



Be a Good Neighbor: Strategies to Mitigate Risk of Damage to Adjacent Properties

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One of the emerging 21st Century perils for design professionals, particularly for structural engineers and architects, is the potential impact of the project you are designing on the condition and even the integrity of adjacent properties. Your legal duty as an architect or engineer is to your client according to the scope and terms of the professional services agreement as well as the responsibilities embodied in state statutes for licensed professionals. However, consideration should be given to those adjacent property owners during the planning stages, and efforts should be undertaken to protect against claims that could be made by other “injured parties” on adjacent properties.

In states where the applicable law embodies the principle of “joint and several liability,” disproportionate responsibility and financial exposure can be allocated to you as a design professional—even if your actions had very little to do with the causation of damages to an adjacent structure. Trends in design and construction claims and litigation indicate the casting of an ever-widening net with plaintiffs seeking defendants with deep pockets, such as your professional liability insurance policy and the assets of your firm. Therefore, it is prudent for design professionals to be proactive in managing risk with respect to potential exposure for damages beyond the property line of your project, especially in dense urban or suburban areas.



Berkley DP therefore recommends that you consider the following actions:

- Disclaim responsibility for adjacent structures in your contract and include an express exclusion in your contractual scope of services
- Compel your client (project owner) to perform a pre-construction survey documenting the conditions of adjacent structures such as:
 - Floor and roof elevations
 - Cracking, spalling, or other evident deterioration of exterior envelope surfaces or components
 - Interior conditions to identify existing floor, wall, and ceiling imperfections
- Document existing conditions with time-and-date-stamped photographs
- Specify the contractor’s responsibilities for temporary conditions and construction methods including shoring, underpinning, vibration control, and other protective measures, some of which may be required by local code and regulation
- Encourage the owner to engage adjacent property owner(s) in dialog about the nature and character of the project and the potential impact of construction

- With the consent of adjacent property owner(s), encourage the owner or contractor to monitor vibration and movement as construction proceeds
- To the extent possible, always include a limitation of liability clause in your professional services agreement that not only covers direct claims from your client but also any potential claims of third parties

Limitation of Liability (Lump Sum):

Neither Engineer, Engineer’s subconsultants, nor their agents or employees shall be jointly, severally, or individually liable to the Client or any other party, parties, persons or entities in excess of the compensation to be paid pursuant to this Agreement or _____ Dollars (\$_____), whichever is greater, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

Your services, responsibilities, and obligations as an architect/engineer are already broad enough on the projects you are designing. Be prudent in mitigating potential risk that can evolve from damage to adjacent buildings in the increasingly litigious environment in our industry.



Andrew Mendelson is an acknowledged design and construction industry leader in the area of risk management and contracts. He joined Berkley Design Professional in 2013 after a 35-year career as a licensed architect and firm principal. Andy directs the company’s client experience (CX) initiatives as well as oversees efforts to provide leading-edge, risk and practice management resources, tools and training.

Andy has a diverse background of practice, project, financial, operations and risk management experience, particularly in the large firm A&E environment. He advanced the development and publishing of industry-standard contracts through leadership of and engagement with the American Institute of Architects (AIA) Documents Committee and the Large Firm Round Table 3 Legal Committee over a 15-year period. Currently, he serves on the American Council of Engineering Companies (ACEC) Risk Management Committee and Legal Counsel Forum.

Andy holds a Bachelor of Science degree in Architectural Studies from the University of Illinois and a business management certification from the Kellogg School of Management of Northwestern University. Andy is based in Chicago, Illinois. Contact Andy at amendelson@berkleydp.com

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