WHY "HANDSHAKE" OR VERBAL AGREEMENTS LEAD TO DISAGREEMENTS

Architects often find themselves in situations where their clients have verbally accepted their service/fee proposal, but, perhaps out of urgency, proceed with the Project without having a signed agreement. Sometimes it is by omission; sometimes, deliberate. Some clients may use various stalling tactics and make promises to sign an architect's proposed agreement, but either never get around to it, or purposely avoid doing so.

On the other hand, some architects may not appreciate the necessity for an executed agreement. Afterall, the client may be diligently paying all their invoices, and everything may appear to be going smoothly – at least until something goes wrong and a dispute arises.

The very first question of the ARM/r test on our website asks: *You have contracts in place with your clients as well as all sub-consultants***.** Almost a quarter of the 300+ respondents to date have indicated "Sometimes."

As long as no misunderstandings or disagreements arise, it may make little difference not having a signed agreement. However, when there is a dispute, the value of a written contract becomes clear.

Our claims history has shown that providing professional services without a properly executed agreement documenting the expectations of all parties is a risky proposition. The mere absence of a properly executed agreement could give rise to a claim or make a claim more difficult to defend.

The most common allegations may involve breach of contract and disputes over fees and scope services to be provided. When a breakdown in the client-architect relationship occurs, the

absence of a signed agreement may worsen the situation due to perceived unfulfilled promises and expectations.

> ***"A verbal contract isn't worth the paper it's written on."***
> -Sam Goldwyn, 20th Century American Film Producer

HERE ARE THREE REASONS ARCHITECTS WILL BENEFIT FROM HAVING A SIGNED CONTRACT:

1. **Fees Payment** – Without a document outlining the terms of the agreement, the architect would be hard-pressed to establish that they performed services and the terms of the payment for those services. As an example, a client could refuse to pay an architect's invoices on the basis that it never signed an agreement. We have in fact, had this audacious claim more than once, where the client claimed that it never requested the architect to proceed with its services, after invoicing for a full set of permit drawings.

2. **Scope of services** – If scope of work is not clearly defined, it can be another source of disagreement. Agreements based on a handshake may have been the norm in days gone by, but in today's more litigious environment, it is not only risky business, it's asking for trouble.

   When there is no written contract, or more commonly, if there is one that was never signed, the Courts may make findings and draw inferences as to what was agreed upon based on evidence and the conduct of the parties. However, these findings may not go your way.

All contracts, written or oral, have express and implied terms. Without a signed agreement, the agreed terms are left to the parties' interpretation and could result in, or exacerbate, a claim.

3. **Professional misconduct** – In addition, providing architectural services without an express written or oral contract is considered professional misconduct under the Regulations of the *Architects Act*.

No written agreement can foresee every scenario that may arise. However, standard form agreements, as are recommended by the OAA and Pro-Demnity, contain protective language and legal provisions that address many possible issues that may arise. For example, there are provisions in the standard form agreements that address limits of liability, termination and dispute resolution processes, to name a few. Perhaps more importantly, standard agreements have been scrutinized by professional associations, owner and construction groups and have been crafted to accurately describe duties and responsibilities and be fair to both parties.

That's why when a claim is reported to Pro-Demnity, one of the first things we may request is a copy of your agreement. We review the provisions of the agreement and use it to protect and defend your interests and ensure the effective resolutions of disputes.

So, what could go wrong by not having a signed agreement? Almost anything and everything. Protect your projects and practice by ensuring that a signed agreement is in place before commencing work on a project no matter the size or scope of work.

Conclusion:

The absence of an executed agreement can be perilous and detrimental in a claim situation.

The best advice we can provide is to insist that the expectations of all parties are documented and

signed before undertaking work – and have the fortitude to stand by that.

Our Contributor

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claims with architects, construction dispute, as well as interacting with insurance underwriters in product development and other initiatives within the Company. Most importantly, Sal passionately services the profession of Architecture by providing consultation to architects on avoiding liability and minimizing risk. He is a licensed Ontario architect with over 35 years' experience at Pro-Demnity (previously the OAA Indemnity Plan).