



Problems with your Client?

The New Zealand Registered Architects Board (NZRAB) regularly receives complaints about architects. Most complaints are broadly the same and easily avoidable. The typical complaint is as follows:

- The client commissions the architect to design a house and specifies a fixed budget.
- The architect prepares the plans and the client pays the architect's fee.
- Then the quotes come in showing the house will cost twice the funds available.
- For the client, the plans – already paid for – are useless.

This happens too often, suggesting that some architects are struggling to manage their relationships with their clients. There are usually two sides to the story, but even so, these problems should not happen.

This brochure provides questions and answers to help you, the architect, avoid these difficulties. The measures described should also help protect you if you ever face a complaint or civil proceedings.

Why does the NZRAB get involved in complaints?

The NZRAB is a statutory board that registers, monitors and, if need be, disciplines architects. Under the Registered Architects Act 2005, clients or other members of the public can lay a complaint against an architect. The NZRAB investigates and, if warranted, hearings are held. If an architect is found wanting, he or she can be fined up to \$10,000 and, as a last resort, the architect can be deregistered.

What can complaints be about?

All complaints against architects must be in terms of the Registered Architects Act 2005 section 25. The main reasons are the architect has practised in a negligent or incompetent manner, or has breached the Code of Minimum Standards of Ethical Conduct for Registered Architects. The Code is reproduced on the back of this brochure.

What are complaints mostly about?

Complaints about design or the quality of an architect's work are rare. Occasionally complaints occur between architects involving professional disputes. Most complaints are made by clients and are about inadequate control of a project budget reflecting misunderstandings or poor communication. The most common complaint is that the architect has designed a house that the client can't afford to build.

Why does this happen?

Too often architects and their clients begin projects without having agreed on a clear-cut commissioning document that sets out the client's expectations of budget and programme, and both the client's and the architect's obligations to each other.

Also, too often clients change their instructions during the design phase in ways that add substantial expenses to the project and yet architects fail to warn that a budget blow-out will be the result.

And communications in general between architects and their clients are too often haphazard, informal and not documented.

How do I avoid these problems?

Commissioning documents

No matter how small the project, make sure you have a good-quality commissioning document agreed to at the beginning. That way, both parties are entering into a commitment that is understood and no one can argue later as to what was agreed to. The commissioning document should be referred to throughout the project. This imposes a healthy discipline on both parties right from the start. The NZIA provides an agreement-for-services template to its members.

Some clients will never put anything in writing – be wary of this and do not fall into the trap of behaving like them. If your instructions are incomplete or chaotic, and the project gets into difficulty, you have nothing to fall back on. If clients won't communicate in writing, you need to do it for them to create a paper trail that protects you.

When you are commissioned to carry out contract observation, make sure that the client understands what this is and hasn't confused it with project management or some other role.

Make sure the client is realistic

As an architect, you need to be dispassionate when first approached by a client, no matter how much you want the work. Architects by nature are optimists, but this must be grounded in reality. Clients should be told what they need to be told, and not just what they want to hear, about the likely costs in terms of both your fees and the construction costs. Clients need to understand that the total project budget will be more than just the construction costs. Sometimes, architects have a duty to say: "With the money that you have, what you want is impossible."

As the architect, you must be realistic too. Professionally, architects are obliged to first meet their client's objectives - design ideals must match these, rather than the other way around.

Make sure the client knows the likely costs as the project develops

For your own protection, insist on good cost control processes throughout a project. *In particular, strongly recommend that there be an independent estimate of costs at least at the sketch design stage.* This is a very powerful reality check. Then keep checking at each subsequent stage!

Nonetheless, a client may refuse to do this, typically and foolishly to save money. If this happens, for your protection make clear in writing that this is against your advice and that it creates extra risk.

Be aware of the cost implications of changing the scope of the project and keep reinforcing this to the client in writing. Scope creep, whether client or architect initiated, will always affect the budget.

Keep communicating and never let problems fester

Problems about money are often the result of poor communication. Architects need to take communication with their clients very seriously. Keep talking to the client and, for your protection, confirm significant things formally and in writing.

Issues and problems must be sorted out with clients quickly and openly. If a problem arises, work out a course of action and tell the client about it as soon as possible. *It will probably be worse if left until later.*

In particular, if the client is changing or extending the brief and this has cost implications, tell the client, and, again for your protection, do it formally and in writing.

What do I do if the client insists on things that are unrealistic or unwise?

For many clients, their project is laden with emotion. Sometimes clients have to be told very forcibly that they are taking risks through scope creep.

Also, a client may need to be warned about other risks, such as the possible consequences of getting embroiled in a resource consent process that could rapidly get out of control. Not only are there the obvious cost and time implications which can be significant, but also the client may be at risk of alienating neighbours or whole communities. Clients are often naïve in these areas and sometimes you need to educate your client to avoid such pitfalls. Remember, you are a professional and often the client is inexperienced.

There are some clients that you should avoid having. Some clients can be plain difficult, or demanding, or unreasonable, or will hear something quite different from whatever you tell them. They will be high maintenance and sometimes the best outcome is not to work with them at all.

Can I learn from the mistakes of other architects?

When a discipline case involves issues that are relevant to the profession, afterwards the NZRAB publishes a case report as a learning resource. The names of the people involved are removed and the lessons to be learned are described.

Currently there are two of these reports on the NZRAB website¹ in the “For Architects/Complaints and Discipline” section. More reports will be added as relevant cases are concluded.

What do I do if things are going wrong?

It is very important to recognise when you are getting into difficulty and need assistance or advice. Other colleagues in the profession will be sympathetic and willing to help – everyone has these problems sooner or later. The NZIA can provide guidance and independent input. Often problems seem bigger than they really are, but they won't get better by doing nothing.

What do I do if a complaint is laid against me?

Firstly, try to avoid getting angry. Inflammatory emails, letters and phone calls will make things worse.

As best you can, ask: “Why did this happen?” Try to think about the complaint from your client's point of view and recognise that your client probably has an emotional investment in the project. It may be that you can solve the problem, if you put aside the question of who is in the right.

Finding a solution that satisfies both parties will almost certainly be better for you than fighting a legal argument even if you win.

As another option, if a complaint has been laid, the NZRAB can arrange mediation or arbitration.

If you have got it wrong, consider a sincere apology and handing back all or part of the client's fee. That grates, of course, because there are always two sides to any issue. But sometimes it is better to just take it on the chin and walk away.

Conclusion:

To avoid problems with your client:

- always have a clear-cut commissioning document
- strongly recommend an independent estimate of costs at least at the sketch design stage and do so in writing
- if the client changes or extends the brief, always tell the client the cost implications and follow it up in writing.

Code of Minimum Standards of Ethical Conduct for Registered Architects

(Taken from the Registered Architects Rules 2006)

Standards related to the public

46. Not misrepresent himself or herself

A Registered Architect must not represent or promote himself or herself, his or her business, or his or her professional services in a false, fraudulent, misleading, or deceptive manner.

47. Uphold the law

A Registered Architect must abide by the professional codes of ethics and conduct and laws in force in the countries or jurisdictions in which he or she provides professional services.

Standards related to the client

48. Exercise unprejudiced and unbiased judgement

A Registered Architect must exercise unprejudiced and unbiased judgement.

49. Care and diligence

A Registered Architect must perform his or her professional work with due care and diligence.

50. Terms of appointment

A Registered Architect must not undertake professional work unless the Registered Architect and the client have agreed the terms of the appointment, which may include but need not be limited to:

- (a) scope of work
- (b) allocation of responsibilities
- (c) any limitation of responsibilities
- (d) fee, or method of calculating it, and terms of trade
- (e) any provision for termination
- (f) provision for professional indemnity insurance.

51. Remuneration and inducements

A Registered Architect must:

- (a) be remunerated solely by the fees and benefits specified in the appointment or employment agreement; and
- (b) not offer any inducements to procure an appointment.

52. Confidentiality of client's affairs

- (1) A Registered Architect must observe the confidentiality of the client's affairs and must not disclose confidential information without the prior consent of the client.
- (2) Subclause (1) does not apply if the Registered Architect is required by law to disclose that information.

53. Conflict of interest

A Registered Architect must disclose to clients, owners, or contractors significant circumstances known to the Registered Architect that could be construed as creating a conflict of interest. The Registered Architect must ensure that the conflict does not interfere with the Registered Architect's duty to render unprejudiced and unbiased judgment.

Standards related to profession

54. Act with honesty and fairness

A Registered Architect must pursue his or her professional activities with honesty and fairness.

Standards related to other Registered Architects

55. Acknowledge colleagues' contributions

A Registered Architect must:

- (a) build his or her professional reputation on the merits of his or her own performance; and
- (b) not claim as his or her own intellectual property and ideas of other Registered Architects.

56. Not maliciously or unfairly criticise

A Registered Architect must not maliciously or unfairly criticise or attempt to discredit another Registered Architect's work.

57. Conflicts of professional appointment

A Registered Architect must, on being approached to undertake professional work for which he or she knows, or by reasonable inquiry ascertains, that another Registered Architect has a current appointment with the same client, notify the other registered Architect.

58. Giving an opinion on the work of another Registered Architect

A Registered Architect must, when appointed to give an opinion on the work of another Registered Architect, notify the other Registered Architect unless the appointed Registered Architect is aware of any current or pending litigation concerning the work that is the subject of the opinion.