

Residential Clients (Small Projects)

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Summary

This Practice Tip focuses on projects involving single, detached dwellings designed for clients who intend to live in the project or rent it out in whole or in part once complete. It is not intended for townhouse, apartment, or condominium building projects.

For these clients, a residence is often one of the most important investments of their lifetime, as well as a personal expression within the community. Problems may arise between the parties to a contract for professional services due to their expectations not being mutually and clearly understood. When working with such clients, members are strongly encouraged to employ standard forms of contract (such as the latest OAA Contract Suite) and to discuss proposed services, fees, budget, and client requirements and expectations at the outset. Members may also want to become familiar with Ontario New Home Warranty Program requirements that could apply to the project.

Background

Some projects require an Architect or Licensed Technologist for both the design and general review of the construction, while others **may** be designed by an OAA member, though this is not a requirement. Houses that will be three or fewer storeys or in building height, whether custom or tract, fall into this latter category.

This includes:

- one dwelling unit or two attached dwelling units, subject to height and at-grade restrictions; and
- three or more attached dwelling units, subject to height, at-grade, and building area restriction.

By law (under the *Architects Act*), these projects do not need to be designed by Architects or Licensed Technologists. Where general review is not mandatory at law (such as under the Building Code), it may still be provided as a professional service.

Architects or Licensed Technologists authorized to offer services to the public will have a certificate of practice (CoP). They are referred to collectively as “CoP holders” or simply “holders”.

When embarking on a project to design and build, a residential client is committing to a major investment in what may be to them an unfamiliar process. While it is possible to define a proposed residence broadly in terms of form and function, there are significant variables and questions needing attention. The chosen design professional will be a major determinant in answering these questions.

During the design of the residence, the holder becomes a major contributor to the project, serving as advisor, coordinator, technical manager, and translator of the client’s program of requirements into reality.

Services are rendered most effectively when a clear understanding exists between the holder and the client regarding respective obligations and responsibilities. This understanding is best accomplished by a thorough review of the scopes of the project and of the services to be provided (or not being provided) by the CoP holder, confirmed in a written contract.

Managing Expectations and Communicating with Residential Clients

A home is likely the single most expensive purchase most people make. For many residential clients, this may be the first time they are personally involved in a construction project. Clients need to understand the time commitment involved, the need for timely decisions, and the stress that may ensue. As a result, they may require more guidance than commercial or public-sector clients.

The financial investment in a new home may be the largest that a family will make. A client's emotional investment in the new home could be even larger than their financial investment. CoP holders should therefore approach the client with emotional sensitivity. The CoP holder should be attentive to aspirations and expectations, especially if they are perceived to be unrealistic. This emotional investment may reflect the client's expectations and affect which aspects of any communication receives the focus of their attention. Clients may believe the new home project will resolve life challenges. CoP holders should make it clear they are designing a building to meet real world constraints (climate, codes, zoning, budgets) and are not responsible for the fulfilment of dreams.

When it comes to design discussions, clients often share images found on the internet or social media, or ideas and expectations gleaned from home improvement shows on television. Such involvement can be beneficial, but the ideas and expectations must be evaluated for consistency with the overall design concept, suitability for site conditions (including climate), and costs in relation to a realistic budget in the local market.

Communication is key to a successful project and requires active participation from all involved. Clients may be unfamiliar with much of the vocabulary taken for granted in the design and construction industry. They may also be reluctant to admit a lack of clear understanding of the terms being used, which can have a negative impact on communications. Clients may need to be introduced to the specialty language of the design and construction industry. Where possible, limit use of industry jargon without being ambiguous. Ask the client to tell you what they have understood you to mean and then clarify as needed.

In expectation of saving money, some clients may not think they need to keep a CoP holder retained after a building permit is issued. It may be necessary to educate the client about the value added by continuing to work with an OAA member for both the design and construction contract administration phases. There are benefits in having a professional available to handle the unexpected, to answer questions, and to help evaluate changes proposed by the contractor or technical matters related to other consultants involved in the project. This should be discussed with the client at the outset of the project.

Holders attract significant liability by visiting a site even once during construction. Appropriate compensation for performing site reviews and undertaking the associated liability should be addressed in the contract with the client.

Clients should also confirm with their lenders if third-party certification of construction progress will be required before funding is advanced.

Become Familiar with the Ontario New Home Warranty Plan

The Ontario New Home Warranty Plan (the Plan) was created pursuant to the *Ontario New Home Warranties Plan Act*, RSO 1990, c O.31 to protect new home buyers from the effects of poor workmanship, non-compliance with the Building Code, and other issues that may arise in home construction. The Plan may have specific implications for the project, including on the holder's scope of services and the owner's need to hire a registered builder. (The Plan does not apply to renovations or additions to existing buildings.)

Responsibility for Ontario's New Home Warranty Plan is split between:

- [Home Construction Regulatory Authority \(HCRA\)](#), which handles registration of builders; and
- [Tarion Warranty Corporation \(Tarion\)](#), which handles warranty provisions.

According to the HCRA website, "all new home builders and sellers are required by law to be licensed by the HCRA. It is illegal to build or sell a new home without a valid licence." Special rules apply to owner-builders.

If a holder becomes aware of a client hiring a non-licensed builder, certain responsibilities may arise. In addition to contractual responsibilities to the client, holders have a duty of care to the public. Refer to Section 42 of [Regulation 27](#) for professional misconduct considerations.

For more information on the Plan's possible applicability to the residential project, refer to the Tarion and HCRA websites, as well as:

- [OAA Practice Tip PT.02](#), What Every Architectural Practice Needs to Know About Government Legislation; and
- [OAA Practice Tip PT.08](#), Participation in the Permit Process: Application for Building, Demolition, or Conditional Permits.

Suggested Procedure

The following suggestions represent some of the issues requiring attention at the outset of a project.

1. **Consider an Initial Consultation:** An initial consultation with the prospective residential client can have tremendous value. This exploratory meeting can be used to determine and explore client expectations, establish a mutual comprehension of expectations, and discuss a rough estimate of the likely construction budget (the amount the client is prepared to spend on the construction itself) and a rough estimate of construction cost. It is appropriate to have a discussion of the overall project cost, which could include variances, permits and approvals, bridge financing, land surveys, title searches, new furnishings and appliances, etc., in addition to the construction cost and design fees.

The prospective client must be made aware in advance if a fee is associated with this consultation.

This is also an opportunity to help clients understand that many aspects of the project are beyond the control of the CoP holder and project team. This particularly applies to approvals by municipalities and other authorities having jurisdiction, as well as performance of and time taken by the client's other consultants, manufacturers, suppliers, and contractors.

2. **Discuss Use of a Retainer:** The retainer's need and purpose should be expressly established. Clearly state (ideally in writing) the retainer's dollar value and that services will not commence until the retainer is paid. The client should be aware of when and how the retainer will be applied. Typically, as in Article A22 of the OAA 600-2021, the retainer is applied to the final invoice once the contract is completed or terminated with any unexpended amount of such retainer then returned to the client.
3. **Establish the Scope of Services:** Establish the level of professional service adequate for the project and then negotiate a fee commensurate with the services to be provided. (See, for example, Schedule 2—Basic Services and Schedule 3—Additional Services to the OAA 600-2021 or OAA 800-2021.) Do not tailor services to meet your residential client's proposed fee if the resulting scope of services is less than that of a prudent holder, less than required to properly meet the needs of the client, or less than required to protect the public interest.

It is also helpful to establish items such as the maximum number of design iterations that will be prepared, the maximum number of meetings to be attended, the number of hours to be spent in preparation for and in presentation to various authorities having jurisdiction, and the minimum number of site visits required. Exclusions from the scope of services should also be expressly articulated. Hourly rates should be established for extra services required beyond that agreed to in the contract. See, for example, GC04 of the OAA 600-2021.

4. **Use of Standard Contract to Document Expectations:** To protect both parties (client and design professional), document everything in writing and leverage a standard architectural services contract for signature. The OAA recommends use of the free OAA Contract Suite, such as [OAA 600](#), Standard Form of Contract for OAA Licensed Member Services (the Architect or Licensed Technologist version as appropriate). You may also want to consider [OAA 800](#), the standard short-form contract.

If the client requests that your practice carries subconsultants (engineering, interior design, landscape), use of [OAA 900](#), OAA Standard Form of Subcontract Between Licensed Member and Subconsultant, is recommended for the holder's engagement of such subconsultants.

Note: The schedules and appendices in the OAA Contract Suite 2021 are an excellent tool for discussing with the client the typical phases and services involved in a project that a holder may or may not provide.

5. **Establish the Budgets and Timeframes:** A clear understanding of the envisioned project relative to their budgets and timeframes is important to clients. At least two distinct budgets should be established:
 - the design budget (consisting primarily of consultants' fees and various fees for approvals by authorities having jurisdiction); and
 - the construction phase budget.

Whether prepared internally or with a subconsultant, provide your client with a realistic estimate of construction cost (including design and construction contingencies), prepared with a level of precision commensurate with the information available at the time. It is recommended the client have a third budget for furnishings, appliances, equipment, moving expenses, and other costs that are not normally part of the design or construction budgets.

Discuss with the client that approvals by authorities having jurisdiction, including municipal approvals, are not a foregone conclusion and will proceed on their own timelines. Neither the approval nor the timeline is under the design team's control.

Advise the client of the impact of contemplated adjustments or changes as they arise (including any impact on project start time, duration, construction costs, approvals, and professional fees.) See, for example, the terms relating to budget, estimates, and construction cost in GC06 of the OAA 600-2021.

6. **Finalize the Fees:** When finalizing the contract, clearly indicate the professional services being offered, along with associated fees. Equally important is an explicit indication of the services not being provided. If the contract is silent, it may be held that a reasonable client could expect a service even if there is no identified fee in the schedule for that service. Fees such as hourly rates to be applied for any extra services, like those required to address unforeseen changes and delays, should also be clearly set out.

The design process led by the holder is a collaboration involving all the consultants that is constrained by applicable law and the requirements of the authorities having jurisdiction. Alterations and changes during the process often occur due to unforeseen site conditions, changes in applicable law, and changes in scope or design requested by the client. To avoid disagreements concerning intent often accompanied by greater costs than expected, ensure every item is discussed, properly understood, and documented when they first arise.

7. **Sign the Contract:** On a residential project, the ownership of the project may not be straightforward, and it is recommended that legal ownership of the property be confirmed by review of the registered title (i.e. of the Property Identification Number). Where there are multiple registered owners of the property, each of the owners should sign and be jointly and severally bound by the terms of the architectural services contract.

Sometimes, clients are hesitant when it is time to sign the contract, but this is an important threshold to achieve and important to protect the holder's rights, including its right to payment for services performed. There may be pressure to get the design underway for various reasons, including meeting the client's desired schedule. Each practice will have to judge for itself how much service to provide after negotiations are concluded but before the contract is signed.

Best practice is to have a signed contract before beginning design services, so the terms of the holder's engagement are clear and not subject to debate. However, where this is not possible, it is recommended that the holder make clear in writing that its performance of services is predicated upon the terms of the current form of contract. The holder should also expressly identify when the performance of the services will stop if the contract is not executed.

These understandings should be communicated in writing and, if necessary, can be confirmed in a letter of intent or other form of written agreement. Where a letter of intent or other form of "preliminary" agreement is contemplated, it is recommended the holder obtain independent legal advice to ensure protection of the holder's rights under any such agreement.

8. **Maintain Clear Lines of Communication:** At the start, establish clear lines of communication and finalize essential issues such as program, budget, forms of project delivery and construction contracts, milestones, and significant deadlines. Whenever possible, such communications with the client should occur or otherwise be recorded in writing.
9. **Obtain Direction Only from a Single Source:** This is particularly important if the client is a couple, family, or partnership. Have one of them designated in writing as the owner's representative and take instructions only from that individual. This will avoid inconsistent or contradictory instructions from different individuals and reduce the likelihood of disputes over scope and fees.
10. **Keep Accurate Records Throughout the Project:** Confirm to your client in writing all instructions they have given you. Memory failure, unrealistic expectations, incomplete understanding of events, and lack of proper documentation can cause many anxious moments. Contemporaneous documentation has been cited by the courts as being critical when trying to establish or defend a holder's position.
11. **Provide Guidance Throughout Your Scope of Services:** Guidance does not need to be provided related to phases of the project or for services not within the scope to be performed by the holder.

Not all residential clients realize how complicated design and building processes are. Never assume a client understands architectural and building terminology, can read and understand drawings, or visualize the final product from them. They may not know which questions to ask. Communicate fully, confirm what the client has understood. Be prepared and willing to listen carefully and understand your client's concerns. Seek confirmation by clearly communicating your understanding of what the client says or is asking, and any solutions proposed. Whenever possible, such communications with the client should occur or otherwise be recorded in writing.

12. **Choices of Materials and Impacts on Durability and Maintenance:** A well-designed residence can be built efficiently and economically. The selection of materials, systems, and design solutions are interrelated. Contractors may suggest changes that will make it cheaper or more efficient to construct the residence, but without necessarily having evaluated other impacts of the proposed changes, such as on the project's durability or long-term operating costs to be borne by the either the client (or owner of the property). All proposed changes should be properly reviewed by both client and CoP holder.
13. **Holder's Role in the Permit Process:** Refer to [OAA Practice Tip PT.08](#) (Participation in the Permit Process: Application for Building, Demolition, or Conditional Permits) for a discussion of the appropriate role of the holder in assisting the client.
14. **Selection of a Contractor:** The selection of a contractor is the client's responsibility. Holders may assist the client in comparing bids and identifying missing or incomplete information. Holders may comment on experience with a contractor, noting that past performance is no guarantee of future performance. The client is entering into a relationship with the contractor that will impact the quality of the project and the stress experienced by the client. Bid price should not be the only consideration in the selection of the contractor.

Holders may also comment on the suitability of a contractor, but should not make the actual selection. Doing so may leave the holder liable should the contractor perform poorly. If irregularities arise in the selection process, explain the issues involved and suggest the client seek the appropriate legal, accounting, or other advice. Whether any bid is acceptable under Contract A/Contract B considerations or is substantially compliant requires a legal determination that should not be made by a holder. By this time, the owner should have determined whether the requirements of the Ontario New Home Warranty Program apply.
15. **Holder's Participation in the Construction Phase:** If you are retained to provide construction contract administration (office or field services) during construction, communicate clearly the extent of those services and what is not being provided. The client should understand you are not responsible for the contractor's performance or lack thereof. Should the contractor fail to carry out the work in accordance with the construction documents, that is the contractor's responsibility.

Caution: As the design professional, the holder should guide the determination of the minimum number of site visits and their frequency based on the needs and complexity of the project. This decision is best made using professional judgment, rather than being dictated by the client. Site visits should be scheduled strategically in alignment with the progress of the work to ensure meaningful observation. Agreeing to conduct visits solely on an “as requested” basis may compromise the holder’s ability to provide appropriate oversight.

Moreover, even a single site visit focused on a specific issue may carry broader implications, potentially creating liability for all visible aspects of the construction at that time. CoP holders may be liable for what could have been seen at that time—even if it was not the subject matter of the visit or if the CoP holder had not been formally contracted to provide general review or any site services. Ensure your compensation reflects the liability exposure.

Definitions

“**General review**,” in relation to the construction, enlargement, or alteration of a building, means an examination of the building to determine whether the construction, enlargement, or alteration is in general conformity with the design governing the construction, enlargement, or alteration, and reporting thereon; (“examen de conformité”) from *Architects Act*, Section 1, “Definitions.”

Note: “General review” as a term applies whether the service is mandatory at law, such as under the Building Code or provided as a contract option. When providing general review, the requirements do not vary depending on the occupancy classification of the project or if general review is mandatory or a contractual responsibility. In all cases, the performance standards are as set out in Regulation 27, Section 50.

Useful Resources to Share with Clients

[“Working with an Architect” on OAA Website](#)

Home Construction Regulatory Authority (HCRA)

Tarion Warranty Corporation

References

[Architects Act](#)

[Regulation 27](#)

[Professional Requirements for the Built Environment in Ontario](#)

[OAA Contract Suite and Guides](#)

[OAA Contract Change Form Template](#)

[PT.02 What Every Practice Needs to Know About Government Legislation](#)

[PT.05 Building Code and Non-Code Related Matters](#)

[PT.08 Participation in the Permit Process - Application for Building, Demolition or Conditional Permits](#)

Royal Architectural Institute of Canada’s (RAIC’s) [Canadian Handbook of Practice for Architects](#) (CHOP)

RAIC’s [A Guide to Determining Appropriate Fees for the Services of an Architect](#)

[Mastering the Business of Architecture](#) (MBA)

The OAA does not provide legal, insurance, or accounting advice. Readers are advised to consult their own legal, accounting, or insurance representatives to obtain suitable professional advice in those regards.
