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## INTERIOR DESIGN CONTRACTS

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*No matter the size of the project, interior designers should always clearly document the scope of the work, the price to be paid, limitation of liability and any other special terms or conditions respecting their work. Time spent drafting and reviewing a contract will pay off even if the project is small.*

Here is a list of the **TOP TEN** items Interior Designers should include in their Design Contracts:

### 1. Proper Identification of Parties and Project Site

If your design company is incorporated, the Contract must be in the name of the company and not in your own name; otherwise you may be personally liable.

The Client must be properly identified and the Designer must know that the person providing instructions is authorized to deal with the project. The address of the project site should be set out together with the legal description of the site of where the work is being performed. (If your account is not paid, you may have to file a lien against the property so you will need the legal description for this purpose.)

### 2. Scope of Services and Additional Services

The Scope of Services should describe the specific work the Designer is going to complete. The scope must be clearly defined and set out the details of what the Designer is committing to do. At this stage, the Designer should resolve any misunderstandings and ensure that the Client understands what he or she is going to get. Managing client expectations is crucial to a design project and it begins with the Contract.

A good approach to defining the Scope of Services is to set it out in stages or phases. *For example, Stage 1 – Preliminary Design Concept Presentation, Stage 2 – Design Development, Stage 3 – Construction Documentation, Stage 4 – Construction Coordination or Project Management, and Stage 5 – Post-Project Client Review.*

If the Client later requests additional services that were not included in the original Scope of Services or there is an increase in any price, the additional services or increased price must also be clearly described and agreed to in writing in a change order.

### **3. Pricing Structure**

There are a variety of ways that a Designer can charge for services, including a flat fee or an hourly rate or some form of a combined flat fee and hourly rate. Many design services include project management and it is easy to underestimate the amount of time project management will take -- therefore it is preferable that project management services be charged at an hourly rate.

A good approach to dealing with fees is to obtain an initial retainer or deposit from the Client when the Contract is signed. The retainer can be held by the Designer until the project is complete and then it can be applied to the Designer's final invoice.

There are different ways Designers bill for their work such as monthly invoices, invoices upon the completion of each stage of the project, collection of a percentage fee of the total construction cost, or billing of all services upon completion of the project.

Unless the Designer has a strong relationship with the Client and is confident the Client will pay, Designers should avoid waiting until the end of the project to bill the Client. By invoicing the Client regularly, the Designer can identify any payment issues early on and the Client will not be surprised by the cost of the services (especially where the billing method is by hourly rate).

The Contract should also outline who is responsible for the payment of expenses and disbursements, and should set out any applicable taxes (e.g. GST or HST) and whether there is interest payable on outstanding accounts.

### **4. Designer Purchases for Clients**

Many Designers obtain discounts on items they purchase for their clients. The Contract must set out the price that is to be paid by the Client, the price paid by the Designer plus any additional percentage or other fee. Some Designers wish to pass on the entire discount to their clients. Always be sure to include all applicable freight and delivery charges and all applicable taxes.

The Contract must state that the Designer does not guarantee prices, quantity or quality of items purchased by the Designer, so if the item is either not delivered or is defective, it is the Client who must look to the manufacturer or seller of goods for any legal remedy.

### **5. Client Responsibilities**

Designers often rely on information provided or actions taken by the Client or others hired by the Client such as engineers, architects or surveyors. If you are relying on others or if there is crucial information that the Client is to provide or crucial actions which the Client is to take (i.e. permits will be obtained), this should be specifically outlined in the Contract.

When the Client hires a sub-contractor or any other third party, the Client should make a separate contract directly with the third party. If the Designer is hiring the third party, the Design Contract must specify the extent of the Designer's liability for the services provided.

## **6. Designer Representations and Warranties**

Representations or warranties given by the Designer should be limited to what is in the control of the Designer. *For example: "The Designer shall provide the design services to the standard of a reasonably skilled person engaged in the practice of interior design."*

Designers should not make any representations or warranties about the quality or timeliness of work performed by third parties or about the quality of goods or materials supplied for the project. If there is a delay, a defect or incompetence, the Client should look to the supplier of the goods or services and not to the Designer for legal remedy.

## **7. Suspension and Termination of the Contract**

To protect both the Designer and the Client, Design Contracts should state how the Contract may be terminated. *For example: "This Contract may be terminated if the Client fails to pay or the Designer fails to perform the services or either party becomes bankrupt."*

Good termination provisions build in timelines to remedy defaults. *For example: "The Client must give 15 days notice to the Designer that the Client will terminate the Contract if the Designer fails to remedy the Designer's default under the Contract."*

It is also important to include a detailed description of what happens upon termination. *For example: "The Designer shall render the Designer's final invoice which shall be paid within 10 days."* The Contract should also set out what happens to the designs or work in progress upon termination.

From time to time, clients change their minds about projects, run out of funds for the project or simply need to delay the project. In these circumstances, the project may need to be suspended for a period of time. A suspension clause in a Contract should set out that the Client must give the Designer written notice, make payment of all fees and disbursements incurred up to the suspension date as well as a mechanism for the Client to resume the project or the Designer to terminate the Contract if the Client has completely abandoned the project. Specific timelines about the length of project suspension and when the Designer can terminate should be included. Once a project has been suspended, it can often cost the Designer extra expense to resume and such potential for extra expense should be included in the Contract.

## **8. Insurance and Liability**

Provincial interior design associations or regulators require members to have liability insurance. Designers should protect themselves and their business by purchasing and maintaining adequate insurance coverage. Contracts may specifically state the amount of insurance to be carried by the Designer and provide that any additional insurance required by the Client should be obtained and paid for by the Client.

To further protect the Designer, Contracts can also include a statement limiting liability. *For example: "The Client agrees to release the Designer from any and all liability that the Designer may have to the Client for any amount in excess of the Fees paid by the Client to the Designer or the amount payable under the Designer's insurance policy, whichever is less."* This provision may prevent the Client from being able to sue the

Designer for more than what the Client has actually paid under the Contract. But the release may not be enforceable if the Designer has been negligent or fraudulent in the performance of the design services.

## **9. Ownership of Intellectual Property**

Unless the Designer and the Client have agreed otherwise, copyright in the designs created for the project belong to the Designer. You should mark your plans accordingly (i.e. © Designer Name, Year). But in order to avoid any claims in the copyright by the Client, it is important that ownership of copyright also be clearly stated in the Contract. If a Designer agrees to assign his or her copyright to the Client in exchange for a higher fee, for example, the Contract must be in writing for it to be enforceable.

Other intellectual property provisions that need to be considered include the right to photograph and publish pictures of the completed project, the right to use the project to promote the Designer, the right to enter the project into awards competitions, the right to post a sign on the project site, and a provision that the Client has no right to reproduce the work without the prior written consent of the Designer.

## **10. Dispute Resolution**

Dispute resolution provisions may include an escalating process which gives the Designer and the Client the option to pursue a variety of remedies depending on the value of the dispute. The simplest approach is informal negotiation. You might find that the issue is not the quality of work but rather that the client is having financial troubles. You could then agree on a revised payment schedule. If the dispute is substantial and under the monetary limit of the small claims court in your jurisdiction, you might commence a civil claim. If the value of the dispute is greater than the amount of the small claims court, you would consider whether to litigate in the court system or to go to arbitration before a single arbitrator. Arbitration can be expensive, but it may not be as expensive as a court process and may result in the fast, effective resolution of the dispute.

**NOTE:** In Quebec, contracts must be written in French or have a clause in French stating that the parties agree that the contract is to be written in English.

*Each project is unique. The Design Contract should reflect the unique nature of each project. If you follow a template contract, review each project to ensure all of the terms and conditions in the template are applicable to the project.*

**Protect the work that you do and the business you have created by documenting all your agreements in writing.**

*This Bulletin is not to be considered legal advice relating to specific facts or situations. If you have specific concerns or questions, please contact Denise E. Robertson, Mills & Mills LLP (Telephone: 416-682-7139 or Email: [denise.robertson@millsandmills.ca](mailto:denise.robertson@millsandmills.ca)).*

**Mills & Mills LLP offers all IDC Members a complimentary half hour consultation about their existing Design Contracts to discuss any necessary revisions and to**

**provide an estimate of the time required to review the Contract in detail and make revisions and improvements.**