

“VOICE” of an ARCHITECT EXPERT

## **CONTEMPORARY ARCHITECT’S STANDARD OF REASONABLE CARE**

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**Date Line: 2600-C-2500 BC, The Giza pyramid complex, Cairo, Egypt /(Shutterstock)**

*According to Wikipedia the Great Pyramid was the tallest man-made structure in the world for about 3,800 years. Wikipedia writes that historically, Akhet Hemiunu, nephew of the Fourth Dynasty pharaoh, Khufu, is generally accepted as the architect of largest pyramid of the complex, the Great Pyramid. What is seen today is only the under lying sub structure which supported the locally harvested smooth white limestone exterior veneer. So, today Architecture has become so much more than a single building. Present-day Architecture is the art, science, and entrepreneurial business of designing and constructing individual spaces, buildings, neighborhoods, communities, and municipalities to add greater value to societies’ future growth, welfare, and viability.*

**How will today’s Architect’s performance be measured?**

**DID THE ARCHITECT MEET A STANDARD OF REASONABLE CARE ?**

Architectural services performed for any project design undertaking is based on creativity, competency, and reasoned judgment, focused on the unique characteristics and requirements of a specific contractual Scope of Work. The common “Standard of

Reasonable Care” instrument of service fulfillment addresses a reasonable degree of care, skill and diligence for design professionals and is usually couched in terms of “community”, “time-frame” and “circumstances”. However, in my opinion, a broader Standard of Reasonable Care requisite to consider involves three (3) factors interacting together:

1. **Regulatory minimum constraints,**
2. **Contractual promises,** and
3. **Knowledge and experience of the Project Type.**

Obviously, each of these three are not weighed equally. In a test of the Architect’s Standard of Reasonable Care, analysis and considerations flow from the general to the specific. First, Jurisdictional Regulatory definitions of a Standard of Reasonable Care become the framework and base-line. Second, are the specific tenants within any Owner-Architect Agreement which may raise to a higher bar of performance, written and or implied. Third, is the Architect’s experience and knowledge level of the specific project type under consideration (health care, housing, commercial, etc.).

After 20 years of opining on “130-plus” construction dispute matters, as an Architect Expert Witness, Arbitrator and Mediator, representing a 50/50 Plaintiff / Defendant professional case mix, although not a lawyer, my operational understanding is that various States have moderating Statute Language (or...none at all) which define the Standard of Reasonable Care, for example:

- A. South Carolina Law establishes a Standard of Reasonable Care for the performance of Architects and design professionals in the Construction Industry.

*COMPETENCE “1.-In practicing architecture, an architect, firm, corporation, professional association or partnership shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by architects, firms, corporations, professional associations or partnerships in good standing in South Carolina.”*

- B. Florida Statutes {Title XXXII-§481.221(8)} state it this way....

*“ Final construction documents or instruments of service which include plans, drawings, specifications, or other architectural documents prepared by a registered architect as a part of her or his architectural practice shall be of sufficiently high standard to clearly and accurately indicate or illustrate all essential parts to which they refer”.*

As important as the Statutes are, the actual tenants of Owner-Architect Agreements are critical, especially **if these cites raise the statutory bar** and require a nuanced “higher” standard. From my case experience, here are two (2) samples of subtle but potent actual “higher” standard contractual clauses which would set the context for my testimony.

1. “The Architect shall be responsible for **ensuring** that the standard of care practiced by the Architect and **all Subconsultants** engaged by the Architect, to provide Design Services for the Project, shall be that standard of care practiced **by other leading architects** providing design services on projects of similar size and complexity.”

2. “Services and Standard of Care. DSA agrees to perform the Services in accordance with the customary standard skill and care of DSA’s profession for projects of **similar scope and complexity**, and in accordance with applicable government regulations. The Services **will be performed in a manner consistent with Owner’s interests** and as expeditiously as is consistent with professional skill and care in the orderly progress of such Services.”

So...unquestionably, it would be my opinion that any Architect’s applicable Standard of Reasonable Care **has or has not been breached** if the nature and degree of design/construction defects, deficiencies, errors, and omissions **[were to]/[or did not]**, negatively impact the original design intent of the specific project design in question.

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