



## Problems with your Client?

From time to time, the New Zealand Registered Architects Board (NZRAB) receives complaints about architects. This fact sheet provides questions and answers to help architects avoid these difficulties. The measures described should also help protect you if you ever face a complaint or civil proceedings.

### **Why does the NZRAB get involved in complaints?**

The NZRAB is a statutory board that registers, monitors and, if required, disciplines architects. Under the Registered Architects Act 2005, clients or other members of the public can lay a complaint against an architect. The NZRAB investigates and, if warranted, hearings are held. If an architect is found wanting, he or she can be fined up to \$10,000 and, as a last resort, the architect can be deregistered.

### **What can complaints be about?**

All complaints against architects must be in terms of the Registered Architects Act 2005 section 25. The main reasons are the architect has practised in a negligent or incompetent manner, or has breached the Code of Minimum Standards of Ethical Conduct for Registered Architects (attachment 1) in some way.

### **What are complaints mostly about?**

Most complaints are made by clients and are about inadequate control of a project's budget reflecting misunderstandings or poor communication. The most common complaint is that the architect has designed a house that the client can't afford to build. Complaints about design or the quality of an architect's work are less common. Occasionally complaints occur between architects involving professional disputes.

### **Why does this happen?**

Too often architects and their clients begin projects without having agreed on a clear-cut commissioning document that sets out the client's expectations of budget and programme, and both the client's and the architect's obligations to each other. This is despite written terms of engagement being mandatory under the Architects' Code of Ethics.

In addition, communications in general between architects and their clients are too often haphazard, informal and not documented.

## How do I avoid these problems?

### **Terms of Appointment**

No matter how small the project, you must have written Terms of Appointment at the beginning. That way, both parties are entering into a commitment that is understood and no one can argue later as to what was agreed to. The Terms of Appointment should be referred to throughout the project. This imposes a healthy discipline on both parties from the start. As one option, the NZIA provides an agreement-for-services template to its members.

Some clients will never put anything in writing – be wary of this and do not fall into the trap of behaving like them. If your instructions are incomplete and the project gets into difficulty, you have nothing to fall back on. If clients won't communicate in writing, you need to create a paper trail that protects you.

When you are commissioned to carry out contract observation, make sure that the client understands what this is and hasn't confused it with project supervision, or some other role.

### **Make sure the client is realistic**

As an architect, you need to be dispassionate when first approached by a client, no matter how much you want the work. Architects by nature are optimists, but this must be grounded in reality. Clients should be told what they need to be told, and not just what they want to hear, about the likely costs in terms of both your fees and the construction costs. Clients need to understand that the total project budget will be more than just the construction costs. Sometimes, architects have a duty to say: "With the money that you have, what you want is impossible."

As the architect, you must be realistic too. Professionally, architects are obliged to first meet their client's objectives - design ideals must match these, rather than the other way around.

### **Make sure the client knows the likely costs as the project develops**

For your own protection, insist on good cost control processes throughout a project. *In particular, strongly recommend an independent estimate of costs at least at the sketch design stage.* This is a very powerful reality check. Then keep checking at each subsequent stage!

Nonetheless, a client may refuse to do this, typically to save money. If this happens, for your protection make clear in writing that this is against your advice and that it creates extra risk.

Be aware of the cost implications of changing the scope of the project and keep reinforcing this to the client in writing. Scope creep, whether client or architect initiated, will always affect the budget.

### **Keep communicating and never let problems fester**

Problems about money are often the result of poor communication. Architects need to take communication with their clients very seriously. Keep talking to the client and, for your protection, confirm significant things formally and in writing.

Issues and problems must be sorted out with clients quickly and openly. If a problem arises, work out a course of action and tell the client about it as soon as possible. *It will probably get worse if left until later.*

In particular, if the client is changing or extending the brief and this has cost implications, tell the client, and, again for your protection, do it formally and in writing.

### **What do I do if the client insists on things that are unrealistic or unwise?**

For many clients, their project is laden with emotion. Sometimes clients have to be told very forcibly that they are taking risks through scope creep.

Also, a client may need to be warned about other risks, such as the possible consequences of getting embroiled in a resource consent process that could rapidly get out of control. Not only are there the obvious cost and time implications which can be significant, but also the client may be at risk of alienating neighbours or whole communities. Clients are often naïve in these areas and sometimes you need to educate your client to avoid such pitfalls. Remember, you are a professional and often the client is inexperienced.

### **What do I do if things are going wrong?**

It is very important to recognise when you are getting into difficulty and need assistance or advice. Other colleagues in the profession will be sympathetic and willing to help – everyone has these problems sooner or later. The NZIA can provide guidance and independent input. Often problems seem bigger than they really are, but they won't get better by doing nothing.

### **What do I do if a complaint is laid against me?**

Firstly, try to avoid getting angry. Inflammatory emails, letters and phone calls will make things worse.

As best you can, ask: "Why did this happen?" Try to think about the complaint from your client's point of view and recognise that your client probably has an emotional investment in the project. It may be that you can solve the problem, if you put aside the question of who is in the right.

Finding a solution that satisfies both parties will almost certainly be better for you than fighting a legal argument even if you win.

If you have got it wrong, consider a sincere apology and handing back all or part of the client's fee. That grates, of course, because there are always two sides to any issue. But sometimes it is better to take it on the chin and walk away.

## **Code of Minimum Standards of Ethical Conduct for Registered Architects**

(Source: Registered Architects Rules 2006, part 3, applicable from 1 January 2018)

### **46. Uphold the law**

A registered architect must abide by the laws and professional codes of ethics and conduct in force in the countries and jurisdictions in which the architect performs professional activities.

### **47. Honesty and fairness**

A registered architect must perform the architect's professional activities with both—

- a) honesty; and
- b) fairness.

### **48. Professional judgement**

A registered architect must exercise unprejudiced and unbiased professional judgement.

### **49. Skill, care, and diligence**

(1) A registered architect must perform the architect's professional activities with reasonable skill, care, and diligence.

(2) A registered architect who becomes aware that the architect's professional advice has not been followed, and considers that a failure to follow that advice may lead to significant harm, damage, or financial loss, must advise the recipient of the advice of the potential consequences.

### **50. Obligations to report on risk**

If a registered architect has reasonable grounds to believe that an architectural matter with which the architect is professionally involved could put the safety of any person at risk, the architect must bring the matter to the attention of the appropriate person or authority.

### **51. Misrepresentation**

A registered architect must not represent or promote the architect's capability, business, or professional services and activities in a false, fraudulent, misleading, or deceptive manner.

### **52. Conflicts of interest**

A registered architect must—

- a) avoid any significant conflict of interest; or
- b) manage any significant actual or potential conflict of interest and disclose it to all relevant parties.

### **53. Abuse of authority**

A registered architect must not abuse the architect's professional authority.

### **54. Malicious criticism**

A registered architect must not maliciously or in bad faith criticise or attempt to discredit another registered architect or another registered architect's practice.

### **55. Conflicts of professional appointment**

If a registered architect, acting in the architect's own capacity or representing a practice, is approached to provide professional services in relation to a project, and the architect knows that another registered architect has a current agreement for services for that project, the architect must notify the other registered architect.

### **56. Remuneration and inducements**

A registered architect, in respect of the architect's professional activities,—

- a) must be remunerated solely by the fees and benefits specified in the architect's written terms of appointment or employment agreement; and
- b) must not offer or accept any significant inducement that creates, or may create, a conflict of interest; and
- c) must not offer any significant inducement to procure an agreement for services or gain an unfair advantage.

### **57. Professional reputation**

A registered architect must—

- a) build the architect's professional reputation on the merits of the architect's own performance; and
- b) acknowledge the contributions of others to projects where those contributions are significant.

### **58. Competence**

A registered architect must—

- a) actively maintain the currency of the architectural knowledge and skills that are relevant to the architect's work; and
- b) perform only architectural work for which the architect is competent, or obtain appropriate support to ensure that the work is completed to a competent standard; and
- c) if the architect tasks others to do architectural work, ensure that their work is appropriately supervised so that the work is completed to a competent standard.

### **58A. Terms of appointment**

(1) A registered architect must provide professional services only if—

- a) written terms of appointment appropriate to the commission or services to be undertaken have been provided; and
- b) the client, having agreed to the written terms of appointment, has provided an instruction to proceed.

(2) The written terms of appointment must cover—

- a) the scope of the work; and
- b) the allocation of responsibilities; and
- c) any limitation of responsibilities; and
- d) fees, or any methods for calculating fees; and
- e) how billing will occur.

### **58B. Client communication**

A registered architect must—

- a) ensure that, where applicable, effective systems are in place during a commission to establish and monitor its quality, budget, cost estimates, and time line; and
- b) advise the client in a timely manner of any significant issues that arise, or are identified, at any time during the commission.

### **58C. Confidentiality**

A registered architect must observe the confidentiality of their clients' affairs and must not disclose confidential information without the prior consent of the client unless required by law to do so.

### **58D. Registration status of others**

A registered architect who owns, manages, or controls a practice must ensure that nothing is done by the practice that creates, or may create, the impression that an unregistered person working for the practice is a registered architect.