

How to Avoid Common Pitfalls in Owner/Architect Contracts

By Forensic Architect – David Erik Chase, AIA

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Forensic architecture plays a vital role in understanding and analyzing design and construction failures or disputes that arise during or after a project. It involves the investigation and examination of architectural design intent, **contract documents**, materials, systems, and the building's eventual performance.

FORENSIC ARCHITECT - David Erik Chase, AIA, located in Palm Beach, Florida, and Hilton Head, South Carolina, has helped design and construction professionals better understand their duties and responsibilities for years. Continue reading for more information on how designers possibly mitigate risks in documentation within their contracts.,

How Forensic Architecture Impacts Construction Disputes

Forensic architecture is a multidisciplinary field that involves examining physical evidence and conducting investigations to understand the causes of building system failures, safety issues, or design flaws. It is often used in cases of construction disputes, where issues such as building code violations, defective workmanship, and unsafe designs are suspected and even discovered years later.

When a building fails or a construction dispute arises, forensic architects are tasked with determining whether the failure was due to errors in the design, construction, or materials used. They may also investigate whether the architect, engineer, contractor, or any other parties involved in the project fulfilled their obligations according to the contract of each separate party...all linked together in a contractual manner.

In contracts, legal and contractual provisions regarding safety, quality standards, timelines, payment schedules, and project scopes are essential in determining responsibility for a failure. Forensic architecture can help clarify these issues and serve as an investigative tool for identifying factual contractual breaches.

Understanding the common contract "pitfalls" that can lead to forensic investigations is critical for architects, interior designers, engineers, contractors, specialty inspectors, and owners.

Ambiguity in Contract Terms

One of the most common pitfalls in design/construction contracts is ambiguity in contract terms. Vague contract language or even unclear project specifications can create confusion regarding the Parties' obligations, leading to disputes over performance, payment, scheduling, and project scope.

For example, if a contract that doesn't clearly define the designer's scope of work, timing of deliverables, owners' process responsibility in reviewing each stage of document development, quality of products and materials required, and payment for professional services, the relationship can get bogged down rapidly and lead to disputes not originally anticipated at the initial negotiation "Honeymoon Period".

In forensic architecture, ambiguous terms often become central to investigations and analysis. If the contract is unclear about the expected standards of quality or construction performance, a forensic architect may have difficulty determining whether the failure was due to substandard materials, poor workmanship, or a misinterpretation of the contract terms.

To avoid such pitfalls, it's essential that all terms and conditions of the design contract be clearly defined. This generally includes:

- Specifying the architect's Standard of Care
- Detailing the scope of work to define a clear design intent and program requirements.
- Identifying the health, safety, welfare, and industry standards for a code compliance baseline.
- Design financial expectations for the project bottom line fees and timing of payments for phases.

The contract should also specify what constitutes a breach of the agreement and the consequences for such breaches.

Non-Compliance With Building Codes and Regulations

In the role of preparing specifications (e.g., project manuals for large projects), the architect is responsible at a minimum, to make sure these documents require absolute compliance with all applicable building codes, zoning regulations, and safety standards in the jurisdiction of the project. Non-compliance with these codes can lead to unsafe structures, legal penalties, and, in some cases, building failures that require forensic investigation.

Forensic architects often analyze and opine on whether building codes and regulations were adhered to during both the design and construction phases.

If a structure fails due to non-compliance with these regulations, the parties responsible for the failure may be held liable. In such cases, forensic investigations may reveal that the failure was the result of a failure of any party to adhere to the building code requirements, design requirements, substandard non-code compliant materials, etc. In such cases a forensic architect may assign fault to one or several parties and actually designate damages in line with fault.

Additionally, architects should be aware of any updates to building codes and regulations and make sure that the project meets the latest standards. The date of the application of the construction documents being submitted to the building department, becomes the date that the applicable codes are established to follow.

Poorly Managed Change Orders

Change orders are common in construction projects, as unforeseen issues or changes in project scope often arise during the construction process. However, poorly managed change orders can lead to disputes, delays, and budget overruns. If change orders are not properly documented and agreed upon by all parties, they can create confusion and may lead to claims of breach of contract.

In forensic architecture, change orders may be examined to determine whether the changes made during the construction process contributed to a failure or defect.

For example, if a change order was issued to modify the design of a building envelope or roofing system, a forensic architect may investigate whether the change was specified correctly and installed correctly. In such cases, the architect's failure to specify or observe the defect and/or the contractor's failure to properly manage and document change orders could be a key factor in the forensic investigation.

To avoid this pitfall, contracts should include clear procedures for managing change orders. This includes specifying the architect's role as to how changes should be documented, approved, and implemented, as well as how any cost adjustments will be handled will be critical.

Disputes are an inevitable part of any construction project. Whether it's a disagreement over payment, timelines, or quality of work, all parties' contracts should provide clear procedures for resolving disputes. Without an established dispute resolution mechanism, legal conflicts can escalate, leading to costly litigation or the need for forensic investigations.

Forensic architecture can play an important role in resolving disputes by providing an objective analysis and factual findings of the issues at hand. For example, if a dispute arises over whether the construction met the agreed-upon specifications, forensic architects can assess the quality of the construction documents to determine whether any design flaws, construction defects, or material issues contributed to the dispute.

By having clear procedures for resolving disputes, you can avoid lengthy and costly litigation, arbitration and even mediation, reducing the likelihood of needing forensic analysis to settle the matter.

Reach Out to a Forensic Architect for Oversight

A well-drafted architectural contract is the key to a successful project. Receiving oversight from an experienced forensic architect can help you avoid common process problems and make sure your project goes according to plan.

For some oversight, I do not recommend a simple "three to four page" letter of agreement between an owner and architect, no matter how small the project. From my 55 years of experience in this field, I have seen and opined on many project conflicts with disastrous outcomes, for all parties. Reliance on contract simplicity at the beginning "Honeymoon" period may ultimately lead to a potential disaster if any uncovered issues arise.

The standard should be in my opinion, the American Institute of Architects AIA Contract Documents--B-SERIES: Owner / Architect Agreements, which are available online. Any size and type of project will have the applicable agreement to which an owner and/or counsel can follow.

With a firm based in Palm Beach, Florida, and Hilton Head, South Carolina, **David Erik Chase, AIA** has over 20 years of experience as a forensic architect, **construction expert witness**, and arbitrator and 55 years as a registered practicing architect in 21 states and the District of Columbia,

Contact Mr. Chase today for assistance consulting to "Avoid Common Pitfalls in Owner/Architect Contracts". (d-chaseforensicarchitect.com)

Disclaimer: David Erik Chase is a registered architect in 22 states and not an attorney. The content of this article is intended only as a general overview of process and not a representation for guidance or any legal professional opinions, as advice. (Nb. Legal consultation is always advisable in this entire process).