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The Real Estate Institute of New York University



You must understand the design process to understand the contract. First of a two-part series.

People and Property: Negotiating Architectural Contracts

Emanuel B. Halper



NOT LONG AGO on a Monday morning, when a cloudy sky and a drizzly, cold atmosphere matched my mood, I entered my office to check my calendar, review my mail, and attempt to make order of the accumulated mess on my desk.

Before I could sit down, a special courier arrived with a message from Luciano Tremolo, the world-famous singer. You must have heard of him. According to Luciano himself, his voice is the equal of the Archangel Gabriel's. He towers above the other singers.

Luciano had become a client only recently. When he was referred to me by Dr. Ludwig Dreykopf, I assumed that the referral was my reward for introducing Dr. Dreykopf to his patients Harry Paine and Siegfried von Chutspah. Later I realized that Dreykopf's motive was not reward but revenge.

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Last month we represented Luciano when he purchased twenty-five acres of wooded land in the elegant resort community of Euphoria.

Tremolo's message informed me that he planned to engage H. Donald Cumberbund, A.I.A., to design a palatial home on the new property. Since Luciano did not like the idea of signing a complicated contract without legal advice, he wanted me to review it carefully. Tremolo and Cumberbund had agreed that the three of us were to meet for breakfast tomorrow morning at Cumberbund's summer home, which was also in Euphoria.

Euphoria is a lovely and most fashionable rural community. Well-known and elegant celebrities spend their summers in Euphoria to be with other well-known and elegant celebrities. Although its population dwindles in the winter to a handful of recluses and eccentrics, Euphoria has become so expensive that its summer residents are limited to European bankers, designers of fashionable jeans, Japanese electronics manufacturers, Arab oil sheiks, American and Italian movie stars, high draft choice basketball players, and recent graduates of Harvard Law School.

The next day, the day of the meeting, was a sunny day in early spring. That morning I drove 130 miles to Euphoria, regretting that the lovely weather probably would be wasted on a long day of disagreeable negotiations. I arrived at Cumberbund's summer home at 10:30 A.M. I was quickly led to the dining room to join the group at a sumptuously set table. Luciano Tremolo was seated with H. Donald Cumberbund, H. Donald's wife, Myrna, and Tremolo's inseparable companion and business manager, Maria Fasola.

Luciano's huge frame was covered by a burgundy velvet suit. His white cotton shirt had been custom designed by one of Italy's foremost designers, and he wore a blue-and-red-patterned silk ascot.

H. Donald, conservative to the core, wore his customary all Brooks Brothers outfit, including a dress shirt with a collar that had been popularized by Herbert Hoover. Myrna wore a lovely blue silk hostess gown, and Maria wore Turkish-style pants and a soft white blouse.

I felt self-conscious. Because I had anticipated that Tremolo wanted us to spend part of the day walking around his property to observe its borders, I had dressed in my Army fatigues and an old college sweatshirt. I guess you realize that I felt conspicuous at the table.

When we were all too stuffed with food to continue eating and when we had consumed a quart of

coffee each, the conversation turned to the Tremolo mansion. Cumberbund had a novel concept. He designed buildings to resemble their occupants. Thus, a short and squat client would find himself in a ranch house. If you were tall and thin, you would get a narrow three-story townhouse. Luciano was built like a pumpkin, and Cumberbund had sketched a proposed building that would be built like one.

Luciano spoke about what he wanted in his dream house. "We need a ballroom. Very big ballroom. We'll have parties all the time. The ballroom should have parquet floors and hanging chandeliers. It must be grand. Very grand, with built-in speakers for quadrophonic sound and a stage! I'll need at least three guest bedrooms and one master bedroom. The master bedroom should be about 25' \times 20'. The others can be 15' \times 15'. I want a king-sized waterbed built into the floor. Every bedroom will need its own bathroom, but mine should have a sunken tub and luxurious appointments."

He went on to describe the kitchen, living room, dining room, and den. He specified some of his requirements for outdoor facilities including a pool, clubhouse, tennis courts and dance pavilion. "There must be trees. Trees everywhere. I love trees. I love bushes. I love flowers."

Cumberbund: How much are you willing to spend on all this?

Tremolo: Money? Money is no object. I am a very wealthy man. They pay me \$10,000 a night sometimes.

Cumberbund: But there must be some limit to your resources. There's a point at which anybody may feel the expense is not worth the benefit. Even the Medicis imposed limits on Michaelangelo.

Tremolo: How about \$65,000?

I: About all that will buy you these days is the waterbed and a box of feathers.

Cumberbund: Now seriously, Luciano, Halper's right even if he dresses like a slob. You can't truly believe that I can design a house for you with these facilities unless you spend considerably more money.

Tremolo: So how much more is considerably more?

Cumberbund: I can't be sure, but at least three-quarters of a million and that excludes my fee.

Tremolo: Gran dio! And tell me, Mr. Smart Guy, what is your fee?

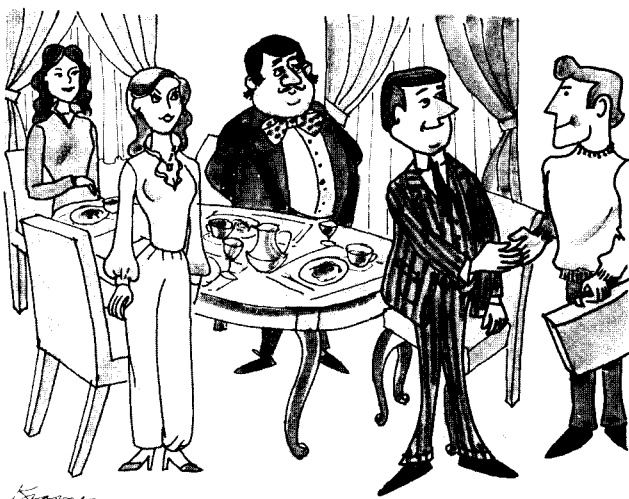
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Cummerbund: About \$125,000 as long as the job doesn't get out of hand.

Tremolo: But H. Donald . . .

Cummerbund: Call me Billy.

Tremolo: Now, Billy, I know that you must charge such incredible sums to establish yourself as the world's most fashionable architect. But I imagine that you are anxious to represent such a famous personality as I am. I'm not proud. I'll tell everyone that you are charging me \$125,000. That should give you great satisfaction. But actually you charge me \$15,000. OK?



Cummerbund: Look, Looie . . .

Tremolo: Call me Luciano!

Cummerbund: Everybody knows who I am already. I'm famous and rich now. I don't walk around in rags like your lawyer. Even on an outdoor day I dress like a gentleman. Ten years ago, I did Harry Paine's home for \$15,000 and told everybody that he paid \$125,000. But today, I want \$125,000, and you can tell everybody that you only paid \$15,000.

Tremolo: Momma Mia! What am I going to do? I'm just a poor immigrant boy. When you add everything you mention to the cost of the land, the house will cost over \$1 million. Do you think I'm made of money?

Cummerbund: Well, if you can't afford it . . .

Tremolo: Of course, you snake, I can afford it. I'm the best singer in the world. I have the voice of an angel.

Cummerbund (holding his head dramatically): I'm shocked that you thought I would work cheap. Oh, my head is pounding. Myrna, call Doctor Malatesta. My attack is starting again.

Tremolo: No, no, dear friend. I didn't mean to insult you. I should know the rules of dealing

with such an important and celebrated architect.
I'll gladly pay all you say.

Cummerbund (still holding his head): After the way you treated me I shouldn't work for you. Only my better nature and charitable disposition persuade me to relent. All right, let's shake hands on it.

The famous architect and his new client shook hands. Myrna served brandy and cigars. There was harmony.

Now Cumberbund was anxious to get Tremolo's signature on his form contract. Tremolo pointed out that he and I had not yet met to discuss the contract. Luciano suggested that Cumberbund and Myrna leave for about fifteen minutes so that he and I could go over things.

I informed Tremolo sadly that we would need much more time to review that contract. Cumberbund agreed to take his wife for a nice long walk. Before she left, Myrna Cumberbund placed two bottles of Asti Spumonti in front of the great tenor, and buoyed by the prospect of sipping his favorite liquid, he settled down to the dreary prospect of listening to his attorney.

First, I warned him that there was so much to discuss, I could not explain it all to him in one sitting. At best, I would be able to explain some of the many issues he'd have to consider and outline some of the duties that he should expect the architect to perform.

THE AIA FORM CONTRACT

What Cummerbund had submitted to Tremolo, and what Tremolo had asked me to review, was a printed form published and copyrighted by the American Institute of Architects. Usually the printed form contracts that are circulated by trade associations and stationery stores are one-sided, disorganized, and sketchy documents. However, although the AIA form of Owner-Architect contract favors the architect plenty, the draftsman of this form can be justly proud of his creation. The form is well-written, comprehensive, and well-organized. But despite the merit of the drafting job, a homeowner, developer, or anyone else who seeks to employ an architect would be unwise to execute this form without many revisions. Moreover, there is no reason why a homeowner or developer should be required to deal with the AIA form. From the owner's point of view, there's much to be said for drafting a totally new document that gets away from some of the difficult issues raised by the AIA form.

THE PROGRAM

Every architectural undertaking starts with a program. The program may be in writing. It may be oral. It may be an unwritten or even unconscious understanding. Nevertheless, there is a program.

So what's a program? A program is a set of broad statements that describe the proposed building or alteration or other work that the owner contemplates. For example, if you are hiring an architect to design your country house, you have to tell him how many bedrooms you expect, whether the building is to be a ranch house or a duplex, and many other things. How else would you expect the architect to know what building to design?

The AIA form specifies that the owner should prepare the program. As a practical matter, owners usually need the assistance of the architect to discover many of their wants and needs. At this stage the architect should be asking questions, and the client should be searching his heart to establish the scope of the intended construction.

To be realistic and fair, the contract should not require the owner to develop a program. It should require that the architect develop the program in consultation with his client.

THE BUDGET

At the outset an owner's thoughts about what he wants to see constructed are often imprecise. Buildings can be built sparingly or luxuriously. The difference between the most economical version of a building and a luxurious version can be hundreds of thousands or even millions of dollars.

To avoid a serious disappointment on the part of the client when the design process is concluded, architects usually require their clients to specify the approximate amount of money they wish to spend. Sometimes the architect and owner learn at an early stage that the structure that the owner has visualized cannot be built for the funds he has available. If this is the case, the client must either reduce the scale of the project or find new methods of financing it. Sometimes the project is dropped altogether at this stage.

It's better for an owner or developer to drop a project at this point than to wait until he has paid for the architect's preparation of detailed specifications and working drawings only to discover that the money isn't available.

The budget specified at the outset should remain a central feature of the relationship between the owner and the architect. Although architects

seldom pretend to be experts on what things cost, the cost of what they design will be a most significant factor in the success or failure of the project.

THE NATURE OF THE CONTRACT

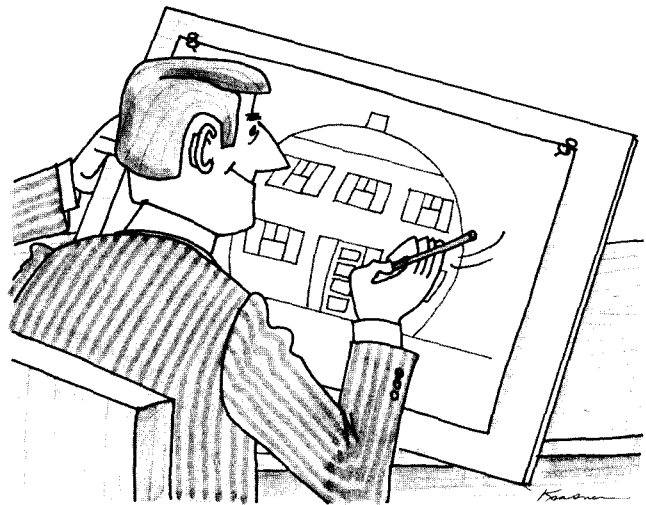
An architectural contract is an employment contract. The owner is hiring the architect to perform services. The three main ideas in architectural contracts are the same ideas that underlie every employment contract.

These principal questions must be answered:

- ☐ What services do you expect the employee (the architect) to perform?
- ☐ How much are you to pay the employee (the architect)?
- ☐ When does he get paid?

The AIA form of owner-architect contract has standard answers to these questions.

The form's draftsmen were no doubt aware that most architects, although they may be wonderful technicians and creative people, are not adept at manipulating homeowners and real estate developers. It is much more likely that a homeowner or



real estate developer will manipulate his architect than vice versa. Many architects are willing to do a great deal of work for meager rewards. The AIA form was designed to give the architect a badly needed crutch. If the architect is confused about what he is required to do, help is as close as the *Architect's Handbook*, which contains all the forms with instructions on how to fill them out.

One-family-house deals and many others are covered by printed Form B141. The fact that it's

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printed convinces many lazy owners' representatives that it can't be changed or that changes are hard to come by. That's just what architects need. But it's not what owners need because Form B141 is craftily arranged to tip the balance of equity too far in favor of the architect.

Under AIA Form B141, the architect does nothing for nothing. All the owner gets for his agreed payment is what the contract calls "basic services." The contract goes on to say that the architect is ready and willing to do more. All you have to do is ask him. But he is to be paid an additional amount for the additional work. It sounds fair, doesn't it? But it isn't always fair. Whether it is fair or not depends upon what the owner is led to believe will be included in "basic services."

Specifying Payment

The standard form also deals with compensation in a formal manner. Many architects are willing to fix a stipulated sum to compensate them for what they are to do. Architects usually earn their fee well. In fact, they usually perform many services that aren't included in the list of basic services without charging for them.

Many architects resist the notion that their compensation for designing a building be set at a specific amount. The trouble with agreeing to specific compensation is that the amount of work that the architect will have to do in the creation of a building often cannot be determined at the outset. Architects fear (often justly) that what started out as a standard and simple task may end up being exceedingly complex. In such circumstances, an architect who has agreed to a lump-sum payment in exchange for his services is gravely disappointed.

Asserting the theory that the cost of the project is an accurate guide to the extent of the architect's commitment, many architectural contracts base the architect's compensation on a percentage of the cost. Because the parties are then faced with the problem of determining what elements are part of the "cost," the AIA contract handles this problem with an elaborate definition of cost.

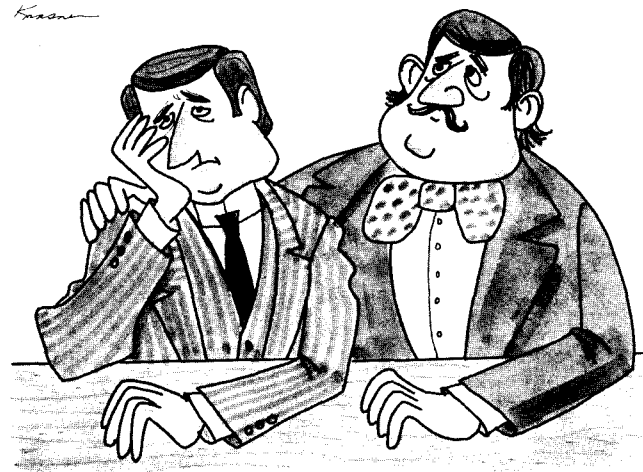
However, many clients object to percentage-of-cost arrangements, arguing that if the architect's fee goes up as the cost of construction goes up, the architect will have little incentive to keep the cost of construction down.

Some architects like to fix their compensation in a manner similar to the way that lawyers do. They ask their clients to pay for the architect's time at a specified rate per hour.

Clients often object to time-charge arrangements on the grounds that they have no way of controlling the amount of time the architect will spend on the job. They complain that the arrangement is reminiscent of a time clock in a taxicab.

Ultimately the owner and architect negotiate a method (hopefully sensible and reasonable) of determining how much the architect is to be paid.

When that decision has been made, the parties are ready to discuss what services are to be performed. The AIA form divides "basic services" into five phases. The main reason for doing this is to fix the times on which the architect is to be paid. Accordingly, many architectural contracts provide that the architect is to get a partial payment after each phase is completed.



The Package

The most significant difference between an architectural services contract and other employment contracts is that the owner who employs an architect is often contracting for the services of a large group of professionals and technicians—not just those of an individual architect.

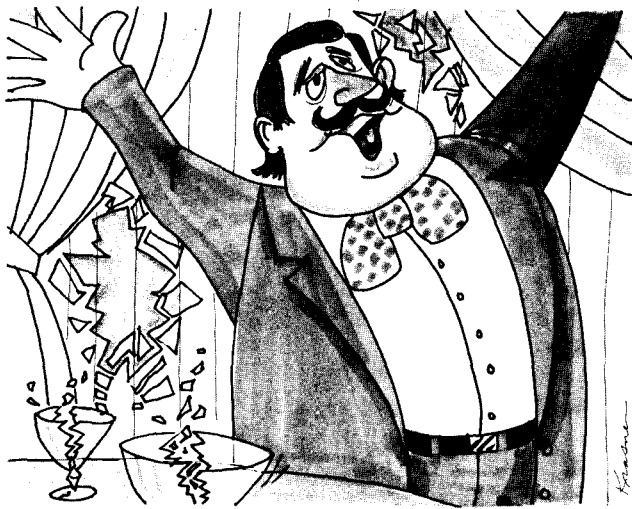
Most architects are well-rounded people. They must be skilled in both art and mathematics. They must be sensitive to the individual psychological needs of their clients and the social needs of the communities in which the buildings that they design will be located. But no matter how wide their backgrounds, few architects have all the skills necessary to design every aspect of a building.

At least three types of engineers (structural, mechanical, and electrical) may be needed to supplement the architect's work. Sometimes architects em-

ploy independent design firms to help them with the preparation of the design concept and the plans and specifications. Architects often hire other firms to deal with special technical problems. For example, some project architects employ landscape architects to deal with problems of the site other than the building itself and to select and to prescribe locations for trees, bushes, and flower beds.

Architectural firms often employ staffs of junior architects, draftsmen, model builders, and other technicians. An architectural firm resembles a construction subcontractor in that the contractor is usually not contracting for his own labor. He employs many laborers and supervisors and also deals with other independent contractors. Similarly, the staff of a well-organized architectural firm will include junior architects who are capable of dealing satisfactorily with aspects of the job. The staff also is usually augmented by draftsmen and model builders.

The architect usually pays his employees and the engineers out of the compensation that the owner pays him. Occasionally the engineers and landscape architects are employed and paid for directly by the owner.



All of this has an effect on how the architect asks the owner to compensate him for services beyond the "basic services." Even when architects agree to lump-sum or percentage-of-cost payment arrangements for basic services, they prefer to be paid for extra services in a different way. Architects want their clients to agree to pay for extra services at fixed rates relating to the time expended.

Consequently an architectural contract usually includes a schedule of additional compensation

that specifies the cost of extra services with respect to each of the cast of characters involved. Usually the architect asks for a fixed amount per extra hour for himself, other senior architects, junior architects, or his staff. The cost for extra compensation for independent professionals such as engineers, designers, and specialized architects (such as landscape architects) is also quoted on an hourly basis. Extra compensation for the services of members of the architects' own staff (such as draftsmen and model builders) is often a multiple of the employee's salary.

Currently architects would like to charge the owner with 300 percent of employees' salaries and 125 percent of fees paid to independent professionals as compensation for extra services.

Where all or part of an architect's compensation is based upon the number of hours of services performed, the architect should be prepared to keep accurate time records and to require his employees and associated professionals to keep accurate time records. The time records should be open to inspection and audit by the client.

THE DESIGN PHASE

To understand how to define an architect's services, it is best to pause a moment to understand the process in which an architect deals with the design aspect of his work.

As I mentioned before, everything starts with a program. Regardless of whether the program has been prepared by the owner or whether the architect has had to extract the program from his client by asking penetrating and insightful questions, there must be a program.

Boundaries and Topography

The architect must also have available a survey of the boundaries and topography of the property. Lawyers usually make arrangements for a boundary survey before the owner purchases the property. Topographical material is often added after title passes. As soon as Luciano advised me that he intended to engage an architect, I made arrangements for the surveyors to gather topographical information to add to the survey. In fact, the surveyors were on the job at the site as I was talking to Luciano.

When an architect deals with an experienced development organization, he expects his client to conduct a thorough site investigation before the architect's work reaches a detailed stage. A site

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investigation includes test borings to determine the stability of the soil and complete information as to the availability of water and sewer service and other utilities. If the client is a homeowner or is otherwise inexperienced, the architect usually makes arrangements for the site investigation himself.

Conceptual Drawings

After reviewing the topographical survey and the information gathered from the site investigation, the architect prepares conceptual drawings of various aspects of the project. The conceptual drawings are the architect's interpretation of the most important visual aspects of the program. Architects often prepare several versions of the conceptual drawings and give their clients the opportunity to choose among them.

Now it's the owner's turn. Once the owner gets the conceptual drawings, it is the owner's job to review them and report his reactions to the architect. It's only by careful review and comment by the owner that the architect can know whether he has done his job to the satisfaction of his employer.

If there is a problem with the design, it is best for the problem to surface at the earliest possible stage of the design process. Consequently, no owner should be shy about airing his views about the conceptual drawings in the frankest manner.

Preliminary Plans

When the conceptual drawings are approved, the architect prepares another set of drawings and a set of criteria for specifications. Specifications are instructions to the general contractor. They set forth the type and quality of the materials to be used, some of the equipment required, and the nature and quality of the labor to be performed. At this stage, the specifications are general in scope, and they are intended to add some dimension to the drawings and set forth criteria for a more detailed set of instructions to be developed later.

For the moment, let's call this new set of drawings and criteria "preliminary plans," and let's call the specifications "outline specifications." When the architect completes the preliminary plans and outline specifications, they are sent to the client for review. Buildings or parts of the buildings are often leased to prospective tenants long before they are built and sometimes long before plans and specifications are developed for the building. When this is the case, the tenants can get an opportunity to participate in the design process. If a tenant wants to

review and approve plans and specifications, the tenant can negotiate for assurances of this right in his lease. If the owner has signed a lease that grants rights of approval to the tenant over plans and specifications, the landlord (or owner) should follow through and make sure that these rights are reflected in his contract with the architect.

When preliminary plans and outline specifications have been completed and approved by all concerned, it is often a good idea to take two precautionary steps before continuing with the design process.



A Cost Estimator

At this point, it might be wise to engage a professional cost estimator to review the plans in their present state and to advise both the owner and architect as to what he thinks the job would cost at current prices. Cost estimation at any stage is particularly difficult. However, many estimators are really good at what they do, and they are able to give valuable guidance to the owner and architect during the design process.

If the cost of the proposed construction as outlined in the preliminary plans and outline specifications is expected to exceed the budget, the architect should review the preliminary plans and outline specifications. In the course of the review he may be able to make changes that will reduce the expected cost of construction so that it will not exceed the budget. If the architect can't make changes to reduce the cost without reducing the utility or quality of the building, the owner will have to decide whether to pay more, get less, compromise, or abandon the project.

It is unfortunate if the project must be abandoned at this point. The owner will have spent money and received nothing for it. On the other hand, it is best to reject an impractical concept when the cost of that decision is relatively minor. If the owner has to scrap the project at the completion of the design process or after construction is under way, the cost may be astronomical.

Building a Scale Model

For many types of projects, the time has also arrived to employ the skills of a model maker to construct a scale model of the project that conforms to the requirements of the preliminary plans and outline specifications. When the owner sees in three dimensions what he might get, he may understand, for the first time, the content of the drawings and specifications that he has been reviewing. He may desire changes in the plans or he may even scrap the entire project.

Detailed Specifications and Working Drawings

After the preliminary plans and outline specifications are approved, the architect gets back to work. Before him lies the arduous task of preparing the detailed specifications and working drawings.

The working drawings differ from the preliminary plans in the scale of the drawings, their complexity, and their detail. For this type of task, architects like to delegate a good deal of the work to draftsmen and other technicians. In addition, structural, mechanical, and electrical engineers are employed by the architect to design the structural elements and the electrical, lighting, plumbing, heating, ventilating and air-conditioning systems.

The detailed specifications differ from the outline specifications in their degree of specificity. The outline specifications are merely criteria for the development of the detailed specifications. For example, when an architect sets forth the criteria for the air-conditioning system, he might state that the system should be capable of cooling the building so that the temperature of the inside air will be at 78° F. when the temperature of the outside air is no more than 96° F. In the detailed specifications the architect will prescribe the manufacturer and the exact model of the compressor unit. His working drawings will also indicate where the compressor and fan unit for the system will be placed, whether or not the cool air will be distributed by a system of ducts, and, if so, the nature and location of the ducts.

The detailed specifications and working drawings are the data from which prospective general contractors compute their estimates of the cost of construction. Now, general contractors seldom construct a building with the resources of their own organizations. They usually solicit bids from numerous subcontractors. In order to accommodate the general contractor's need to solicit bids from subcontractors, the architect organizes the detailed specifications and working drawings by the trades in which subcontractors customarily operate.



Reviewing the Working Drawings

When a draft of the detailed specifications and working drawings is prepared, the review process continues. The owner goes over it. If the property has been leased to a tenant, the tenant reviews it too. Snags may arise at this point. The owner or tenant may believe that the draft does not conform to the preliminary plans and outline specifications. If the draft of the working drawings and detailed specifications doesn't conform to the criteria of the preliminary plans and outline specifications, the architectural contract should require the architect to revise his draft and to keep revising it until the detailed specifications and working drawings conform to the preliminary plans and outline specifications to the reasonable satisfaction of the owner and tenant.

Suppose that the owner (landlord) and the tenant disagree as to the contents of a draft of the detailed specifications and working drawings. Usually the issue is whether the detailed specifications and working drawings actually conform to the

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preliminary plans and outline specifications. Leases frequently discuss this problem. One customary way lease negotiators handle this issue is to pass the buck to a panel of three arbitrators who are charged with responsibility for making the determination.

This issue does concern the architect. Some architects demand extra compensation for their services in connection with the arbitration and sometimes even for further revising the detailed specifications and working drawings to conform with the determination of the arbitrators.

Plans and specifications are also reviewed by mortgage lenders, government agencies, and insurance organizations. Architectural contracts generally require that the detailed specifications and working drawings conform to applicable legal requirements. But few architectural contracts direct themselves to the need of the owner to obtain the approval of his mortgagee and fire insurance company.

As to the mortgage lenders, most of us know that both construction and permanent mortgage loan commitments provide that the mortgage lender has the ultimate power to approve plans and specifications. So the architect's draft of the detailed specifications and working drawings is also submitted to the lenders' engineering departments. Lenders are not shy, and they often require changes in the architect's draft. Architectural contracts must deal with the question whether the architect is entitled to extra compensation for negotiating the content of the detailed specifications and working drawings with mortgage lenders. Another issue that architectural contracts should handle is whether to pay the architect more money to revise the detailed specifications and working drawings to meet the requirements of the lenders even if the lenders' requirements don't conform to the preliminary plans and outline specifications.

Insurance organizations also may have input at this point. It is possible to purchase fire insurance at premiums that are drastically lower than premiums to which many of you have become accustomed. Many fire insurance companies offer sharply reduced premiums for buildings that are carefully designed to reduce the danger of fire.

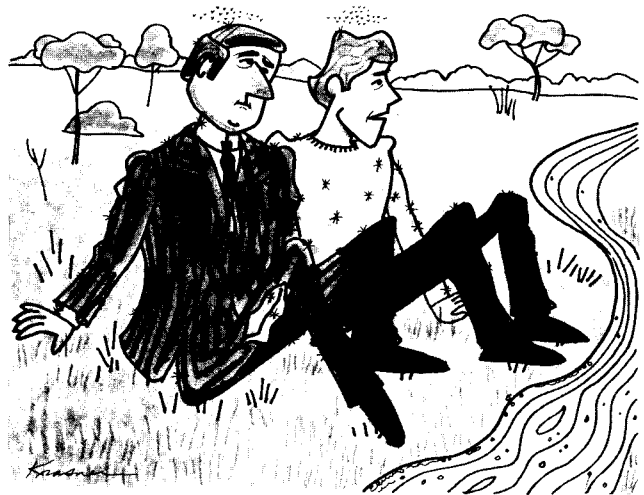
The Factory Mutual Group, for example, employs an engineering service that reviews plans and specifications and makes recommendations to the insurance companies and the insureds as to potential fire hazards and ways of minimizing the risk of loss from fire. After an insurance company makes recommendations with respect to a draft of de-

tailed specifications, the same issues arise. Does the architect get paid extra for working with the safety engineers employed by the insurance organizations? Does the architect get paid more to revise the draft to comply with the recommendations of the insurance engineers?

As I had warned Luciano Tremolo when I began this discussion, I didn't have enough time in one sitting to deal with all of the issues involved in architectural contracts. We were expecting H. Donald and Myrna Cumberbund to return from their stroll any moment. So we decided to defer to another lecture topics like the role of the architect in soliciting and evaluating contractors' bids, inspecting and administering the work, evaluating requests for payment and reviewing shop drawings.

A WALK IN THE SUN

When H. Donald and Myrna returned, they reported that the weather outside was inspiring. Luciano responded with an aria about the beautiful sky from Donizetti's *La Favorita*. As he hit his high C, one of Myrna's finest crystal pieces shattered.



H. Donald moved quickly. He bundled all of us out of doors. Here the entire atmosphere of the earth was available to absorb the momental soundwaves that Luciano's larynx produced, and H. Donald's possessions were safe.

We entered H. Donald's new Bentley and drove off to Luciano's new estate. In the car, Myrna served brandy to keep the mood cheery. She regretted this move when Luciano became inspired to sing drinking songs from *Cavalleria Rusticana*, *Student Prince*, and *Werther*. The man has extra-

ordinary power in his voice. As the drinking glasses shattered, H. Donald ordered that all of the side windows of the car be opened for protection against the power of the high C.

When we arrived at the site, we discovered the surveyor and three of his assistants working on the topographical survey that H. Donald would need. They had spent the morning tying red ribbons to stakes and shrubs on the boundaries.

Although Luciano had expressed an avid desire to walk around the boundaries of his new property with his lawyer and architect, he decided suddenly that his time would be better spent memorializing the experience by writing a new song. The song was to be entitled "Beautiful Moment."

He delegated the walking responsibility to H. Donald Cumberbund and me. We were ordered to walk along the boundaries of the property, to observe the trees and bushes, and to see whether any adjoining property owner had constructed anything that might pollute the view. Cumberbund protested, but Luciano would not be dissuaded. Both Cumberbund and Halper were required to inspect the boundaries.

H. Donald Cumberbund reluctantly assented. He went back to his car. There he changed from expensive patent leather oxfords to expensive leather hiking boots. He also hitched himself to a backpack. Why did he need a backpack for a short walk in the woods? I estimated that our entire journey around the property would consume only three hours.

We started our journey on a flat plain where the premises met the road. The surveyor and one of his assistants served as our guides. We had no problem as we plodded over the soggy yellow grass that still retained a bit of the early Spring frost. Cumberbund chatted incessantly about his architectural and sartorial triumphs. About 100 feet from the road we encountered thick vegetation and a winding trail.

The trail ended, and now we had to pass through

about forty feet of thorny weeds. I found this particularly distressing. H. Donald tripped. I helped the world-famous architect up and helped him to adjust the backpack. Why was it so heavy?

The trek continued. We walked through piles of leaves. Then we crossed a stream. We crossed by hopping across the rocks that were slightly above water level. I was thinking about how uncomfortable it would be if I missed one. Then I missed one and found myself standing knee deep in the frost-tinged water. Soon H. Donald Cumberbund missed one also and stood next to me in his Brooks Brothers suit knee deep in the frost-tinged water.

We looked at each other. He had a look of profound disgust. His face was a furious red. Was mine the same? We made our way to the edge of the bank where H. Donald found a convenient boulder. As he sat down, he shrieked and sputtered and muttered and cursed. What happened? The seam in the seat of his pants split.

Now he groaned. How could he face Luciano Tremolo with such a disability? Everyone would know his brand of underwear. How could the master tailors at Brooks Brothers have done such a poor job? After all, they had European accents.

I helped him release the backpack and laid it next to him. He asked me to open it, and I did. There I found four bottles and a box. The bottles each contained four-fifths of one quart of liquids that H. Donald valued, Jack Daniels, Courvoisier, Chivas Regal, and Smirnoff vodka. The box contained elegant glassware, flatware, and other needs of drinking men.

And so on an early Spring afternoon on the banks of a stream near the border of the estate of the world's most beloved tenor, I sat with the world's most famous architect. Our pants were wet. We had some thorns in our thighs. He had an unexpected air vent in his trousers. And we both had the gloomy warmth that only mutually disagreeable experiences and a glass of whiskey can inspire.

ON STABILIZED EXPENSE PROJECTIONS

"Show me a stabilized world and maybe I'll believe stabilized expenses."

—Alfred Lerner
Chairman
Realty Refund Trust
Forbes, March 15, 1977.