

Common Mistakes that Cause Contractual Problems

The preparation of an owner / architect agreement can be hampered by a number of simple mistakes that are sometimes made between the contracting parties. The mistake that is most frequently made is failure of one or more parties to correctly identify themselves as the contracting party to the agreement. An example of this common mistake would be for John Doe (an architect) to execute an owner / architect agreement as John Doe, completely failing to identify his firm, John Doe Architects, Inc. as the architect for the project and failing to execute the agreement in his official capacity as “President” of John Doe Architects, Inc. Even though John Doe intended his firm, and not himself individually, to be the architect he failed to draft the agreement to reflect that desire. This simple mistake could have many ramifications.

John Doe’s professional liability insurer provides policy protection to John Doe Architects, Inc., not to John Doe practicing as an individual architect. If a claim arises against John Doe practicing as an individual and not against his corporate entity, the insurer may not cover the claim because they don’t insure John Doe. John Doe will argue that the claim should be covered because he intended John Doe Architects, Inc. to be the architect for the project, not himself. The insurer’s winning argument will be that if he intended John Doe Architects, Inc. to be the contracting entity, then why did he execute the contract in his individual capacity?

Many times, even when the contracting entity is correctly stated as the architect for the project in the front part of the owner / architect agreement, the architect inexplicably fails to list that same corporate or partnership entity on the signature page above his executed signature. Often, the architect also fails to designate the official corporate or partnership capacity in which he is executing the agreement. When that happens, an argument could be made by a plaintiff that the individual architect (the signatory) executing the agreement is really the person liable for anything that happens, not the architect’s corporation or partnership entity. If the architect

This article is not legal advice. Consult with an attorney familiar with the law in your area.

Sabo & Zahn
233 S. Wacker Dr.
Suite 8620
Chicago, IL 60606
312-655-8620
312-655-8622 fax
[Http://www.sabozahn.com](http://www.sabozahn.com)

seeks the protection of his or her corporate, LLP or LLC structure, he or she may not be able to get it, and may be held solely liable for any ensuing damages, again without the benefit of the professional liability insurance coverage the architect's firm paid for. This is a very simple error which is, unfortunately, common place.

If a plaintiff knows that the corporate entity has little or no assets and is likely to declare bankruptcy, the plaintiff most likely would prefer to hold the architect personally liable, especially if the architect's firm is practicing without the benefit of professional liability insurance. Why waste time suing a corporation that has no assets or insurance and most likely will declare bankruptcy, when you can sue the architect personally and seek his possibly substantial assets? Many times, plaintiffs feel it makes good sense to sue the architect personally rather than the architect's corporation. Conversely, they would rather sue a partnership, instead of just the individual architect, because partners have joint and several liability. If one partner can't pay for the damages, the other partner(s) will have to. Due to joint and several liability of partners, each partner could be held liable for the full amount of the plaintiff's loss.

Another common mistake concerns the correct legal formation of corporate entities. If a mistake is contained within the corporation's incorporation paperwork, and because of the mistake the corporation is adjudged by a court of competent jurisdiction to be improperly formed to practice architecture, any contracts that the entity entered into could be declared void. Assume for the moment that John Doe Architects, Inc. failed to correctly state its business purpose in the corporation's articles of incorporation. Further assume that the architect licensing laws of the particular state require that the purpose clause specifically state that the purpose of the corporation is to practice architecture.¹ If the clause fails to state that the corporation is formed to practice architecture, the corporation could be properly incorporated, yet not meet the requirements of the state's professional licensing laws, possibly resulting in invalid contracts.

To be sure that your company is properly incorporated and licensed, you will have to determine what requirements are called out by the appropriate licensing practice act. Specifically check any required verbiage concerning the purpose clause of your corporation against any possible verbiage required by the state's licensing practice act.

Perhaps the most devastating mistake that architects make is that

This article is not legal advice. Consult with an attorney familiar with the law in your area.

Sabo & Zahn
233 S. Wacker Dr.
Suite 8620
Chicago, IL 60606
312-655-8620
312-655-8622 fax
[Http://www.sabozahn.com](http://www.sabozahn.com)

they fail to renew their licenses. If the business entity entering into a contract is not properly licensed to do so, the contract can be declared void. If it is required that you personally be licensed to properly maintain your business entity's license, and your license lapses, then the business entity's license will also lapse and contracts will once again possibly be void. If you individually enter into a contract with an owner and your license has expired, you are likely guilty of practicing architecture without a license, a violation in most states.

If you hold yourself or your firm out as being able to provide architectural services and your license or your firm's license has expired, your states department of licensing could decline to renew or suspend or revoke your individual license and that of your firm.

Even if you promptly renew your license after a lapse, a plaintiff could still make a convincing argument that he is entitled to the return of any monies he paid you or your firm for architectural services you performed. This is obviously a severe penalty for a simple mistake; one which may be avoided merely by keeping one's licensing in order and up-to-date.

Werner Sabo, FAIA, CSI
James K. Zahn, FAIA, CSI

1. An Example of one such requirement is contained in the instruction sheet for the Illinois Professional Design Firm Registration Application, IL486-1419 10/98, which under "Supporting Documents" states the following:

"Submit a COMPLETE certified copy (including purpose clause) of the Articles of Incorporation or Agreement issued by the Illinois Secretary of State, including any amended articles. If a fore (non-Illinois) corporation, submit a certified copy of the Certificate of Authority (including the purpose clause) issued by the Illinois Secretary of State. The purpose clause must include the practice of the specified professions for which the design firm is seeking registration."

This article is not legal advice. Consult with an attorney familiar with the law in your area.