

SHAUB AHMUTY CITRIN & SPRATT LLP

DESIGN PROFESSIONALS LEAVING PROJECTS BEFORE COMPLETING SERVICES NEED TO BE PROTECTED

By Steven R. Goldstein¹

Even the best laid plans can go awry, such as when a client and a design professional, both intent on seeing a project through to completion, recognize it is better for everyone if the relationship is terminated. In times like these, design professionals must realize this is the type of break-up that needs to be in writing.

When the parties discuss terminating the relationship, they often make certain agreements between themselves regarding the terms of the termination. It is imperative that such terms be memorialized in writing, since they are as important, if not more so, than the terms of the original agreement between the parties.

There are no guarantees that litigation will not subsequently ensue regarding the services performed by the design professional prior to the date the relationship is terminated. Preparation of the appropriate Settlement Agreement, however, will certainly go a long way toward protecting the design professional's interests if a lawsuit is filed. Although each project is unique, thus requiring preparation of a Settlement Agreement which provides the appropriate terms and conditions, the following is a general list of provisions design professionals should include to provide protection:

- Identify the parties to the agreement and the effective date of the agreement;
- State the relationship between the parties and the existence of any prior agreements which will be superseded by the Settlement Agreement;
- Set forth that although the design professional's services are not yet complete, the parties have agreed to terminate their relationship and any prior agreements for mutual convenience with no admission of liability on the part of the design professional;
- Identify the termination date of the prior contract and state that the design professional will not perform any further services at the project as of that date;
- If applicable, set forth the date the design professional will provide written notice to the appropriate agency (i.e., Department of Buildings) advising of the withdrawal of the design professional at the project;
- With respect to outstanding fees, provide the exact amount, method and date of payment to the design professional;

- When turning over project records, clearly identify what documents will be provided, and in what form, as well as the party that will retain ownership of the documents. If ownership is retained by the design professional, set forth that the documents are to be used solely for the subject project;
- Acknowledge that the design professional is issuing a limited license for use of the identified documents solely at the subject project, and provide that any breach of the Agreement by the contracting party will terminate the license;
- State that any reference to the design professional on the design professional's project documents will be deleted;
- Provide that the design professional is to be indemnified and held harmless by the contracting party for any liability resulting from subsequent use of the design professional's project documents;
- Include mutual General Releases in favor of each party to the Settlement Agreement; and
- Clearly state that the agreement is being signed by individuals authorized to enter into the Agreement and bind the referenced parties to the terms of the Agreement.

The above list is comprehensive, but by no means exhaustive. Each project has its own nuances that must be addressed should the parties decide to terminate their relationship. The days of the handshake deal are over. Therefore, to the extent possible, a design professional should not leave a project while there remain services to be performed by them without first consulting their legal counsel and protecting their rights, in writing.

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