

Synopsis: Strangers No More? Trends in the Architect's No Privity Defense

One of the most important defenses in any professional liability lawsuit is that an architect is not responsible for losses of a person who has no contract with the architect such as a general contractor or sub-contractor on a project. The legal term is that the architect and the third party do not share "privity of contract."

This paper tracks recent changes in the privity defense occurring in the courts of some of the largest states in the country. The author discusses specific cases and the legal reasoning used by each court to expand the persons who can make claims against architects. While each state differs somewhat on the words they use, the author extracts a common denominator that these courts allow a party that does not have a contract with an architect to sue for an economic loss if the architect's plans conveyed false information to persons the architect knew were relying on the accuracy of the information in the course of conducting their own business.

Because losing the privity defense dramatically increases the potential damages in a lawsuit, it is more important than ever that architects be vigilant about the new legal landscape. The author provides practical advice on contract provisions to focus on, such as those:

- Discussing a third party's intent to rely on the architect's work;
- Implying a relationship between the architect and a third party;
- Enlarging the scope of those who can rely on the architect's representations and warranties;
- or
- Expanding the client's right to assign his rights under the contract with the architect.

The author also lists some conduct to avoid, such as:

- Taking instruction from the general contractor or undertaking tasks at his direction;
- Writing or responding to reports on the project for third parties;
- Engaging in work outside the obligations of the written contract; or
- Asserting control over the work of the third parties.

Privity of contract may not be the defense it used to be, but with careful attention to the issue, architects can still protect themselves if they understand the risk that they can be seen as owing duties to a party outside the contract and act accordingly.

For more detailed definitions and explanations please refer to the entire white paper, [Strangers No More? Trends in the Architect's No Privity Defense](#)