

Design Professionals Roundtable Recap: Contracts 101: Key Provisions for Design Professionals

May 14, 2025

On May 13, 2025, MG+M The Law Firm hosted a roundtable, "Contracts 101: Key Provisions for Design Professionals." Led by Partner [Brendan Malvey](#) and Of Counsel [Michael Robertson](#), this session provided a comprehensive overview of the key provisions found in nearly all design contracts.

The webinar focused on the most crucial elements designers should incorporate into their contracts to ensure better protection and smoother dispute resolution processes. Below are the key takeaways and action items from the discussion.

Standard of Care

- + Your professional services should be measured against the expected level of performance of your peers in similar circumstances.
- + Perfection is not the standard; avoid warranties or guarantees regarding your services.
- + A negligence-based standard of care requires a finding that you breached the standard of care, i.e., negligence, and evidence that any alleged damages were caused by the breach.

Revise Indemnity Clauses

- + Align indemnity clauses with professional liability insurance by limiting obligation to extent caused by negligence. Avoid duties to defend.

Instruments of Service

- + Clients should be limited to using your instruments of service specifically for the project to which the agreement pertains.
- + Client pays design professional as a condition precedent to the transfer of instruments of service.
- + Indemnification from client in favor of design professional for misuse, alteration, modification of instruments of services without written consent.

Implement a Tiered Dispute Resolution Process

- + Ensure your contracts include a structured process for resolving disputes:

Project-level discussions

Executive-level discussions

Mediation

Arbitration or litigation as a last resort

- + Ensure that professional liability insurers are involved in any claims resolution process.

Limitation of Liability (LOL)

- + LOLs establish a monetary limitation on your potential financial exposure for a project based on a defined ceiling, e.g., your total fees or available or recoverable professional liability insurance proceeds.

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101: Key Provisions for Design Professionals



(Continued)

- + Limits should apply to any and all causes of action, e.g., tort (negligence) and breach of contract.
- + Be sure to check whether the law governing the contract allows for LOL clauses for design professionals.
- + LOLs should include mutual waivers of consequential damages.

Clarify Arbitration vs. Litigation Preferences

- + If choosing arbitration, assess whether it's suitable for complex disputes and be aware of the costs and very limited rights to appeal. Consider litigation for appellate rights and clearer legal framework.

Define "Prevailing Party" in Contracts

- + Specify what constitutes a "prevailing party" in both arbitration and litigation to avoid future disputes over fee entitlement.

Understand Fiduciary Obligations

- + Be aware that fiduciary obligations can arise from specific contractual language. Review contracts carefully to ensure you understand any heightened duties imposed on the designer.

Control Dispute Mechanisms

- + Maintain control over the dispute resolution mechanisms in contracts to protect your interests and minimize the risk of a costly, complex process.

Prepare for Complex Cases

- + Acknowledge that design professional cases often involve technical issues and may not be suited to lay juries. Ensure your team is prepared for arbitration or specialized court proceedings when necessary.

MG+M's Design Professionals team specializes in addressing the legal complexities and business challenges that design professionals face, offering strategic counsel to ensure their long-term success. By carefully drafting and reviewing key contract provisions, design professionals can reduce risk, streamline dispute resolution and better protect their interests. The roundtable highlighted the importance of understanding and navigating critical provisions—such as indemnity clauses, dispute resolution processes and arbitration agreements—to create more effective and enforceable contracts. Taking proactive steps to incorporate these action items will not only lead to smoother projects but also enhance legal protections and provide a stronger foundation for managing potential disputes.

Stay tuned for upcoming roundtables and resources as we continue to bring you meaningful insights throughout 2025.