

formance fell short of applicable professional standards usually exercised by a member of the profession in the locale where the services were performed.

The law does not expect or require absolute perfection from an interior designer. Unless the parties have contractually agreed to a higher standard, the law tests the efficiency of the interior designer by the rule of ordinary and reasonable skill usually exercised by one of that profession. To prove malpractice, the claimant must almost always present evidence of the standard of care by which the designer's competence may be judged and show that the designer did something, or failed to do something, that violated accepted professional standards.

Design professionals commonly face exposure to liability related to the design, scheduling, construction cost estimating, supervision and inspection, certification of payments due a contractor, and resolution of disputes. We focus below on several of these areas and address specific steps that an interior designer can take to minimize risk of exposure in these areas.

LIABILITY FOR SCHEDULING

If a designer fails to achieve established project deadlines, the owner can sustain substantial damages. A design professional may be liable to the owner if the project is not completed on time as a result of his or her acts or omissions. Because of the increasing number of claims for damages due to delay, designers should include in their contracts specific provisions to minimize liability for this type of claim.

Although a sophisticated owner will want the designer to assist in preparing a project schedule and be responsible for meeting all agreed-upon schedule deadlines, the designer's contract should expressly exclude liability for delays caused by other project team members. Such contractual language could read as follows:

The Designer, in collaboration with the Owner [and the Architect of Record], shall establish a mutually acceptable schedule for the

design development and contract documents phases. The schedule shall include commencement and completion dates for such phases in accordance with the Owner's established date for issuance of drawings for bidding. Should there be any deviation from this schedule due to the Owner's programming changes or other causes outside the Designer's control, the completion dates for such phase shall be modified accordingly. As appropriate, the Designer shall assist the Owner [and the Architect of Record] in coordinating the schedules for installation of the work, but shall not be responsible for any malfeasance, neglect, or failure of any contractor or supplier to meet their schedules for completion or to perform their respective duties and responsibilities.

Should the project be delayed through no fault of the designer, the designer should be entitled to an adjustment in the project schedule and compensated for the extra time spent and services rendered on the project past the agreed-upon completion date. The following provision will ensure that the designer is entitled to the schedule adjustment and is properly compensated for the extended time and services rendered on a project as a result of an owner- or contractor-caused delay:

Notwithstanding any other provision contained in this Agreement, if the services covered by this Agreement have not been completed within _____ (_____) months of the date hereof, through no fault of the Designer, the Designer shall be compensated for all services rendered after _____ (_____) months on an hourly basis in accordance with the Designer's Hourly Rate Schedule which is then in effect. The Designer shall be entitled to an adjustment to the project schedule for the number of days the completion of services was delayed.

Finally, designers should take the following general precautions to avoid exposure for scheduling claims: (1) be insistent that all project schedule milestone dates and turn-around times are realistic; (2) ensure that reasonableness standards for time extensions are built into your agreements and that a *force majeure*, i.e., Act of God, clause is included; and (3) immediately inform your client in writing of all delays caused by contractors, consultants, or other parties.