

business and legal complexities facing the design world. Though this is not intended to be a summary of every area of liability faced by an interior designer, it is the intention of the authors to sensitize practitioners to the need to take appropriate steps, from a business and contractual standpoint, that can limit or eliminate such liability. Because it is not practical to discuss the law and practices of every jurisdiction, design professionals are advised to obtain the assistance of experienced legal counsel.

LICENSING

During the recession of the early 1990s, many architects began to complain that interior designers were usurping the licensed field of architecture, i.e., practicing a profession for which they were not authorized by strict professional training. In order to avoid legal exposure because of licensing issues, interior designers must not only become familiar with the licensing laws and rules in the state where a project is located, but must also be able to distinguish the difference between the services they can legally perform and those services they cannot perform.

Licensing issues can have serious consequences for designers, financially as well as personally. In recent years, the number of complaints filed against designers for practicing without a license has increased dramatically. Interior designers could be prosecuted in criminal court under penal statutes for unauthorized practice, and in addition they now face the possibility that a client will add monetary damages to their claim about the unlicensed practice of interior design, architecture, and engineering. Even if they are not sued, designers are likely to find that a court will refuse to enforce a designer's claim for the payment of fees, if the court finds that the designer performed professional services without the required license.

Perhaps the most important step designers can take is to understand what services they can legally perform in a particular state. The distinction between permissible and impermissible services is not always as clear as it seems. Licensing laws concerning interior designers commonly stress the difference between interior design and the practice of architecture and engineering.

These laws place responsibility for the building systems, i.e., mechanical, electrical, plumbing, life safety, with the architect and engineer who are licensed by state law to seal and stamp drawings for this portion of a project. In New York, for example, the law emphasizes the difference between interior construction “not materially affecting the building systems” and design services that affect building systems. The clear intent is that the latter shall fall within the practice of architecture and engineering. Elements such as cabinets, lighting, and shelving usually fall within the ambit of the interior designer’s permissible scope of work. Where an interior design firm’s services included designs for floor elevations, changes in walls and openings, and supervision of the general contractor, a New York court found that the interior designer engaged in the unlicensed practice of architecture and noted that “there is a thin—but plain—line between ‘interior design’ and ‘architecture’ services.”¹ The court held that “the preparation of plans and supervision of construction work are the usual functions of an architect.”

In comparison, Florida focuses on the difference between structural elements and nonstructural interior elements of a building. The Florida Board of Architecture & Interior Design defines “Interior Design” as:

*Designs, consultations, studies, drawings, specifications, and the administration of design construction contracts relating to non-structural interior elements of a building or structure. . . . Interior design specifically excludes the design of or responsibility for architectural and engineering work except for specification of fixtures and their location within interior spaces.*²

The Florida board defines “Architecture” as:

*The rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures.*³

When interior design documents are prepared by a registered interior designer in Florida, the Florida board requires the interior designer to include a statement on the plans that “the document is not an architectural or engineering study, drawing, specification, or design and is not to be used for construction of any load bearing framing or walls of structures, or issuance of any building permit, except as otherwise provided by law.”⁴