

Designers who practice beyond the scope of a license often incur serious civil and criminal consequences. Not only do these designers lose the opportunity to make a valid defense to an owner's malpractice claim, but in states such as California, Illinois, and New York, those who practice without a license commit a crime that subjects them to penalties such as imprisonment, fines, and the revocation of their properly obtained license. Likewise, a designer who unlawfully uses another's title or stamps a drawing could also be subject to penalties. Most states, and the rules promulgated by the American Institute of Architects (AIA), require a design professional to report any instance of licensing law violations to the appropriate regulatory bodies.

Interior designers must be careful not to mistakenly represent themselves to the public as being able to practice beyond the scope of their license. Most states not only prohibit the unauthorized practice of the professions but also proscribe a nonlicensed individual from holding himself or herself out as a licensed person. In California, New York, and other states, an interior designer or interior decorating firm cannot include the term "architect" or similar word in its name or on its advertising material, including business cards or other material which may indicate to the public that the firm is qualified to practice architecture or engineering. Care must also be taken to avoid using terms such as "architectural," "construction supervision," and similar expressions.

To avoid liability for unlawful practice, designers should inform their clients of the services their firm will be performing and explicitly exclude all architectural or engineering services. When drafting an interior design agreement, careful attention must be paid to ensure that the interior designer's services do not go beyond the allowable definition of interior design. This information should be included in the written agreement with the client so there will be no misunderstanding concerning the services to be performed.

PREPARING PROPOSALS

For interior designers, preparing and submitting proposals is a traditional approach to securing new business. The skillful preparation of a Request for Proposal (RFP) can position a firm on a project's short list or, in the best of circumstances, reflect qualifications that distinguish one firm over those without similar qualifications or terms of service. The fundamentals of the pro-

For interior designers

posal process are simple enough: identify prospective clients and projects; clarify the prospect's need to determine your marketing approach; transmit the written proposal; and, hopefully, learn that one's proposal has received the client's approval. Seems easy enough. Or is it? Unfortunately for designers, under certain circumstances the proposal can bind the designer contractually to terms that may be unreasonable. In order to avoid being bound by unreasonable contract terms, interior designers should understand the legal ramifications of preparing a proposal for a project.

What happens if a proposal is answered by a simple client reply stating across the bottom page: "Accepted, please commence services immediately as set forth above." Is there an enforceable contract? Are you responsible for commencing your services immediately? Can you be sued if you do not perform the precise services outlined in your proposal? The legal answers to these questions are frequently "yes." Although RFPs often do not create an offer that the prospective client can turn into a binding contract merely by writing "Accepted" on its face, a proposal can sometimes be interpreted by courts as an invitation or "offer" to enter into a binding contract for the described services. Generally, whether at an auction in a gallery or on an Internet site, when a potential buyer makes a bid and the seller subsequently accepts it, a contract exists because the parties have mutually assented to be bound. It does not matter that the parties may not have worked out every one of the contract terms or that the agreement is not in writing. And the mere fact that the parties intend to reduce their agreement to a writing in the future does not make their "agreement" nonbinding. For this reason, designers should see the process of responding to a potential client's RFP as serious business.

Protecting the Designer from Lawsuit

Design professionals can avoid being unwittingly bound to contract terms if they follow some steps designed to make their proposals precise and to make their intent clear. Under the law of contracts, parties are free, with certain limitations, to decide under what circumstances their assents will become binding. It is also fundamental that contract formation is governed by the intent of the parties. In evaluating the parties' intent, courts look to their expressed words and actions. Two legal rules are well established on this point: (1) if parties manifest an intent not to be bound unless they have executed a formal agreement, then they will not be bound until such time; and (2) the mere fact