



Foreword by  
Douglas Gordon, Hon. AIA and  
Stephanie Stubbs, Assoc. AIA,  
Editors of *AIArchitect*

# MANAGING PROJECT RISK

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Best Practices for  
Architects and Related Professionals

James B. Atkins, FAIA, FKIA, and Grant A. Simpson, FAIA

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# Foreword

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By Douglas Gordon, Hon. AIA, Executive editor, and  
Stephanie Stubbs, Assoc. AIA, Managing editor, *AIArchitect*

Over the decades, dozens of potential contributors have come to us offering to write this series of articles or that. Some would actually write an article, maybe two, then lose interest or run out of ideas. And when an AIA committee comes up with the idea that its members will write a column, we never say “no.” And, almost invariably, when we invite such a series, nothing materializes.

So it was in 2004 when we met Jim Atkins and (a bit later) Grant Simpson, who—at the instigation of an AIA committee—said they had some ideas for a risk management series. With a slight sense of trepidation, we agreed and set up a meeting. That first sit-down was markedly different from any before or since, though. At the outset, the authors presented us with the first article, fully written (a reprint from *Texas Architect*, “A Loss Cause”) and a full year’s worth of article titles and a submission schedule. The draft of the second article came soon thereafter.

In the coming months, we became believers. These two very busy architects working at the top levels within and with some of the largest firms in the country were delivering their monthly risk management medicine—always laced with spoonfuls of sugar in the form of tongue-in-cheek humor—on time every time. What luxury it is to work with such tireless, knowledgeable, informative people. But it gets better . . .

Being electronic, we are able to track the readership of every article that runs in *AIArchitect*, and we do. It didn’t take long to notice that every time we ran a Simpson/Atkins article, they had the highest article hit rate for the week (often for the month). To this day, that phenomenon continues.

We did hear some criticism, too, of course—from lawyers. Interestingly, the lawyers found the articles too anecdotal, with no citations, limited case law, and oversimplification of complex legal issues, for instance. Whenever they delve into the level of detail that these articles do, apparently, it was in law reviews, not architectural periodicals.

So, it seems, what draws the lawyerly ire is the very reason practicing architects keep asking for more. Atkins and Simpson were telling the story from the architect’s perspective. They have both been through litigation, arbitration, and mediation. They have conferred with the sharpest legal minds in the field of construction law, and they understand the finer points of that sometimes arcane discipline. They also recognize that few other architects do. They chose their mission to spread the word, as they are wont to write: “Be careful out there.”

These two writers have sustained their momentum for more than two years, and keep promising more. In the meantime, anecdotally but continually, we hear from principals of firms large and small that they want printed copies of the articles to pass around for all their firm associates to read. The next step, then, which we had all been contemplating all along, actually, was self-evident. It is the book you are holding right now.

Read it. Enjoy it. Learn from it.

# Preface

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*Managing Project Risk: Best Practices for Architects and Related Professionals* is composed of a series of articles that we had originally written over a three-year period for *AIArchitect* online at AIA.org, with a small handful initially published in *Texas Architect* magazine. It is intended to provoke thought and provide information that the design professional can apply in delivery of services. This book should be utilized with the understanding that we, both practicing architects, are in no way providing legal advice or services or any other type of expert consultation regarding specific conditions or situations. The reader must also understand that the laws, codes, and documents referenced herein periodically change and their authority should be confirmed prior to reliance or use.

The practice issues, conditions, and situations cited in this book are relevant studies and commentary of how specific situations on actual projects have been effectively administered by design professionals. However, all projects are unique and specific situations may require actions or approaches that significantly differ from those cited or suggested in this book. Further, actions taken and decisions made in certain situations may require the advice of legal counsel or special consultants.

It is also important that the reader understand that laws vary from state to state and that professional practices may vary depending on the geographical location and size or type of your practice and the project. In addition, the reader should seek the advice of a competent lawyer with expertise in the defense of design professionals should matters proceed to the claim or dispute resolution stage.

# Acknowledgments

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We are very grateful to The American Institute of Architects, particularly Jay Stephens, Esq., and Douglas E. Gordon, Hon. AIA, who cleared the path and enabled the article series to be born and to flourish. Jay's leadership on the AIA Risk Management Committee supported our efforts to do the series, and Doug's talented edits and nourishing support gave life to our messages in *AIArchitect*. The talented editing and production work of Stephanie Stubbs, Assoc. AIA, enabled our series to shine brightly. We have both learned and grown from the guidance of Joseph A. Demkin, AIA, who taught us the benefits of good editing and critical review.

Our appreciation also goes to Stephen Sharpe, executive editor of *Texas Architect* magazine, who published our first coauthored work and came up with good titles. Our articles would not have come to you in book form without the able leadership and direction of John Czarnecki, Assoc. AIA, with John Wiley & Sons.

**Jim Atkins:** I am indebted to my business partners at HKS Architects for their many years of support and encouragement. Special thanks go to mentor and friend, Ronald L. Skaggs, FAIA. My growth as an architect was profoundly shaped by three late great mentors: my father, C. B. Atkins, who taught me to work hard and not fear adversity; my professor and friend, Ernest L. Buckley, PE, PhD, who encouraged me to write and speak; and an old-style contractor, Hap Padgett, who showed me how buildings can and should be constructed.

Finally, I am grateful to my daughter, Ashley, for her eternal love and support, and my ultimate gratitude goes to my wife, Sook Kim, PhD, for allowing these articles to steal me away from her all those nights and weekends. This book would not have been possible without her loving support, understanding, and encouragement.

**Grant Simpson:** I am indebted to several important mentors who shaped my career. Joe Moore, homebuilder, who let me work summers during high school and college, building the things I drew; the wise old chief draftsmen from the '70s, Robert Reynolds, Arthur Stone, William Echols, Terry Garrett, and Bob Jackson, who taught me more about construction documents than anyone else could; Ronald M. Brame, FAIA, from whom I learned, during my 22 years with HKS, that architecture is a business; and my friend Lance K. Josal, AIA, who invited me to help out with project delivery at RTKL.

I am grateful to my two sons, Andrew and Austin, who, in the midst of innocence and their unconditional love and concern for me, asked me in the early fall of 2003, as we made our morning commute to school, if I was ever going to work again, and to my grandfather, Clyde W. Wilkerson, the wisest man I've ever known. Finally, I am most grateful to Tina, my wife and loving companion of 37 years. Her patience is without limits, and she nurtures and tolerates me endlessly.

# Introduction

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The articles that compose this publication are a product of our experiences as project managers and group leaders over many years. As we entered the profession in the late 1970s, the two of us began to encounter the issues we would later discuss with architects as copresenters at AIA events and write about together. As we debated, presented, and published our works, we began to realize that many of the most contested topics were not represented well in the literature that was available. When these issues were addressed, they tended to be superficial, watered down, or off the mark entirely.

In 2003, while working together on a large litigation that made rude, rhetorical, and disingenuous claims against an architect, we decided it was time to address some of the basic issues such as the realities of errors and omissions and the concept of betterment. Our decision led us to writing the article “A Loss Cause” that was initially published in 2004 by *Texas Architect* magazine and later republished by AIA.org’s *AIArchitect* as one of its “Best Practices” topics. Discussions with *AIArchitect* regarding future topics resulted in the “Best Practices in Risk Management” monthly series. The *AIArchitect* readership responded with much praise and some criticism, leading us to augment, temper, and strengthen our messages, our opinions, and our resolve.

The elements of our approach to practice cover many areas in risk management—from the fundamentals to client issues to the essentials that we believe necessary to survive in today’s challenging work environment. We include applications from our personal experience to accompany traditional AIA-based project management to strengthen and enhance this well-established industry standard. We are introspective, observing and questioning our actions in an effort to keep our path true and within the best-practices arena. We continuously sound our best-practice ideas to a network of professionals across the country that supports us with beneficial advice and commentary. The group includes prominent architects, lawyers, and insurance specialists with direct and extensive experience in the topics we address. We occasionally look backward, lamenting the loss of the way things once were, but we learn and use these past events to keep our expectations and projections of the future in context.

The topics in this book reference both the 2007 and the 1997 AIA documents. Claims adjudication often takes many years due to lengthy or non-existent statutes of limitation and repose and our somewhat glacial legal system. A significant number of disputes pending in litigation today involve contracts written using both the 1987 and 1997 AIA document editions. Although the 2007 AIA document revisions are now available, some practitioners will continue to use the 1997 document family that they are familiar with for as long as they remain available. However, in an attempt to fulfill



the needs of readers, we have references to both revisions. This publication is intended to not only present the reader with sound risk management suggestions but also to help give context to professional practice and provide supplemental assistance to the references and resources currently available for the practitioner. It is not so much a book of directions as it is a collection of opinions derived from our experiences. We hope to provoke thought and provide information that you can apply in your approach to architecture. We also hope that you benefit from this information and you use this publication as a handy reference. We sincerely invite your debate, because by questioning and arguing the issues, we grow together. There is no substance to the phrase “ask a stupid question,” because the angst of regretting a question asked is much preferred over ignorance.

Many of our readers and supporters have asked how we continue to come up with informative, stimulating, and relevant topics to address. The problem we face is not in finding new topics, but in choosing from the many ways we architects get into trouble not only in practice but also from the fantastic ways plaintiffs’ lawyers spin the alleged wrongdoings of architects. From this great source we find the few topics we have time to write about.

We admonish you to wisely balance your risks with your rewards, cherish that shingle on the front door while having fun and finding fulfillment along the way, and please, as we note at the end of every article, don’t forget to be careful out there.

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# Chapter 1

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## Fundamentals

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### The Importance of Risk Management: Its Key Role in Professional Service Delivery

This introductory article for the series was actually our second article written as a team. We felt it important that the series lead-off piece convey the overall message of the integral part risk management plays in our daily work. The operative word in this article is “attitude.” Risk management is a way that we think about work that affects many things we do each day. We also touch on some topics we will be addressing in later articles, and for the first time we close with our now familiar monthly departure line, “be careful out there.”

There is no security on this earth, only opportunity.

—General Douglas MacArthur

Risk management is not a standard course in architecture school. It is not a topic on the Architect Registration Examination. Yet there are many seminars on the subject presented each year at the AIA Convention, and professional publications address the topic frequently. The AIA Risk Management Committee is one of the two most funded committees in the Institute.

Unfortunately, many architects believe risk management is a remote activity and should be discharged by the “technical guys” in the back room, out of sight of clients. Our profession is actually heavily influenced by risk management, yet there are no checklists or descriptive processes. Why is it so enigmatic? Why is it so important? Why should we be concerned with something so distant from architecture? Or is it so distant?

Only in the last 30 years have we had to worry about our risks. It all began about the time the request for information (RFI) appeared on the scene. Up until then contractors didn’t write down the questions they asked the architect. They didn’t keep track of what their questions were or how they were answered. They were only concerned with building the project, collecting their fee, and moving on to the next job.

Today, as you know, things are quite different. Our documents are scrutinized in excruciating detail for conflicting, duplicated, or missing information. The RFI process has become a struggle, with architects considering their answers to be “supplemental instructions” and contractors often claiming them to be added scope. RFIs and submittal tracking logs are now

viewed as the contractor's primary tools for making a case against the architect. As architects, we are condemned if we don't answer any and all questions quickly or correctly. We are also condemned if we answer correctly, with the presumption that the question was necessary because the drawings were deficient in some way.

The result has been an alarming increase in claims and litigation against architects. This has threatened the existence of many insurance providers, and premiums and deductibles have risen as they attempt to stay alive. Meanwhile, insurance companies and defense lawyers are preaching risk management. They tell us to proceed with great caution, and they warn against project types of higher risk.

## It's an attitude

Risk management is not so much a subject as an attitude. It is more an approach to business than it is a part of business. Achieving success in architecture in today's treacherous industry is dependent upon how you apply relevant risk management as you go about providing your professional services.

Our topics will cover essentials such as good contracts and effective documentation. We will look at the risks that arise from our plans and specifications and the minefield of construction administration liabilities. We will review high-risk areas in project delivery, such as the broadly misunderstood aspects of fast track and the varying expectations of construction management. We will also examine risks associated with the contractor's work responsibilities and how easily the architect can assume them if not prepared and knowledgeable. In virtually every article, we will examine the benefits of communicating with and understanding your clients and their expectations of your performance.

The trouble with law is lawyers.

—Clarence Darrow

## How did things get this way?

First, let's look at how we got into this fine mess. What happened to cause the contractor to start worrying more about keeping score than keeping in budget and on schedule? What caused us to start dissecting words and using those cover-your-assets phrases?

The worm began to turn back in the '50s when the courts ruled that you could sue someone although you were not contracted with them. The contractual relationship, known in legal terms as *privity*, ceased to be an absolute requirement for filing suit, and architects began to experience the joys of being served with legal papers. The climate quickly changed for architects from never being involved in lawsuits to almost always being involved.

As a result, architects began to worry more about semantics than about their services. Inspection and supervision gave way to observation and just being generally familiar with the work. Any certifications that were made

had to be based on the “best of our knowledge, information, and belief.” Architects had to start dancing with the legal aspects of their services because they were becoming targets in claims and legal actions.

## Insurance plays a role

But architects didn’t really become a viable target for claims until they acquired professional liability insurance. The insurance policy gave the plaintiffs a measurable goal for claim damage awards. Professional liability insurance was created for architects and engineers by Victor O. Schinnerer in 1957 to protect against a very real threat. But one has to wonder if the policy itself has become the desired target. Could this response to a need have actually helped to seal our fate?

Claims against design professionals typically allege negligence—that is, a negligent act or failure to act by the architect in the performance of professional services. In today’s design industry everyone keeps score. Contractors want additional general conditions costs if the architect fails to act quickly enough, and owners want to be compensated for anything that is added to the job after the contract is signed. This has grown out of the perception that almost everything is the architect’s fault. Any error or omission or duplication is perceived as caused in some way by the design professional. This topic is explored in “A Loss Cause: Drawing Discrepancies and Ensuing Damages” in Chapter 4. If you have ever been involved in a lawsuit, you have experienced firsthand that every mistake that can be divined from your services will be cited as evidence of a “pattern of negligence.”

They say that nobody is perfect. Then they tell you practice makes perfect.

I wish they’d make up their minds.

—Winston Churchill

## Nobody’s perfect

This raises the question: Why do they perceive us to be the perpetrator? Why is it that for years the architect was never thought to be at fault, and now it is automatically assumed? The accepted definition of “Standard of Care” does not contain the word perfection—not for architects and not for any other profession. So how have contractors and owners come to demand such performance? Standard of Care as addressed in AIA Document B503, 2007, Guide for Amendments to AIA Owner-Architect Agreements, emphasizes that “The law . . . does not expect architects to provide perfect or flawless services or to guarantee or warrant the results of their services.” Nevertheless, the topic warns architects that “Use of words or phrases such as ‘highest,’ ‘best,’ or ‘most qualified’ in relation to the Architect’s standard of care, increases to extreme levels the standard of performance expected of the Architect.”

Perhaps architects have brought some of their trouble on themselves with lofty representations that have altered expectations. But there is also

a marked demand and expectation for perfect services that prevails in the industry. Clients want architects to sign “redraw at the architect’s sole expense” and “time is of the essence” clauses in contracts, and they frequently demand “100 percent complete” or “fully coordinated” construction documents. This has come about in part because architects do not concern themselves enough with what the general public thinks and knows about realities in their profession. Architects who practice as if they can do no wrong will likely create the same expectation from those with whom they do business.

So risk management in architecture is much more than just playing it safe by documenting decisions and securing a good contract. It is also about education, enlightenment, communications, and relationships. It is partly about improving your product delivery, but it also includes demanding the full measure of the obligations of others. These practice adaptations are necessary if we are to overcome the risk challenges that face us.

## A good start

A good place to start is in your own shop. How good is your documentation? What’s in your laptop? E-mail has become perilous, and the trail that we leave behind us can be condemning. When you think of documentation, you must think in terms of your complete body of services. Remember, people are now keeping score on not only what you do but also when you do it and how fast. It is a lot like keeping a diary. In fact, many architects keep a personal journal of their projects that much resembles a diary. They document decisions, events, discussions, and any other information that chronicles the project delivery. We address the essentials of a project journal in detail in “To Document or Not to Document” later in this Chapter in Chapter 1.

A reasonable risk management objective is to have everyone in your office keeping records in a similar manner and with the same thoroughness. This will make training easier, and it will enable data research should you need your records for defending yourself. Your records should be clear and easy to understand. Remember that the person reviewing them later will likely not be an architect, so try to refrain from terminology and jargon that the layperson will not understand. You should also be careful to avoid self-criticism in project-related correspondence. At any given time, on any given project, we are likely to take actions that we could have done better, and there is no reason to make a case against yourself by identifying and emphasizing your shortcomings.

The “story” of the design and construction of a project is told primarily through meeting reports, site observation reports, and communicating correspondence such as letters, memoranda, and e-mails. Therefore, it is essential that you manage these media to the greatest extent possible. In addition to the site observation report, it is important that you also manage the project meeting report. After all, they are essentially tools for reporting project progress to the owner. If you issue the report, you will be able to recount the events as you have experienced them, and if you do not issue the report, you will likely read results or opinions that do not coincide with your own. If your contract or your project organizational structure does not



allow you to issue the project meeting report, it will be necessary for you to rebut in writing each and every issue and event that is not consistent with your experiences and understandings. Rebuttal is a laborious process that too frequently falls through the cracks of a busy schedule.

## Managing communications and the 24-hour rule

Letters, memoranda, and e-mails must also be managed effectively. Though seemingly ludicrous, a good rule to follow is not to put anything in writing that you do not want to see projected on a screen in a courtroom. This includes criticism of yourself and your consultants, documentation of any breaches of responsibility, and any unprofessional actions or behavior. When managing sensitive subjects, it is usually a good idea to wait a while after you have written on the subject before sending it to someone. This is known as the 24-hour rule. This allows you time to cool down and think over the appropriateness of your response. An abrupt or rude e-mail “missile” cannot be recovered once it has been fired.

It is also important to administer your project management activities effectively through your spoken words and actions on the job. To achieve this goal, you should think of risk management as an integral part of the project management process. Ideally, this is done without affecting the outward appearance of your management activities. However, if you are too heavy-handed with your risk management behavior and activities, it could do more harm than good with your relationships and your effectiveness. It takes time and work to develop a balance that is effective without being inefficient or damaging.

As mentioned earlier, your success in managing your risks within your project will depend to a great extent on the understanding and perception of others. Owners, contractors, and subcontractors all bring to the table their own expectations of what architects are responsible for. Therefore, it can be greatly beneficial if the owner and contractor fully understand what your contracted services are and how you are required to do them. This may require frequent explanations and much patience because many aspects of architecture services are not generally well understood.

What we think, we become.

—Gautama Buddha, born 563 BC

## A new way of thinking

The only way that you can truly eliminate risk in the practice of architecture is to close your practice, shutter the doors, and go home. If we practice as architects, we must take risks, and the objective becomes a balancing act. We must balance our risks with our rewards. The more we can control our professional risks without adversely affecting the level and quality of our services, the more successful we will be. The new way of thinking we espouse involves developing a reasonable attitude about effective risk management.