

Council of Architecture

ARCHITECTURAL PRACTICE (COA/DOC/04/2002/APR/12&13)

ARCHITECT'S PROFESSIONAL LIABILITY

INTRODUCTION

Professionals are required to discharge their obligations and commitments diligently and befitting with quality and standards of services. The laws of the land mandate that the professionals should provide services to the consumers in a required manner exercising duty of care and while doing so they should not commit any negligent act. In order to protect the interest of the consumers against the breach of duty, the deficient services have been defined by the statute and legal actions have been initiated on the erring professionals. The services rendered by architects have also been covered by the relevant laws of the country.

It has been often asked by the Architects why the legal action taken against architects whenever buildings or any other built form collapses of which they are the architects, without inquiring their faults and circumstances leading to the collapse. The suo motu action against architects have brought disrepute, embarrassment and mental agony to them, at a time, when they are unconnected with reasons responsible for the collapse of building.

What is the professional liability of architects for the buildings which have been designed and its construction and completion is supervised by them and thereafter, remain under the control and management of owners/ occupants, and not under the superintendence of an architect who was originally engaged for the design and supervision of construction. In reality, the longevity and stability of the building are dependent upon the observance of safety and maintenance norms.

Although Council of Architecture has prescribed the Conditions of Engagement and Scale of Charges, the question of professional liability of architects during the post completion period of the project remained a vexed question for many years.

It has been the constant desire and earnest request of the professionals that Council of Architecture being a statutory body regulating the Architectural Education and Profession throughout the country, it should formulate guidelines on architect's professional liability. Keeping this end in view, the Council has prescribed guidelines on "Architect's Professional Liability" to make aware of the architects and the owners and occupiers of the buildings in what manner and under which circumstances an architect should be held responsible for the negligent act/ deficient services and at the same time, it highlights the clients/ occupiers' duties and responsibilities to be undertaken by them to preserve the longevity of the building. This document has been approved by the Council of Architecture at its 40th meeting held on 12th & 13th April, 2002, vide Resolution No.302, as guidelines to the Architects and user organisations / individual clients.

President

Architect's Professional Liability

1.0 Professional Duties of Architect:

- 1.1 **Service:** "Service", as defined under Section 2 (1) (o) of the Consumer Protection Act, 1986, means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. In other words, rendering professional service by an architect for "consideration" falls within the ambit of "service". The relationship between the Client and the Architect is that of recipient and provider of service. The professional services rendered by the architect mean the services rendered pursuant to the Conditions of Engagement and Scale of Charges, entered into between the Client and the Architect.
- 1.2 **Competence:** An architect, being a professional, shall possess the required knowledge and skill i.e. proficiency and competence for discharging his professional duties and functions. These are governed under the provisions of the Architects Act, 1972 and the Architects (Professional Conduct) Regulations, 1989, framed thereunder.
- 1.3 **Duty of care:** It means duty to exercise utmost skill and care. When an architect offers professional advice/architectural services, implicitly undertakes that he is possessed of the knowledge and skill for the purpose. Thus, an architect shall bring to his task a reasonable degree of knowledge and skill and must exercise a reasonable degree of care.
- 1.4 **Duties:** The duties that are required to be performed by an architect for various types of projects have been prescribed by the Council of Architecture under the Conditions of Engagement and Scale of Charges for respective areas in the field of architecture. The documents stipulate the parameters within which the Architect is required to function. However, the Conditions of Engagement and matters related therewith for a given project shall be carried out in accordance with the terms and Conditions of Agreement executed between the Client and the Architect.

2.0 Professional Conduct:

An architect shall be required to comply with the standards of professional conduct and etiquette and a code of ethics set out in clauses (i) to (xxv), read with exceptions covered by sub-clauses (a) to (h) of sub-regulation (1) of Regulation 2 of the Architects (Professional Conduct) Regulations, 1989. Violation of any of the provisions of sub-regulation (1) shall constitute a professional misconduct.

3.0 Client's – Owner's / Occupant's duties and responsibilities:

The Owner – Client shall discharge all his obligations connected with the project and engagement of the Architect in accordance with the Conditions of Agreement as agreed upon. Further, the Client(s)-Owner(s) / Occupant(s) upon completion of the building shall maintain it properly to safeguard and preserve the longevity of the building.

4.0 Professional Negligence:

- 4.1 **Negligence:** "Negligence" of an architect means failure to take reasonable degree of care in the course of his engagement for rendering professional services.

4.2 Deficient Service:

- 4.2.1 "Deficiency", as defined under Section 2(1)(g) of the Consumer Protection Act, 1986, means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.
- 4.2.2 An architect is required to observe and uphold the Council's Conditions of Engagement and Scale of Charges while rendering architectural services in terms of Regulation 2 (1) (xii) of the Architects (Professional Conduct) Regulations, 1989. Thus, failure to provide any service/services that is/are necessary for discharge of his duties and functions for the project for which he has been engaged, amount to deficient service.

4.3 Exceptions:

An architect is not liable for any liability, if the damage to the building has occasioned in the following circumstances :

- 4.3.1 Use of building for the purposes other than for which it has been designed.
- 4.3.2 Any changes/ modifications to the building carried out by the owner(s)/occupant(s) without the consent or approval of the architect who designed and/ or supervised the construction of the building.
- 4.3.3 Any changes/alterations/modifications carried out by consulting another architect without the knowledge and consent of erstwhile architect or without obtaining No Objection Certificate from him.
- 4.3.4 Illegal/unauthorised changes/alteration/ renovations / modifications carried out by the owner(s)/occupant(s).

* Prescribed under regulation 2(1)(xii) of the Architects Professional Conduct Regulations, 1989. This revised document was approved by the Council of Architecture at its 40th Meeting held on 12th and 13th April, 2002, vide Resolution No. 303.

- 4.3.5 Any compromise with the safety norms by the owner(s)/ occupant(s).
- 4.3.6 Distress due to leakage from terrace, toilets, water logging within the vicinity of the building and that would affect the strength/stability of the structure or general well-being.
- 4.3.7 Lack of periodical maintenance or inadequate maintenance by the owner(s)/occupant(s).
- 4.3.8 Damages caused due to any reasons arising out of 'specialised consultants' deficient services with regard to design and supervision of the work entrusted to them, who were appointed/ engaged in consultation with the Client.
- 4.3.9 Damages caused to the building for the reasons beyond the control of the architect.

5.0 Professional Negligence and Deficiency in Services – Professional Misconduct :

Any person aggrieved by the professional negligence and/ or deficiency in services provided by the architect, the matter shall be referred to the Council of Architecture under Rule 35 of the Council of Architecture Rules, 1973, to adjudicate whether the architect is guilty of professional misconduct or not.

6.0 Professional Liabilities:

- 6.1 **Indemnity Insurance:** The architect is required to indemnify the client against losses and damages incurred by the client through the acts of the Architect and shall take out and maintain a Professional Indemnity Insurance Policy, as may be mutually agreed between the Architect and the Client, with a Nationalised Insurance Company or any other recognized Insurance Company by paying a requisite premium.
- 6.2 **Maintenance of Record:** The architect is required to maintain all records related to the project for a minimum period of 4 years after the issuance of Certificate of Virtual Completion.
- 6.3 **Duration:** The architect's liability shall be limited to a maximum period of three years after the building is handed over to / occupied by the owner, whichever is earlier.

7.0 Nature of Liability:

An architect is liable for the negligent act which he committed in the performance of his duties. The action against an architect can be initiated by the Client on satisfying the following conditions :

- (a) There must exist a duty to take care, which is owed by an architect to his client.
- (b) There must be failure on the part of an architect to attain that standard of care prescribed by law, thereby committed breach of such duty; and
- (c) The client must have suffered damage due to such breach of duty.

7.1 Disciplinary action under the Architects Act, 1972

If an architect is found guilty of professional misconduct, he is liable for disciplinary action by the Council of Architecture under Section 30 of the Architects Act, 1972.

7.2 Civil and Criminal action in the Courts of Law

- 7.2.1 The disciplinary action taken by the Council of Architecture against the architect who has been found guilty of professional misconduct does not absolve him of his liabilities under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, if any.

Some of the relevant laws include, The Law of Torts, The Consumer Protection Act, 1986 and The Indian Penal Code 1860, etc.