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You've Got the Wrong Idea About Our Relationship

Synopsis: Undertaking A "Fiduciary Duty": Crucial Legal & Professional Considerations For Architects

The typical complaint against an architect starts with the plaintiff laying out his story of what happened, and then listing the laws that the conduct allegedly violated. Architects are familiar with many of them – malpractice, negligence, breach of contract, and the like. But sometimes the complaint alleges that the architect is a "fiduciary" and has breached his "fiduciary duties" to the client.

This AIA Trust white paper analyzes the chances that a breach of fiduciary duty claim would be dismissed by a court, the risk that such a claim presents if it is allowed to go forward, and the impact of the claim on professional liability coverage.

A fiduciary relationship is characterized by one party's reliance on another, usually in connection with the management of money, and the other person – the fiduciary's – consequential duty to act in the interest of the party relying on him. That differs from most architects' understanding of the architect-client relationship: that it is a commercial relationship between independent parties which is governed by terms and professional standards most often set forth in a contract. When a breach of fiduciary duty claim survives to trial, the architect's conduct is considered by a jury that is told that the architect should be expected to act in the best interests of his client, and not as an independent counter-party to a contract. The risk that this presents is obvious, and indeed, the author's experience is that plaintiffs' lawyers often will try to extract larger settlements before trial where there is a viable breach of fiduciary duty claim.

Since breach of fiduciary duty claims are almost always brought alongside malpractice claims, the typical professional liability policy will provide a defense for them. However, the author discusses a few instances in which defense of the claim, and especially indemnity for any judgment based on breach of fiduciary duty, might not be covered under a policy (for example, where the policy excludes "willful conduct" and the state considers breach of fiduciary duty to be intentional misconduct).

The good news is that breach of fiduciary duty claims against architects are not yet having much success in the courts. The author surveys the cases and concludes that most judges have concluded that the relationship between architect and client is not fiduciary in nature. The minority of cases that have found that a fiduciary relationship exists have included allegations of conflict of interest, or some other conduct in which the architect enriched himself at the expense of the client. Still, the author advises that the architect should avoid over-promising ("we will do the work pursuant to the highest

standards," or "we guarantee a result you will love"). The author also suggests that architects avoid making representations like "you can trust me to take care of everything" if he wishes to avoid defending a different, and potentially more dangerous, claim in a professional liability lawsuit.

For more detailed definitions and explanations please refer to the entire white paper, refer to full white paper on Undertaking A "Fiduciary Duty": Crucial Legal & Professional Considerations For Architects.