



## **Should Design Professionals Return To A Project After Completing Their Services?**

By Steven R. Goldstein, Esq.<sup>1</sup>

Whether to return to a project after design professionals have completed their services is a dilemma many design professionals face. The decision can have far-reaching implications, and if not handled carefully, returning to the job site after professional services have been completed can subject design professionals to additional liability.

Design professionals are often called upon to return to a project to assist in resolving issues that, in many instances, have nothing to do with the work they performed. Nonetheless, for legal, ethical and business reasons, before deciding whether to return to the job site, design professionals first need to take a hard look at whether this is a good idea. Some issues that need to be carefully analyzed and assessed before deciding whether to return to the site include the following:

### **1. What is the statute of limitations in effect in the jurisdiction, and has the statute of limitations expired?**

A statute of limitations is the time period within which one party is allowed to file a lawsuit against another party, and the times vary from state to state. Depending on the state in which the project is located, or the jurisdiction selected in the contract, different statutory time periods apply for a party to sue a design professional. Once design professionals determine the applicable statute of limitations period, they must then determine whether the time period has expired as of the date they are requested to return to the project to identify the cause of a problem and/or assist in providing the appropriate remedial plan.

If the statute of limitations has expired, design professionals may want to consider staying away from the project, as long as they are not contractually or professionally obligated to return. While this could impact their relationship with their client, the design professional has to weigh the risks of returning to the project. If a design professional decides to return after the statute of limitations has expired, they

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may wish to obtain a new contract for new professional services, but they need to bear in mind that they could be sued pursuant to the new contract for work performed from that period forward. Sometimes it may be the best decision to simply stay away.

## **2. Is your jurisdiction subject to the doctrine of continuous treatment?**

If the statute of limitations has expired, in most instances a party may not proceed with a legal action against the design professional. However, even if the statute of limitations is going to expire soon, if the continuous treatment doctrine applies in the jurisdiction and the design professional returns to provide services at the project, the time to file a lawsuit may be extended until the date the design professional completes his or her new services. So if the design professional returns to the project and continues to provide professional services, the courts could find the design professional continued to provide services on the project – or provided “continuous treatment.” Thus, while a lawsuit might have otherwise been filed too late, the court might find that because the design professional continued to provide services, the statute of limitations did not expire and the lawsuit can move forward.

Of note, the professional services usually must be associated with a condition that existed in the original project and not some unrelated work at the project.

## **3. What, if any, ethical obligations exist?**

Design professionals, as with most other professionals, are responsible for adhering to a code of professional responsibility separate and apart from the body of law governing the profession. Specifically, The American Institute of Architects Code of Ethics and Professional Conduct applies to all design professionals and requires the design professional to act in a manner to protect the public, including the client, from harm. As such, a common example of when a design professional should return to a project, regardless of the legal requirement to do so, is when his or her services may have resulted, knowingly or unknowingly, in a condition that is harmful to the public.

## **4. Sometimes returning is simply the right thing to do!**

Perhaps the statute of limitations has expired and you have no ethical obligation to return to the project to assist in resolving a problem that arose after you completed your services. Why return? For one thing, it may help the parties quickly resolve the problem, and thereby reduce potential damages. At the same time, it may also help strengthen your relationship with the parties, as well as increase future business opportunities with the parties.

As noted, there is a clash of considerations – legal, ethical and otherwise – that design professionals must fully address before this seemingly routine, but very important, question of whether to return to a project can be answered. It is a question that should only be answered after carefully considering all of these issues with the assistance of legal counsel in your jurisdiction.

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