6 Professional Liability Risks Architects and Engineers Face in Joint Ventures

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As the architecture, engineering, and construction (AEC) industry continues to evolve, joint ventures (JVs) have become an increasingly popular strategy for pursuing large-scale, complex projects. While JVs offer opportunities for collaboration, resource sharing and market expansion, they also introduce unique professional liability risks that design professionals must carefully manage.

What Is a Joint Venture?

A joint venture is a formal partnership between two or more entities that agree to share resources, responsibilities and profits for a specific project or business purpose. In the AEC context, JVs often involve design firms teaming up to pursue a high-profile project, meet client demands, expand geographic reach or combine specialized expertise.

Key Professional Liability Risks in Joint Ventures

1. Shared Liability Exposure

In a JV, liability is joint and several, meaning each party can be held fully responsible for the actions of the other. This can result in one firm bearing the brunt of a claim, even if its role in the alleged error or omission was minimal.

> **Risk Tip:** Carefully draft the JV agreement to clearly define roles, responsibilities and indemnification provisions to allocate risk appropriately.

2. Ambiguity in Scope and Standard of Care

When multiple firms collaborate, differences in internal standards, Quality Assurance/Quality Control procedures, and documentation practices can lead to inconsistencies. These discrepancies may complicate the defense of a professional liability claim.

Risk Tip: Establish unified protocols for design review, quality management, documentation, and communication to consistently fulfill standard of care obligations.

3. Insurance Coverage Gaps

Professional liability insurance practice policies are written for individual entities—not joint ventures. Unless the JV is specifically named on the policy, coverage may not apply to work performed under the JV umbrella.

Risk Tip: Consult with your insurance broker to determine whether a separate policy is needed for the JV. Confirm that all parties carry adequate and compatible coverage.

4. Contractual Risk Allocation

JV agreements often lack detailed risk allocation provisions typically defined in industry-standard design services contracts. Without clear terms regarding indemnification, limitation of liability and dispute resolution, firms may face increased exposure.

Risk Tip: Treat the JV agreement as a critical contract with potentially elevated risk implications. Include provisions that mirror your firm's risk management standards and consult legal counsel during drafting.

5. Intellectual Property and Document Ownership

Joint ventures can create confusion over ownership of design documents and intellectual property. Disputes may arise if the JV dissolves or if one party uses shared materials outside the scope of the agreement.

Risk Tip: Define intellectual property ownership, licensing rights, and document control procedures in both the JV agreement and the client contract.

6. Termination and Exit Strategy

If a JV dissolves mid-project due to financial, legal or operational issues, liability for incomplete or defective services may fall disproportionately on the remaining party.

Risk Tip: Include termination clauses that address ongoing liability, project continuity and dispute resolution mechanisms.

Best Practices for Mitigating Joint Venture Liability Risks

- Conduct a thorough risk assessment before entering a JV
- Vet potential partners for financial stability, reputation, business practices alignment and insurance coverage
- Use a written JV agreement with detailed risk management provisions
- Coordinate with legal and insurance advisors to ensure coverage and compliance
- Establish JV leadership and management structure
- Implement sound project delivery standards and protocols

- Maintain clear communication and comprehensive documentation throughout the project lifecycle

Conclusion

Joint ventures can be powerful tools for growth and innovation in the design industry, but they require careful planning and risk management. By understanding the professional liability implications and taking proactive steps to mitigate exposure, architects and engineers can protect their firms while realizing the benefits of collaboration.

Additional Resources

Joint Ventures with Other Design Professionals: What You Should Know
Presented by AIA Contract Documents, this 50-minute webinar discusses the risks associated with joint ventures and explores how to properly structure relationships to mitigate risks through contractual provisions.

About the Author

Lisa MacKay is assistant vice president, senior claims examiner at Berkley Alliance Managers, a Berkley Company. She has more than 20 years of experience as a claim professional dedicated to architects and engineers professional liability. Prior to that, Lisa worked as an attorney for 10 years in government and private practice. She earned her Bachelor of Arts degree in Economics from University of Illinois Urbana-Champaign, and her Juris Doctorate from Whittier College School of Law, Whittier California. Lisa is based in Chicago and can be reached at lmackay@berkleyalliance.com.