



PROFESSIONAL LIABILITY UPDATE

A LOSS PREVENTION NEWSLETTER FOR THE DESIGN PROFESSION

MSP PL 09/2009 'Scope of Services — A Profitable Risk Management Tool'

September, 2009

Scope of Services A Profitable Risk Management Tool

Article courtesy of Professional Liability Agents Network (PLAN)



Developing a clear and comprehensive scope of services not only reduces your professional liability risks, it can also increase your profitability. By itemizing all of the many valuable services you provide to clients you help ensure you get adequately paid for your significant contributions to a successful project.

Alternately, the absence of a clear and comprehensive scope of services is a major cause of disputes, claims and counter-claims between design firms and their clients. Without a clear project scope — negotiated and agreed to by both parties — client expectations are rarely met and design firms often find themselves facing demands for delivering far more services than they thought they had contracted to perform.

A vague or inadequate scope of services might simply be the result of a client's lack of knowledge of the design and construction process. Because of this lack of knowledge, a client-drafted contract may contain general language such as "provide any and all design services necessary for the completion of the project." In some cases, however, clients may intentionally use language such as "any and all" so that they can hold the design firm fully responsible for project success.

Other clients might purposely specify a bare-bones scope of services as a cost-cutting effort, limiting the specified services in the agreement in an attempt to limit fees. Then, once the project begins, the client may attempt to squeeze every service imaginable out of the design firm for the inadequate fee.

It is your responsibility to ensure that a clear and comprehensive scope of design services is negotiated prior to signing any client agreement. It is far too risky to take on an assignment in which the scope of services is either unclear or inadequate and therefore imprudent and unusual for your profession. For example, by agreeing to

perform design services without providing construction-phase services, you are prevented from seeing firsthand whether or not the integrity of your design is being maintained. It also denies you the opportunity to clarify ambiguities or correct misunderstandings that arise on the jobsite. And if brought into a claim on such a project, a court or arbitrator may decide that you did not act as a reasonably prudent design professional, even though you were not contracted to perform construction observation as part of your scope of services.

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As shown, a clear scope of services can:

1. minimize misunderstandings between client and design firm and thereby reduce the chances of claims.
2. maximize fees earned by itemizing all services that the design firm will provide.

Negotiating Your Scope of Services

Negotiating a clear scope of services is one of the best ways to make sure you are paid adequately for your work and to optimize your chances of meeting your client's every expectation. The negotiating process helps your client more clearly define needs and expectations and gives you the opportunity to explain how those expectations can best be met. It will also give your client a better understanding of your role in the design and construction process and the full range of services you can provide.

Your goal is to develop a final scope of services that clearly sets forth:

1. Services that you will perform for the agreed-to fee
2. Additional services you can perform for an additional fee
3. Services you will not perform per the client's refusal
4. Required services that will be performed by a third party.

The fourth item — required services performed by others — is often overlooked but very important to spell out. As the prime consultant on a project, you can be liable for failing to ensure a required service was performed up to standard, even if you were not contracted to provide that service directly. This is true even if the third party performing the services enters into a contract directly with the client.

Sample Scope of Services

A useful tool to reach agreement on a reasonable scope of services is a scope of services checklist. You can use the basic services listed in the standard AIA or EJDCDC agreement as a starting point and then customize it to fit your own practice. A sample scope of services checklist, adapted from the Coalition of American Structural Engineers, is shown below.

Project Development Phase

- Define scope of structural services
- Assist in development of schedule
- Assist in determining channels of communication
- Assist in determining responsibility for dimensions
- Assist in determining drawing standards and specifications format

Scope (continued on page 3)



2009 Risk Management Series

- Risk Drivers 2009 — Understanding the Dynamics of Risk in the Design Industry
Tuesday, September 29, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am
- Disaster Planning for Businesses
Wednesday, October 14, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am
- Property Management
Thursday, October 15, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am
- Sexual Harassment Prevention Training
* Satisfies AB1825 requirements
Friday, December 4, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am
*** NOTE:** This will be our **final Sexual Harassment Prevention Training seminar in 2009**. If you have staff members that must complete this course in 2009, be sure to reserve seats early!

All training sessions available to our clients

* Reserve early / seating is limited!

Register for upcoming seminars

Contact Darcee Nichols at dnichols@cavignac.com or call 619-744-0596

* NOTE: Due to the popularity of our seminars and limited space available, we regret we cannot provide refunds or credits with less than 72 hours advance notice of cancellation.

Published by

Cavignac & Associates

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Web Site www.cavignac.com

- Assist in determining number of meetings and number of site visits
- Negotiate fees and payment schedule
- Execute contract

Schematic Design Plans

- Attend meetings
- Establish structural design criteria
- Prepare studies of alternative structural systems
- Assist in selection of structural system
- Provide structural criteria for geographical consultant
- Assist in determining need for special studies

Design Development Phase

- Attend meetings
- Prepare preliminary foundation drawings
- Prepare preliminary structural design calculations
- Prepare preliminary framing layout drawings
- Prepare typical detail sheets
- Identify pre-engineered structural elements
- Prepare or edit outline specifications for structural items
- Assist in preparing preliminary opinion of cost of construction
- Review results of special studies
- Coordinate structural design with special design criteria
- Submit design development documentation for approval

Contract Document Phase

- Prepare structural design of primary structural system
- Designate elements to be designed by specialty engineers, and specify structural criteria for specialty engineers' design of pre-engineered structural elements
- Review effect of secondary or non-structural elements attached to primary structural system
- Attend meetings
- Assist in coordination with building code officials
- Complete structural calculations
- Complete structural drawings
- Prepare or edit specifications for the primary structural system



- Assist in establishing testing and inspection requirements
- Perform checking and coordination of the structural documents

Construction Administration Phase

- Bidding and Award
 - Assist in evaluating bidder's qualifications
 - Provide structural addenda and clarifications
 - Assist in bid evaluation
- Pre-Construction Services
 - Attend meetings
 - Assist in establishing communications procedures
 - Assist in establishing testing and inspection procedures
 - Assist in confirming submittal agency
 - Assist in selection of testing procedures
 - Advise client and contractor regarding which structural elements require construction observation by SER
 - Respond to building department and peer review comments
- Submittal Review
 - Review special submittals for items designed by SER
 - Review submittals for pre-engineered structural elements
- Site Visits
 - Make site visits at intervals appropriate to the stage of construction
 - Prepare site visit reports
- Materials Testing and Inspections
 - Review testing and inspection reports
 - Initiate appropriate action to those reports, if required



Your checklist should be specific to all of the services that are normal and customary in your discipline and for the type of project being constructed. The checklist should indicate which items you are to perform as contracted services, which services are to be performed by other parties, and which non-basic services are available for an additional fee. Reviewing such a checklist with the client is a good planning exercise to ensure that all possible services are considered, and makes a useful guide in estimating or pricing your proposed services.

Incorporating the Scope Into Your Contract

The same checklist or a derivative thereof should become a part of your proposal to your client as well as a part of your contract with the client. The easiest way to incorporate the scope



into your contract is to formalize the checklist as an addendum or exhibit added to the contract with an appropriate reference within the body of the contract.

It may also be beneficial to include a list of available additional services as a separate appendix. Make it clear that these additional services are not included as part of the basic scope of services and will be paid for by the client in addition to payment for basic services in accordance with your prevailing fee schedule.

A separate addendum should be prepared to itemize services that you offered to perform but that will be performed by others or will not be performed at all. Note in your contract that you offered to perform these services but that the client declined to utilize your services in these areas.

Try to include an indemnity clause that holds you harmless from any damages, liabilities or costs arising out of or connected to you not providing these services. If you are unable to get the client to agree to a formal indemnity agreement, note in your contract that you assume no responsibility to perform any services not specifically listed in your scope of services.

Finally, if your client chooses to exclude a service that you consider critical to the success of the project or to public safety, you should call special attention to this. Write a letter reminding the client of the necessity of obtaining these services from other sources and asking the client to provide you with the names of the individuals or firms who will perform these services.

Specifying a clear scope of services may help avert a serious problem with your client. It may also help you expand your scope of services on your next project thereby increasing your fee while reducing liabilities. ✂

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.

Personal Security Safety Tips

By *Stuart Nakutin, CSA, COA, CET, WCCP, CHMC*
Director of Safety and Loss Control

Oh, that couldn't happen to me — five words people often say before *they* become victims of a crime. Unfortunately, the truth is that it can happen to anyone, and denying that anything can happen is the best way to become a victim yourself. Know that danger always exists, and keep the following in mind:

Personal Safety in General

- **Be Aware** – When you are out, be aware of your surroundings – avoid potentially dangerous situations
- **Have a Plan** – Know what you will do if a dangerous situation comes up
- **Carry a cellular phone** in case of emergency
- **Always Trust Your Instincts** – If something feels wrong, it probably is
- **Don't carry a large amount of cash** in your purse or wallet
- **Be Aware of Others Around You** – Write personal information to tellers, etc. rather than saying it so others can hear
- **At Work** – Always lock pocket books, address books, personal planners/calendars away
- Keep an **unlisted phone number**
- **Don't Advertise Your Possessions or Family** to people you don't know well
- **Keep your home address secure** (checkbook, bills/statements or other mail, magazine labels, etc.)

Personal Safety at Home

- Install and use a peephole in your front door
- Keep drapes or blinds down after dark
- Leave lights on in two or more rooms to show people that you are at home (a well-lit home keeps intruders away)
- Be extremely careful about letting strangers into your home
- Be suspicious of visits by people that you didn't call
- Change the locks after moving into a new dwelling (prior tenants and/or their family/friends/neighbors may still have a key)
- Make sure the doors and windows are locked when you leave
- Install motion sensor lighting so that lights will come on if someone is outside your house

Your Obligation

- YOU have to be willing to do what it takes to avoid being a victim
- NO ONE but YOU can keep you safe
- Personal safety requires thought, effort, and vigilance on your part ✂



Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Tan at Your Own Risk!

As summer comes to an end and a chill tinges the air, you might be tempted to head to the tanning salon. It's much safer than the sun anyway, right? **WRONG!**

The World Health Organization's International Agency for Research on Cancer recently found that the ultraviolet light in tanning beds is **just as carcinogenic** as cigarettes, asbestos, radium and arsenic!

The committee also reported that the risk of skin cancer goes up 75% when one uses a tanning bed before age 30. This includes **both** UVA and UVB radiation (some tanning salons claim that UVA is less dangerous).



Melanoma cases have also risen dramatically in recent years. Regular users of tanning beds are **eight times more likely to get skin cancer** than those who do not.

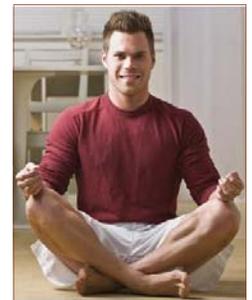
The American Cancer Society strongly recommends using bronzing creams or spray tans instead of soaking up the artificial light of a tanning bed. Your health could depend on it! ✨

Yoga has just as many health benefits as high-impact exercise.

Yearn to Learn Yoga

Did you know September is National Yoga Month? Have you thought about trying yoga lately? It's a fun alternative to high-impact exercise and offers just as many health benefits, such as:

- Decreased stress
- Improved hand-eye coordination
- Enhanced concentration
- Pain management
- Better sleep
- Improved flexibility
- Lower blood pressure
- Strengthened bones and joints
- Weight loss



Yoga encompasses the tools needed to realign and rebalance your body on a regular basis. When your body is finely tuned, your chances for injuries and illnesses decrease. The practice of yoga involves performing a variety of poses, called *asanas*, along with breathing exercises or meditation to cleanse and detoxify your body. These combined actions increase blood circulation. Regular practice of the stretches, twists, bends and inversions – the basic movements of yoga poses – also restore strength and stamina to the body.

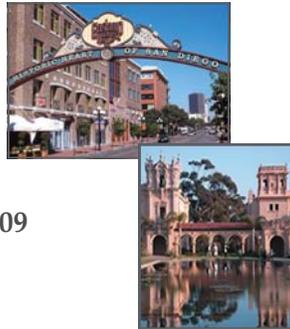
Out of shape or new to yoga? Don't let that stop you! Many of the poses involved in yoga can be altered slightly for beginners. Start out slowly and you will likely be surprised at how far you can come in just a few weeks.

If you are trying to lose weight, incorporate yoga with aerobic exercise and weight training. Along with a diet filled with whole grains, protein, fruits and vegetables, you should be able to see (and feel) the difference in about a month.

Yoga can be practiced by anyone, at any fitness level, at any age, pretty much anywhere! For more information, including how to get a week of free yoga, visit www.yogamonth.org. ✨

Community Bulletin Board

"Neighbors helping neighbors in San Diego"



- ✦ Orchids & Onions 2009
- ✦ Web Site
- ✦ Questions? E-mail info@SDArchitecture.org



- ✦ Web Site
 - ✦ Questions?
- Contact **Alicia Gettys** by phone at **619-232-7451** or e-mail agettys@ymca.org



Monarch Schools



- ✦ Mission Federal School Benefit Campaign
- ✦ Web Site



- ✦ Barktoberfest
- ✦ Web Site



Mission:

The Society for Design Administration advances management and administrative professionals in the A/E/C industry through education, networking and resources.

- ✦ CANstruction Winners
- ✦ Become an SDA Member
- ✦ For more information, e-mail vicepresident@sdasandiego.org



Mission:

To provide quality and compassionate services for the survival, health and independence of seniors living in poverty

- ✦ Stand Up for Seniors
- ✦ Web Site



The San Diego Police Foundation supports the men and women who "protect and serve" by raising community awareness of important

unbudgeted or "discretionary" needs that will improve crime-prevention and law-enforcement efficiency. The Foundation puts your tax-deductible contributions to measureable work in local communities.

- ✦ Web site
- ✦ Beyond the Headlines
- ✦ For more information, contact info@sdpolicefoundation.org