

Strategies for creating an in-house risk-management program

Practice Matters

By Don Crosby, AIA

Poor documents, unclear contracts, inadequate communication, and failure to respond to crises in a timely way all create great risks for an architectural firm, the worst of which is litigation. Yet architects often fail to address these problems in the day-to-day operation of their businesses. Risk management involves the same ingenuity and problem-solving capabilities that architects employ in the design of their buildings. It is only natural, then, that in well-run practices every professional should participate in a comprehensive risk-management program.

Trust helps resolve problems

Managing risk begins with developing trust. When problems occur on a job, there will always be the temptation for parties to speed-dial their lawyers first and communicate with each other later. A better solution is for the parties to learn to trust each other before the first problem ever arises, so that when it does, determining who is responsible occurs only after it has been resolved. If the architect has taken the time to educate the client, then the client will understand that there are always challenges in a complex building, and that the goal is to resolve issues, not to litigate them.

For example, recently, our firm had a condo project where water intrusion from some patio decks

occurred. The client called us first, and we then brought in the contractor and subcontractor. Together we determined that a flashing detail had not been constructed correctly. Instead of pointing fingers, the team designed and installed a fix and the client was satisfied.

Other clients are not so easy to work with, so an important component of risk management demands turning away clients who don't place a high value on communication and conflict resolution. Many larger clients assign contract negotiations to lawyers who may not have adequate experience with the building industry. Therefore, architects and their insurers need to take the time to educate inexperienced clients, or their representatives, in what are reasonable errors and omissions, code issues, and insurance coverage. Any client who insists on contract language that forces an architect to act in a way that is unethical, illegal, or uninsurable is not a desirable client. Although this initial care may protract contract negotiations, if you hold the line in order to ensure a better project and a reasonable profit, you can earn the client's respect. It has been my experience that how things go during contract negotiations can be a good way to predict what will occur during construction.

Architects should also research their client's finances before signing a contract. Credit-reporting services such as Dun & Bradstreet are a good source of background information on potential clients. We do not contract with

shell corporations or limited-liability corporations.

A new position: risk manager

Starting a risk-management program requires designating a senior person to act as the firm's risk manager. Once, this person might have been called "production chief"—a senior person with a strong background in document production, codes, and contracts. Today's risk manager must also have the ability to communicate with the staff about these issues, as well as experience dealing with legal and insurance professionals. He or she needs to know whom to call for advice in a given situation; for example, should it be an engineer or a code consultant?

The risk manager should track all claims or suits and be the firm's chief liaison on these matters. He or she must also stay informed about new construction problems as they are discovered industry-wide, as well as new technical information, and communicate these to the staff. The final responsibility for the quality of a project falls to the principal-in-charge or project principal. Project managers, who are absorbed in day-to-day issues, may not see the red flags that a project principal—with assistance from the risk manager—might notice. The risk manager serves as in-house adviser to everybody.

The quality-control plan

The foundation for any risk-management plan is the firm's quality-control manual. The manual outlines procedures that should be followed,

starting with reviews of marketing proposals. As an expert witness, I have seen circumstances in which the marketing department promised a service or process in their proposal that the architects could not deliver. The principal-in-charge should review all marketing text, particularly that which is related to construction documents, construction administration, plan checking, and schedules.

Plan checking has become a bigger issue than ever because construction documents are stored out of sight—digitally—instead of in print form, where they can be readily reviewed, and because there is a wider gap in technical knowledge between senior and junior staff than ever before.

The quality-control manual should outline procedures for project reviews at the conclusion of each phase. Preferably these should be done by a fresh pair of eyes. It is best to use a plan checker from outside the firm or, if one is not available, use someone from another team in the firm. Currently, at the end of each phase our firm checks plans at least three times, in part to catch errors that could occur due to the knowledge gap. Finally, the manual should outline the process for quality control throughout the construction process.

A good risk-management plan builds on the manual and can be brief. Here are some key ideas for reducing your firm's risks:

- Create a culture in which solving problems is more important than assigning blame.

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- Appoint senior staff member(s) to coordinate and manage risk.
- Have project principals report potential problems to the risk manager immediately and develop a responsive strategy.
- Before reporting a potential problem to the insurance company, the firm managers should agree that

the entire firm. An annual presentation can orient new employees and update the existing staff. Identify a senior technical person who can answer technical questions during the design phases, before potential problems reach the field. The risk manager should continuously distribute updates to the plan

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all alternative solutions have been explored.

- Make appropriate staff available to the risk manager to deal with project-related problems.
- Establish a budget to cover risk management.

Getting staff buy-in

The plan and the process of risk management must be shared with

and inform staff of relevant technical issues. Well-trained employees understand their professional responsibility in terms of life safety and reputation. But it is important to explain the costs of litigation as well as its negative impact on morale.

Covering the cost

Our firm allocates 1 percent of the net project fee to cover the cost of

risk management, and we have found that this is enough to respond to our clients' needs. It serves as a reserve for dealing with problems during or after construction and is very inexpensive insurance.

A few helpful hints

Should a client call with a complicated problem, an expert should be brought in immediately. It is a good idea to contract with a waterproofing consultant from the outset, since water penetration is the source of many claims in certain areas. A building-skin consultant can be invaluable on complex high-rise projects. Remember that your consultant cannot be an expert witness against you if litigation occurs.

In the Bay Area, the Advanced Management Institute, a local organization that offers ongoing training for professionals in the A/E industry, sponsors a monthly forum for risk managers. This informal luncheon is invaluable for hearing about strategies to address the most recent developments in technology and liti-

gation. If such a forum does not exist in your area, work with the local AIA to establish one.

While architecture schools are good at teaching about the architect's ethical responsibilities, few offer courses in risk management. With the growth of the AIA's Continuing Education Program, local chapters and insurance companies are offering frequent courses in these areas. Pay for younger staff, whether they are AIA members or not, to take these courses.

Conclusion: create a culture

In addition to assigning a risk manager to oversee the process of educating the staff, it is also important to have enough project principals available to oversee projects and spot risky situations. Risk can be significantly reduced if the entire team works together to communicate with the client so that he or she will call you first when a problem arises. That call and your committed plan may keep you out of court. ■