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INTRODUCTION

Good contracts provide a guide to a successful project. They also contain clear and reasonable terms and conditions. Such contracts protect design professionals, but a few words can make the difference between security and risk. They can mean a lot more than profit and loss on a given project. The terms of a contract can literally mean the financial viability of the design firm and the livelihood of the design professional.

A large percentage of design professionals continue to render services without a written contract. Written contracts provide protection against unreasonable claims from other parties and limit your exposure to recognized risks. Written contracts can help you collect your fee and indemnify you against the reuse of your plans and documents. It would be difficult to overemphasize the importance of obtaining a written agreement covering every service a design professional performs. As discussed below, we may all want a world where 'handshake' agreements are still valid, but in today's complex environment, the written word offers the best and often the only hope for a successful outcome.

Design professionals hold a special place in the U.S. legal system. The law recognizes their exercise of judgment, acknowledges the uniqueness of their design services, and protects the design professional who practices in a reasonable and prudent manner. However, the law also recognizes that parties can use contracts to define their own responsibilities and obligations. This ability to modify their normal legal liabilities by contract means design professionals can assume unintended, or at least unexpected, risks. That is why attention to contract language is so important.

Design professionals are personally liable

While design businesses can be incorporated, that does not mean that design professionals enjoy the same freedom from liability of most corporate owners. Design professionals can remain personally liable for their professional actions. When a contract exists, that liability can be limited in certain ways, such as for the corporate entity. When no contract exists—in a situation where the general public is injured or at risk—the design professional's liability is unlimited. There are definite limits to the ability of professional liability insurance to protect the design professional for alleged negligent acts. Without a contract, the judicial system makes the ultimate decision about the extent of professional liability.