident. Then offer your preferred agreement form as a more appropriate starting point (see "Present Your Preferred Option" starting on page 4). Even if your client refuses to use your agreement form, you can still refer to its content when negotiating specific terms.

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Provide a Context for Your Proposed Modifications

Simply giving or e-mailing your client a list of proposed modifications is a sure-fire recipe for disaster. Not only will your list overwhelm most clients, it will likely create such an adverse reaction that your client might adopt a "take-it-or-leave-it" stance. Instead, preface your modifications with language such as:

We have distilled our concerns to those that help clarify our respective responsibilities or stem from the following principles that we try to follow in all of our agreements:

- Our A/E team accepts responsibility for actions over which we have control but should be not be responsible for items over which we have no control,
- Our A/E team's liability for professional services should be limited to the extent caused by our negligent acts, errors or omissions and should be linked to our legal standard of care,
- Nothing in the agreement should create or imply any contractual relationship between our A/E team and the Contractor or between our A/E team and your other consultants, and
- Terms or procedures should not jeopardize our insurance coverage.

Providing such a context increases the likelihood that your client and its advisors will perceive your proposed modifications as reasonable and appropriate for discussion.

Contact the Decision Makers

Clients that present one-sided agreements often rely on program managers, attorneys or other representatives to negotiate on their behalf. Let these people know at the onset that you need to communicate directly with your client's final decision makers as part of the process of responding to their draft agreement. Explain that this will allow you to understand the decision makers' goals directly and save valuable negotiating time. If you are not successful in meeting directly with the decision makers, make sure you copy them on key correspondence (e.g., your initial response, proposed modifications and negotiation meeting notes).

Get Your Insurance or Legal Advisor to Grease the Wheels

A single phone call or one-page letter from your insurance agent or attorney to your client can set the stage for a productive and efficient negotiation. Ask your advisor to emphasize both your commitment to the client and the nature of your concerns about the client's draft agreement. If your client engaged an attorney to negotiate on its behalf, get your attorney or insurance agent to call that attorney directly, but make sure the conversation remains conceptual. Then keep your advisors in the background.

Use the Appendices and Attachments to Make Changes

Some clients protect the main bodies of their agreements like a lioness protecting her cubs. Instead of forcing changes to the body of a client's agreement, use the appendices and attachments to incorporate essential modifications. For example, incorporating your fee proposal by reference, with all of its qualifying language, provides a venue for overriding unacceptable compensation terms. An added advantage: some clients don't subject appendices and attachments to the same rigorous review process as required for their boilerplate.

Michael Strogoff, AIA, is the 2009 Chair of AIA Practice Management Knowledge Community's Advisory Group. This article initially appeared in Negotiating Strategies published by Strogoff Consulting. Strogoff Consulting provides practice management, ownership transition, mergers and acquisitions, and negotiation services to architects and other design professionals. For more information, visit www.StrogoffConsulting.com, call 866 ARCH ENG (866.272.4364) or e-mail Michael@StrogoffConsulting.com



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Letter from the Chair

by Michael Strogoff, AIA

As we usher in 2009, our profession is faced with an incredible set of practice management challenges: dwindling backlogs; increasing competition for fewer projects; retaining top-performing staff amidst a shrinking economy; adopting new delivery methods and integrating technological advances; negotiating fees and contract terms in a buyers' market; leveraging in-house resources; bridging generational differences; planning ownership and leadership transitions; and forging new types of strategic alliances. The list goes on.

The Practice Management Knowledge Community, under the leadership of a five-member Advisory Group, is committed to helping our members face these challenges by providing resources, advice and guidance and to elevating the profession by promoting the sharing of tools, resources and best practices.

This is my fourth year as a member of Practice Management Knowledge Community's Advisory Group and, as I assume the role of Chair of the Advisory Group (AG), I want to assure you that my fellow AG members (Sara McCann, AIA, Cliff Moser, AIA, Marjorie Callahan, AIA, and Ray Kogan, AIA) and I will continue to offer bold suggestions and share our knowledge to help you through this difficult economic climate. Equally important, we urge each of you to share your thoughts and experience. Together, we can build on our collective intellectual capital and help each other continue to effectively manage our practices and deliver quality projects to our clients.

Opportunities for Sharing Your Knowledge

Among the opportunities to share your knowledge, tools and advice, to pose questions, or simply to initiate a dialogue with fellow professionals:

PMKC Digest

This newsletter is distributed four times a year under the guidance of Cliff Moser, AIA. You will notice new features in each newsletter to encourage collaboration and provide feedback.

AIArchitect

Each week, the Institute e-mails AIArchitect to every AIA member with a special section on practice issues. To contribute to this newsletter, or to submit a letter to the editor for publication in subsequent issues, e-mail Doug Gordon, Executive Editor, at dgordon@aia.org.

AIA 2009 National Convention

Taking place in my home town of San Francisco, this conference includes many workshops and seminars sponsored by our Practice Management Knowledge Community, including a Practice Management Knowledge Community lunchtime seminar on Saturday, May 2. We look forward to seeing many of you there.

Fall Conference

This year's conference, which will be held in Chicago from September 24 – 26, is titled **Changing Times | Time for Change: Practice, Productivity, and Effectiveness**. This conference, presented in conjunction with AIA Small Project Practitioners (SPP) Knowledge Community, AIA Emerging Professionals, AIA Technology in Architectural Practice (TAP) Knowledge Community, AIA Design-Build (DB) Knowledge Community, and AIA Integrated Practice / Integrated Project Delivery Discussion Group (IPDiG), will bring together architects and allied professionals to provide the perspective, strategies, and tactics necessary to compete effectively in an accelerating and complex world. For more information, please visit the [Conference Web Site](#).

Advisory Group

We want to hear from you – the good, the bad and the unmentionable. Feel free to e-mail us at PracticeManagement@AIA.org with questions, suggestions,

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advice and/or new resources. We know that we serve you, so please keep in touch and let us know how we can be of most value.

PMKC Advisory Group Transition

Every year the AG rotates a new member in and the past chair out. This year, Sara McCann, AIA, 2008 Chair, moved on as our immediate past chair and James Sawyer, AIA, 2007 Chair, became chair emeritus. Both Sara and Jim have been outstanding, creative leaders who carried the Practice Management banner in concert with the admirable tradition of past chairs.

Each year, one new AG member is selected from an elite group of leaders in our profession, and each new member brings a specific body of knowledge that enables us to provide our members with focused, relevant programs. Our new member for 2009 is Ray Kogan, AIA. As both a registered architect since 1979 and a seasoned management consultant to architects throughout the country, Ray brings widespread knowledge of the industry, experience working with hundreds of architectural firms, and a strategic mind to the practice of architecture. I am confident that Ray will bring an energy and level of insight to our Advisory Group that will enable us to continue to fulfill our mission on behalf of our PMKC.

Moving Forward

As we rise to meet significant challenges, please keep in mind that architects possess an incredible set of high-value skills. While no one knows how long this economic downturn will last, we do know that when the turnaround begins, there is going to be a pent-up demand for architectural services. Those that take bold action now will be best positioned to prosper again. On behalf of the PMKC AG, we appreciate you reading this Digest and, again, encourage you to share your thoughts, knowledge, wisdom and experiences as together we navigate through turbulent times while continuing to elevate our profession.

Best Regards,

*Michael Strogoff, AIA
Chair, 2009 Advisory Group*



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Profile

Meet the New Member of the Advisory Group

Ray Kogan is the newest member of the five-person Advisory Group for the AIA's national Practice Management Knowledge Community.

A registered architect and AIA member since 1979, Ray received his B.S. in Architecture from the Ohio State University.

Ray is the president of Kogan & Company, specializing in strategic planning and management consulting for design and construction firms. He brings 35 years of experience in the practice, marketing, and management of architecture, engineering, and construction services, including his work with many leading firms in the industry. Ray has worked with more than 100 architecture and engineering firms in the development of their strategic plans.



Ray has recently co-authored *Strategic Planning for Design Firms*, a book published by Kaplan AEC in April, 2007. His other major publications include the ZweigWhite *Insider's Guide to Strategic Planning*, for which he was the primary author, and the SMPS Core Series Marketing Information Report, "Market Research: Intelligence For Your Firm's Future." He has also written articles on management and marketing issues which have appeared in professional and trade publications, including those of American Council of Engineering Companies (ACEC), Professional Services Management Association (PSMA), and the Society for Marketing Professional Services (SMPS).

Ray is also a co-founder of A|E Advisors (www.ae-advisors.com), a national network of industry-leading consultants providing specialized and complementary business skills and services to architecture, engineering, environmental, and construction firms.

At ZweigWhite, Ray served as a Vice President and senior management consultant where he led the firm's Strategic Business Planning Group and also edited ZweigWhite's *Strategic Planning Advisor*, a bi-monthly publication dealing with issues, trends, and tips for design firms engaging in strategic planning.

Before founding Kogan & Company, Ray also served as Corporate Director of Strategic Planning and Marketing for Dewberry, an *ENR* top-50 firm based in the Washington, DC area with 1,600 employees and 27 eastern U.S. offices. Previously, Ray was a partner in Flynn Heapes Kogan, a pioneering A/E management consulting practice.

He has spoken at many AIA national conventions as well as other component conferences, and has also addressed other national professional organizations including ACEC, SMPS, the Construction Management Association of America (CMAA), and the Associated Builders and Contractors (ABC). He has presented numerous seminars on strategic planning, management, and leadership development in many cities across the country as well as online.

Ray is married to Suzanne Harness, AIA, the former Managing Director and Counsel, AIA Contract Documents, and now the president of Harness Project Solutions.

Ray can be reached at:

Raymond Kogan, AIA

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Case Study Submission Example

My goal would be to design and construct a building that would serve as a model of collaboration and communication, of creativity and intelligence. By blurring the boundaries between design and construction we can generate a building appropriate and particular to its place and its occupants.

This is an opportunity to engage all project participants in design and construction. Ideally, the owner, architect, engineer, and contractor would begin with a three-day outing to the building site. During the three days, there would be a series of analytic exercises, meetings, and social activities, giving the whole team the opportunity to get familiarized with the site, the project and each other, discussing approaches and ideas.

To solve dilemmas through open and frequent communication, throughout the design and building process we would hold meetings and social engagements involving the architects, engineers, contractors, occupants, and the owner. I would develop structural and mechanical solutions with the engineer, however, without complete dependency, knowing that our firm has the capability of generating competent solutions to complete construction documents prior to bid. I would communicate with all contractors involved, from the general contractor to the tile contractor, to discuss the design ideas, and make a constant effort to educate the owner. By knowing all the reasons and results of a particular design decision, the owner would be empowered to make confident decisions. Through an open, informed and democratic discussion process, the design would evolve.

I would remain focused and involved on the project during and after construction, and maintain active engagement on site, in construction. Appropriate decisions would be made on-site, according to the way the building would interact with the elements. Upon completion of the building, I would maintain frequent contact with the owner, visiting the building, even assisting in the move in process to help occupants make the building personal. Being involved in the building after its completion, I would be able to learn from the building and become a better project manager.

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