



Emergency Services

In the aftermath of disasters—earthquakes, hurricanes, floods, mudslides, fires, explosions and other calamities—people turn to architects and engineers to provide much-needed assistance. These professionals willingly come forward to help protect the public and to speed recovery efforts. They may inspect a damaged building to determine if it is safe to enter or inhabit, examine a bridge for structural integrity or monitor an embankment for stability following an earthquake—often under difficult and sometimes dangerous conditions, and frequently for little or no fee.

The Problem

After you have done your best to help your neighbors, it seems so unfair to get your thanks in the form of a lawsuit! True, under the exigencies of the moment, you may not have had sufficient time to do your usual professional analysis and give careful consideration to all the available options. But when the aftershocks have ceased, the ashes have cooled or the winds have died down, victims sometimes forget the conditions under which you were forced to work. They only know that they are facing a huge loss, and they may cast about for any and every source of recovery—including the well-intentioned, public-spirited consultant.

The law provides only limited help. A few states ¹ have adopted “Good Samaritan” statutes that provide immunity from liability to those who provide voluntary services in connection with a declared emergency. These statutes, however, vary widely as to the kind of immunity they offer and to whom. Not all of them protect design professionals.

The Solution

Obviously, in the midst of an earthquake or its immediate aftershocks, you won't be thinking about asking your neighbors to sign a broad-form indemnity. If it is truly an emergency that involves an immediate threat to life or property, caring individuals will do what they can at the moment and deal with the consequences later.

In the aftermath of a disaster, however, you should get some kind of written agreement for your services, even if you are not accepting a fee. Rest assured, it doesn't have to be a full-blown contract. On the contrary, a very simple agreement will suffice. Establish a scope of services, and make it as complete as possible given the circumstances. If you can, also indicate what services you will not be providing.

The EJCDC and AIA both have short-form agreements. ² Some firms have developed their own short-form Emergency Services Agreements. Many send their personnel into the field with a pad of these documents and have them executed on the spot by homeowners or other distressed parties. Other firms prefer to send a simple letter agreement to the client that contains waiver and indemnity provisions. (See **Indemnities** for a related discussion.)

Remember, when you are helping individuals who have just suffered a big loss, they aren't likely to have their attorney standing by to advise them. They need your help to understand what they are facing. Take the time

from later claiming you buried the clause in your letter or forced him or her to sign the agreement on a “take-it-or-leave-it” basis. This may sound harsh. The pros and cons of this should be thoroughly discussed within your firm and with your attorney. You should consider the provisions content and enforceability as well as your firm’s moral and philosophical position on providing services under unfavorable conditions.

When using a letter agreement in emergency situations, you should describe and limit the scope of your services to prevent future misunderstandings. Here is a sample of rather protective wording you might adapt to your situation:

The Consultant is a structural engineer [or architect, etc.], and all observations, opinions and conclusions are limited to structural review. The Consultant cannot investigate any possible electrical or mechanical damage nor can the Consultant render an opinion on the existence of asbestos or any other toxic material or contaminants on the site.

The Consultant has not had the opportunity to review plans, calculations or soils data for the structure or other information normally available to consultants, nor has the Consultant been able to perform detailed analyses or structural calculations. Because of the existing emergency situation, the Consultant’s opinions and conclusions are based on limited visual observations and, as such, should be considered preliminary only. The Client must have these opinions and conclusions verified by detailed analysis once the emergency period has passed. No other warranty, either express or implied, is made or intended.

Before disaster strikes, educate all your key employees on the liability exposures associated with providing emergency services. Instruct them to keep careful notes (as good as the circumstances allow) on all their disaster-site visits. (Video or still cameras and tape recorders are especially helpful in these situations.) Field staff should document their observations and recommendations to your client in writing as soon as possible.

Finally, check to see if your state has a Good Samaritan law. If it does, work with your professional society and licensing boards to broaden existing legislation to provide better protection. If your state does not have such a law on the books, you and your colleagues should urge your state legislators to enact one. Contact your national professional association for model language and guidance.

¹ Including California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, New Mexico, New York, North Carolina, Oregon, Utah, Tennessee, Virginia and Washington. A few states provide immunity for design professionals who volunteer under the direction of a public official, and some, including Connecticut and Missouri, have established programs in which the design professionals who have enrolled with the states emergency management agencies are granted immunity from liability.

² In the wake of Hurricanes Katrina and Rita, The AIA published the short-form B191™-2005: *Emergency Services Standard Form of Agreement*. And the EJCDC offers E-520 (2002 edition): *Short Form of Agreement Between Owner & Engineer for Professional Services*.

See Also

- Excluded Services
- Indemnities
- Inspection
- Limitation of Liability
- Public Responsibility
- Scope of Services
- Standard of Care
- Appendix 1 – Agreement for Emergency Professional Services



Design Professional unit

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