

# BUILDING BLOCKS

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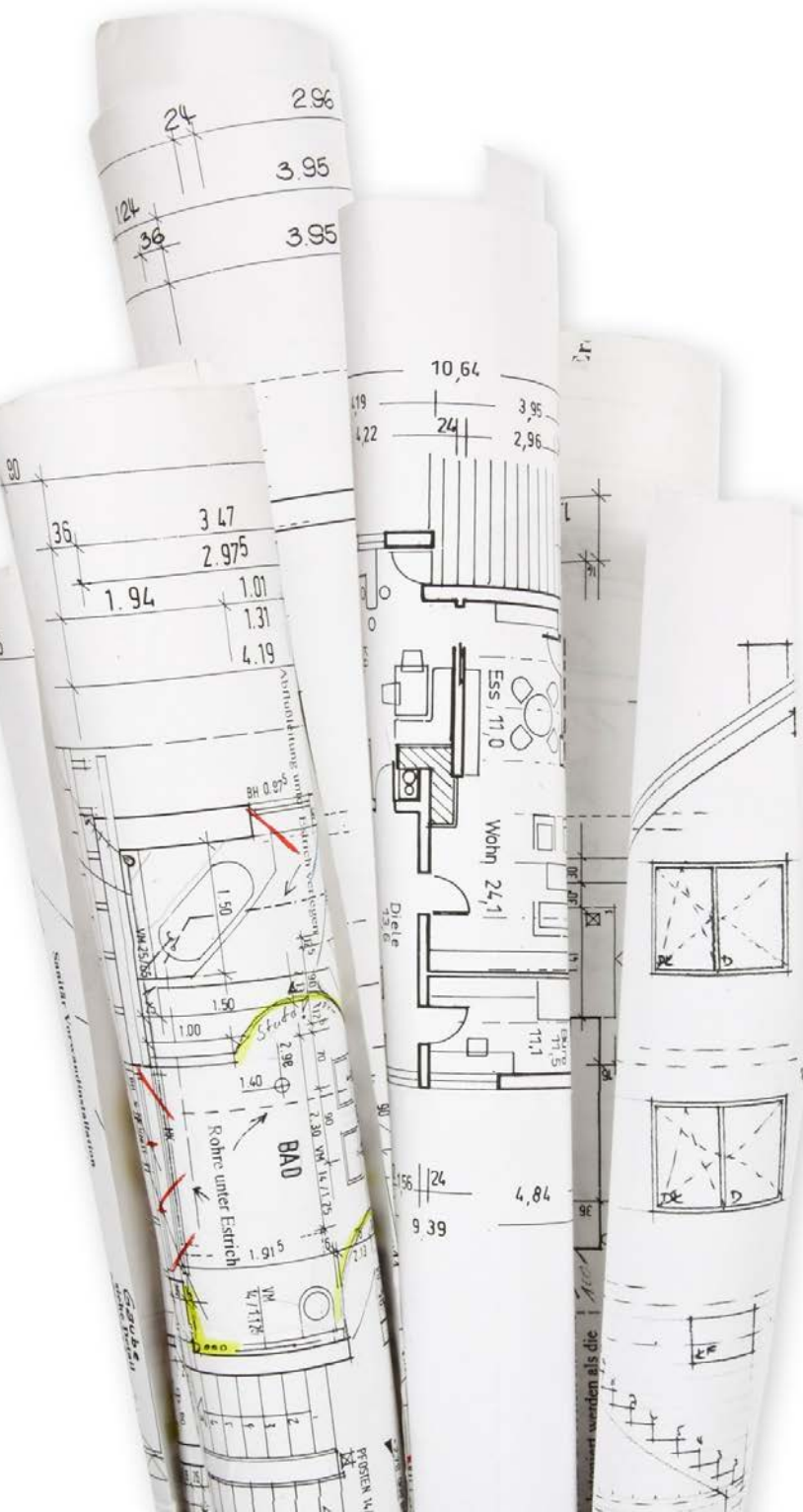
## TOP 10 RISK MANAGEMENT PRINCIPLES FOR DESIGN PROFESSIONALS

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In this Building Blocks issue we are outlining the following risk management principles for the next 10 months, one principle at a time, focusing on one each month. Thus, the November issue of Building Blocks will center on a "Firm's Culture & Ethical Practices." These top 10 principles are based, in part, upon the Council of American Structural Engineers' (CASE) "Ten Foundations for Risk Management,"<sup>[1]</sup> and the National Council of Architectural Boards' two of the six educational modules titled "Practice Management" (PcM) and "Project Management" (PjM) of the Architectural Registration Examination (ARE). The first five risk management principals listed below relate to practice management, and last five risk management principals relate to project management.

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## **1. FIRM'S CULTURE & ETHICAL PRACTICES**

Create a culture of managing risk and preventing claims, in an ethical practice. Culture and ethics in the practice in architecture and engineering is difficult to define in an organization, but is a key element of any firm's character, providing a basis for the decision-making process and operating procedures. To cultivate culture and ethics in the practice effectively, a firm must employ strategic planning (involving staff and clients), and commit to focus a substantial portion of the cultural effort on quality. High-quality client service is achieved when it is "built-in, not bolted on" and infused throughout an organization from the top-down. Producing high quality work will result in satisfied clients who provide opportunities for future business, reduced legal claims, more satisfied employees and higher profit margins, while at the same time avoiding conflicts of interest.

## **2. MENTORING AND EDUCATION**

Mentor and educate all the players in the process. Effective training is the key element to success. Consider a comprehensive training program, including leadership skills, project management skills and technical skills. Establish a mentoring program to enable seasoned staff to nurture the career development of less experienced staff. Ascertain the owner's expectations about coordination and completeness of the contract documents, so risk can be understood.

## **3. COMMUNICATION SKILLS**

Communicate internally and externally to match expectations with perceptions. Developing and practicing good communication is the key to success with the firm. Understanding the client and owner's goals is another step in effective communication, as proactive planning leads to seamless interaction. Communication must flow in both directions throughout the project team. Utilize communication tools, including project status reports, meeting agendas, action item/coordination lists and design criteria document.

## **4. "GO/NO GO" POLICY**

Have an internal office policy that all members of the firm that buy into, and use it. When evaluating new potential projects and clients (client selection), evaluate the firm's ability and appetite for the new opportunity for success. If the project looks too risky, or the client is someone or an entity that you have reason to believe will be difficult to deal with, let one of your firm's competitors have it.

## **5. CONTRACTS & OWNERSHIP OF THE FIRM'S DOCUMENTS**

Identify onerous contract language. A signed and well-written, fair and complete contract can minimize risk. Review each contract for onerous provisions; refer to CASE Tool: 8-1 Contract Review. It is preferred to use in-house standard contracts or standard contracts prepared by CASE or the American Institute of Architects as a starting point of negotiations. Review the master agreement between your client and the owner. Consider negotiating a limitation of liability appropriate for the scope and fee. Ensure that the terms of the contract are insurable under the firm's professional

liability insurance. For example, most insurance policies do not provide for the defense of an indemnitee, even though that term is often found in indemnity agreements. A good contract will recognize that professional services are being provided – not a product – and therefore perfection cannot be warranted by the service provider. Understand that most clients require that you will have to relinquish ownership of the documents that you have created for their project, so negotiate contract language protects the firm's best interests.

## **6. DEVELOP A SCOPE OF SERVICES WITH APPROPRIATE COMPENSATION**

Develop and manage a clearly defined scope of services. A clearly defined scope establishes a firm's responsibilities (avoiding misunderstandings), serves as a basis for compensation and additional services, and should be used in the development of the project work plan. Discuss the scope of the work with the entire project staff to ensure they have a full understanding of the required services – avoiding unnecessary services and identifying when additional services are appropriate. Manage scope-creep effectively with proper expectations between your firm and your clients. Adequate fees allow for adequate time to produce quality contract documents. Negotiate fees together with scope of services, so the client understands what is included in the basic services. Weigh contract fee versus risks to determine if the proposed fee is commensurate with scope, client, project type, complexity, schedule, delivery method and profit strategy.

## **7. PRODUCE QUALITY CONTRACT DOCUMENTS**

The contract documents are the deliverables that communicate the design intent to the construction team. In an effort to raise the document quality bar, CASE released CASE Tool 9-2: Quality Assurance Plan, which provides guidance to the structural engineering professional for developing a comprehensive detailed quality assurance plan, and is applicable to the architectural profession as well. A well-developed and implemented quality assurance plan ensures consistent high-quality service on all projects, and includes: 1) quality control review; 2) firm-wide standards; and 3) construction quality assurance. The quality control review may consist of three elements: 1) design (jury) review; 2) engineering review; and 3) construction document review. Comprehensive firm-wide standards (consisting of design/analysis standards [guidelines], documentation standards and construction administration standards) enable staff to gain historical firm-wide benefits while providing the resources to ensure that the design and documentation are clear, concise, accurate and consistent. Construction quality assurance is an important element of the quality assurance plan since it is the final step in the process. In addition, CASE Tool 9-1: CASE Guidelines Document 962-D A Guideline Addressing Coordination and Completeness of Structural Construction Documents, is a great reference tool for preparing quality construction documents and will be updated soon.

## **8. CONSTRUCTION PHASE SERVICES**

Provide services to complete the risk management process. Construction quality assurance is an important element of the quality assurance plan since it is the final step

in the process (and is best performed by the staff responsible for the design). Develop preconstruction meeting agendas to proactively discuss and resolve key issues. Develop guidelines for replying to requests for information, including issuing sketches and maintaining an RFI log. Develop submittal review guidelines that outline the completeness of specific submittal review, including the use of the appropriate submittal review stamp and submittal log procedures. Develop guidelines for field observation and reporting procedures and reviews of testing reports. Specify and request a submittal schedule to adequately allocate submittal review resources. Reply to RFIs and return submittals within the contractually specified time to avoid a claim for a delay in the process. Review specifications for specified submittal components. Request specified yet incomplete submittal information promptly upon receipt of submittal. Establish a collaborative (non-adversarial) relationship with fabricators and contractors in order to work together to achieve a successful completion of the project.

## 9. UTILIZE A CERTIFICATE OF SUBSTANTIAL COMPLETION

“Substantial Completion” of a project is a date, when established by the prime professional on a project, carries with it immense importance. And is distinct from “final completion” of a project. The start of a project is fairly easy to determine as it is measured objectively. Utilizing a Certificate of Substantial Completion, or a notice such as a letter to the owner, is the best way to close out a project in a professional manner. The objectively determined date of the start of a project can be overshadowed by the subjective determination of the end of a project. Without such tools, the difficulty in determination of the end may result in a dispute between all of the parties to a construction project. Most importantly, Substantial Completion and a fully executed and dated Certificate of Substantial Completion triggers warranties and guaranties on a project. The clock starts to tick on the length of time on parts of the project that have assurances (warranties or guarantees) that the project will be built in accordance with the Contract Documents. And the Certificate of Substantial Completion also triggers timelines for statutes of limitations and statutes of repose applicable to the project.

## 10. DISPUTE AND CLAIM HANDLING

Almost every project has issues to be resolved from design through construction. Only when those issues become troublesome, an approach is needed to protect your firm’s best interests. Develop and implement a dispute and claim handling procedure that involves the appropriate personnel in your firm, be it the principal in charge or the project manager. Communicate both internally and externally in a timely manner, including your firm’s insurance agent, professional liability insurance carrier and legal counsel. Understand that dispute and claim handling is something that is not taught in school, but a firm’s approach is best not based upon just on-the-job training.

[1] *The above risk management principles have been adapted, in part, from an article that originally appeared in the June 2012 issue of STRUCTURE magazine, published by the National Council of Structural Engineers Associations (NCSEA), and is **reprinted with permission**. <https://cseengineermag.com/article/principles-and-tools-for-risk-management/>*

### **About the Author**

*Eric O. Pempus, FAIA, Esq., NCARB has been a risk manager for the last 12 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 years of experience in the practice of architecture, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 30 years. As a Fellow of the American Institute of Architects and a member of the AIA National Ethics Council, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.*

*The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities, and should not be construed to represent a determination of legal issues, but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.*

***Disclaimer:*** *The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individual, group, or institution. This article is an expression by the author(s) to generate discussion and interest in this topic.*





# MARK YOUR CALENDARS FOR ERIC'S UPCOMING CONTINUING EDUCATION PROGRAMS:

## **Conference Seminars:**



### ***“Empowering Your Ethics in a Changing Construction Industry”***

Architects' Association of New Brunswick  
2019 Industry Forum  
Saint John Trade and Convention Center  
Saint John, NB, Canada  
November 26, 2019



### ***“Engineering Law & Ethics”***

Half Moon Education Seminars, Toledo, OH  
February 7, 2020 - 8:30 a.m. – 5:00 p.m.  
Location to be determined

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