

An Owner's Guide For Negotiating Fees and Agreements With Design Professionals

Owners and design professionals share many of the same goals when negotiating an agreement: minimize the owner's risks; avoid future disputes; enable the design professional to meet the owner's expectations; clarify roles and responsibilities; agree on key project parameters; facilitate a smooth design and delivery process; and determine how the design professional can best serve the owner's interests. Yet many negotiations end up as a series of contentious battles. The following guidelines will help owners achieve their project goals and avoid these battles.

- **Meet with your design professional face-to-face to discuss contract terms.** There is no substitute for meeting in person when reviewing the myriad issues involved in an owner/design professional agreement. View these meetings as an opportunity to develop a common dialogue and to establish a dynamic for tackling the difficult issues you will encounter after the contract is signed.
- **Explain your most important project goals and your greatest project fears.** Every owner has different sets of goals and values, so don't assume that your design professional understands yours. Explain your overarching goals and why each of them is important to you. Also describe your anxieties. What do you most want to avoid? What did not work well on previous projects or with other design professionals?
- **Involve your key stakeholders and decision makers** in your negotiations with your design professional. Let them describe their overall goals and concerns directly to the design professional. This will help your design professional craft a responsive project approach and work plan.
- **Assume that most design professionals have your interests at heart.** As a rule, design professionals are among the least aggressive business people and place an inordinately high value on helping owners achieve their objectives.
- **Ask your design professional whether your expectations are realistic.** If your design professional doesn't think so, then either change your expectations or your design professional.
- **Keep the contract language simple and easily understandable.** If language is confusing, simplify it. If a clause is open to interpretation, clarify it. If you don't understand a contract term, ask about it.
- **Ask your design professional to present a work plan and deliverables in terms you easily understand.** Tell your design professional to describe their services as specifically as possible and in lay terms. Make sure they itemize which services are included and which services fall outside their scope.
- **Include a comprehensive project description in your contract.** This will help ensure that you and your design professional share a common understanding of your parameters and will help prevent misunderstandings later.
- **Expect excellence, not perfection.** You retained your design professional to develop a customized solution. Unlike the design of an automobile or other product that undergoes rigorous testing, there is no way to adequately test a design professional's solution, no matter how much you pay in fees.
- **Give your design professional the authority, responsibility and means** to fulfill their contractual responsibilities and better manage your risks. Then hold the design professional accountable for items over which it has control.
- **Establish contingency funds** for unexpected scope changes and resultant design fees. More disagreements surface because of inadequate owner contingencies than any other reason.
- **View the fees paid to design professionals as an important investment, not a cost.** One of the most expensive mistakes owners make is underpaying their design professional. Hire the best and pay accordingly. The payback will be enormous.
- **Value design professionals who are diligent in protecting their own interests.** Once under contract, they will likely apply that same diligence to protecting your interests and to managing your project.
- **Enlist your design professional to provide a wide range of services.** Talk to your design professional about how it can help address your needs. Seek their input about who—the owner, the design professional, another consultant or the contractor—is in the best position to provide those services.
- **Structure timely payments** to your design professional. Most design professionals operate on thin margins and small cash reserves and will perform better for clients that pay them promptly.
- **Review and document your responsibilities as an owner.** A design professional needs your help in order to do its job. If you don't have the time or resources to meet your responsibilities, ask your design professional for guidance.
- **When seeking legal advice, make sure your attorney understands design and construction law.** This area of law requires special expertise to protect your interests and to not compromise your design professional's insurance coverage.
- **Pay close attention to your instincts** and feelings about the design professional when negotiating. If the relationship doesn't feel right or you question the level of trust between you and your design professional, save your money and find a different design professional. ■