



WHAT TO DO WHEN A CLIENT DOES NOT WANT TO RETAIN A DESIGN PROFESSIONAL TO PERFORM CONSTRUCTION ADMINISTRATION SERVICES

*By Steven R. Goldstein**

Design professionals are often retained to perform services during both the design and construction phases of a project. In many instances, final inspections must be performed at the completion of the project in order for the design professional to sign off on the project and obtain the appropriate Certificate of Occupancy or Certificate of Completion. As such, construction administration services must be performed in order to properly certify completion of the project.

While it may be necessary that construction administration services be performed at a project, quite often the owner decides not to retain the design professional to perform such services. One reason may be budgetary constraints with the project. On the other hand, perhaps the design professional has decided not to perform construction administration services. Notwithstanding the reason, it is necessary that the design professional take the appropriate steps necessary to protect themselves from liability exposure with regard to this issue. Such action should be taken by the design professional before the design professional commences any services at the project. Doing so will minimize confusion involving the roles of parties at the project and help avoid resulting delays. Accordingly, in order to reduce liability exposure in this regard the following steps are recommended for the design professional to follow:

- a. Make certain that the executed agreement between the design professional and the owner (or whoever else retains the design professional) clearly states the precise scope of the design professional's services at the project, both during the design and construction phases;
- b. Should it be decided that the design professional will not be performing construction administration services, this must be stated unequivocally in the agreement and that such services will need to be performed by others, and not the design professional;
- c. Do not agree to come in at the end of the project to inspect and sign off on a project at which the design professional did not perform construction administration services. By doing so, the design professional opens themselves up to not only liability exposure, but also potential disciplinary action which may result in suspension/revocation of filing privileges as well as the design professional's license to practice architecture; and
- d. Do not state on any documents being filed with the Department of Buildings, or any other filing agency, that the design professional will be performing inspections

necessary for the sign-off if the design professional has not been expressly retained to perform such services.

Quite often a design professional is initially retained to perform construction administration services and then ceases to perform such services, either on their own or at the direction of the party who retained them. When such termination of services occurs during the course of a project, the design professional should:

- a. Immediately notify the owner, contractor, and Department of Buildings (or other entity receiving filings), in writing, that the design professional is no longer performing construction administration services as of a specific date; and
- b. Make certain that the design professional is promptly substituted out as the existing design professional of record. This involves a new design professional being substituted in place of the existing design professional who will now be responsible for performing the necessary final inspections, sign-offs, and filings. Until and unless such a substitution is effectuated, the existing design professional remains the design professional of record at the project subject to liability exposure.

CONCLUSION

Design professionals must protect themselves, early on in the project, from potential claims which may arise involving construction administration services. Clearly stating, in writing, the scope of the design professional's services (if any) during the construction phase of the project, including any change in status during the project, will go a long way toward minimizing liability exposure to a design professional involving such services.

It is important that the necessary parties, including the owner, contractor, and all entities receiving filings, be made aware of the design professional's scope of services, as well as any change in such scope, at both the beginning and throughout the project. While an owner and contractor may be anxious to commence a project, the design professional must be equally as anxious to protect its interests both prior to and during the project.

***Steven R. Goldstein, Esq. is the Principal of Goldstein Law, PC, with offices in Garden City, NY and New York City. GLPC provides a full range of legal services to design professionals from risk management through trial.**

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