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DISCLAIMER OF RESPONSIBILITY TO THIRD PARTIES

One example of preventing third party reliance on information prepared for a client is the following.

*This report was prepared by _____ specifically for _____.
_____. The material in it reflects the best judgment of
_____ based on the information available for the report at the time of
preparation. Any use which a third party makes of this report, or any reliance on or decisions to be made
based on it, are the responsibility of such third parties. _____ accepts no
responsibility for damages, if any, suffered by any third party as a result of decisions made or actions based on
this report.*

Clients who will not agree to a clause substantially similar to the 'Disclaimer of Responsibility to Third Parties,' above, should agree to provide the design professional with the names of any third parties who receive their reports. This allows the design professional to contact the third parties directly in order to establish a contractual obligation or issue a disclaimer.

Ownership of plans and specifications

Design professionals are not retained to produce documents such as plans and specifications; they are retained to perform services that are expressed through such plans and specifications. This is an important distinction and one that often confuses both design professionals and their clients. Clients must not be allowed to believe that plans and specifications are products that may be used in other circumstances without proper design consultation.

Under standard contracts, the design, the copyright of the documents and the right to use the information contained in these instruments of service are all retained by the design professional. The client is given a right to retain copies for information and reference in connection with the use and occupancy of the project, but it is clearly stated that the documents are not intended to be suitable for reuse by the client or others for modifications to the project or on any other project. It is prudent for design professionals to clearly define ownership of the copyright and what will be considered to be appropriate use of plans, specifications and other documents in the professional service agreement. Be sure to transfer only those rights that are clearly identified in exchange for appropriate compensation and legal protection.

Getting paid

Unfortunately, in today's world, asking for payment can result in a claim for damages against the design professional. When clients run short of money they will look for any reason to file a claim against the design professional and stop payments. It is a fact of life that there are plenty of excuses to file a claim on most construction projects.

There are a number of things that design professionals can do to lessen the chances of this happening. Unfortunately, none of them are completely satisfactory. First, if it seems appropriate, the design professional might attempt to receive a retainer from the client. Invoices should be submitted regularly during the project and collection should be steady and determined. During the course of the project, the design professional should try to get statements of satisfaction from the client. If nothing else, these will look good in court.

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The design professional should make sure the agreement states that the client cannot withhold payment of fees without an independent determination of fault by the design professional.

Finally, at the conclusion of the project, the design professional should submit the final invoice quickly. It may also be useful to offer a discount for prompt payment of the last invoice.

'Project Work Plan/Work Breakdown Structure'

The 'Project Work Plan' is designed to define the design professional's scope of services at the task level, to assign, schedule and budget each task, and to integrate individuals into an effective design team.

The 'Work Breakdown Structure' is a hierarchical representation of the design professional's entire scope of services broken down into successive levels of detail where each level results in defined deliverables.