



Breaking Up With a Client Is Hard to Do

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DIFFERENT WORKS

RLI Design Professionals
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Course Description

Most projects begin on a positive note. You are focused on what services you'll be providing, and your client is happy to have secured the right team to achieve their ultimate objectives.

No one is likely envisioning how they'd end the contractual relationship.

Prudent design firms understand how to assess their risk when selecting a client, but even the most thorough due diligence doesn't always uncover problematic clients who may need to be fired.

Learning Objectives

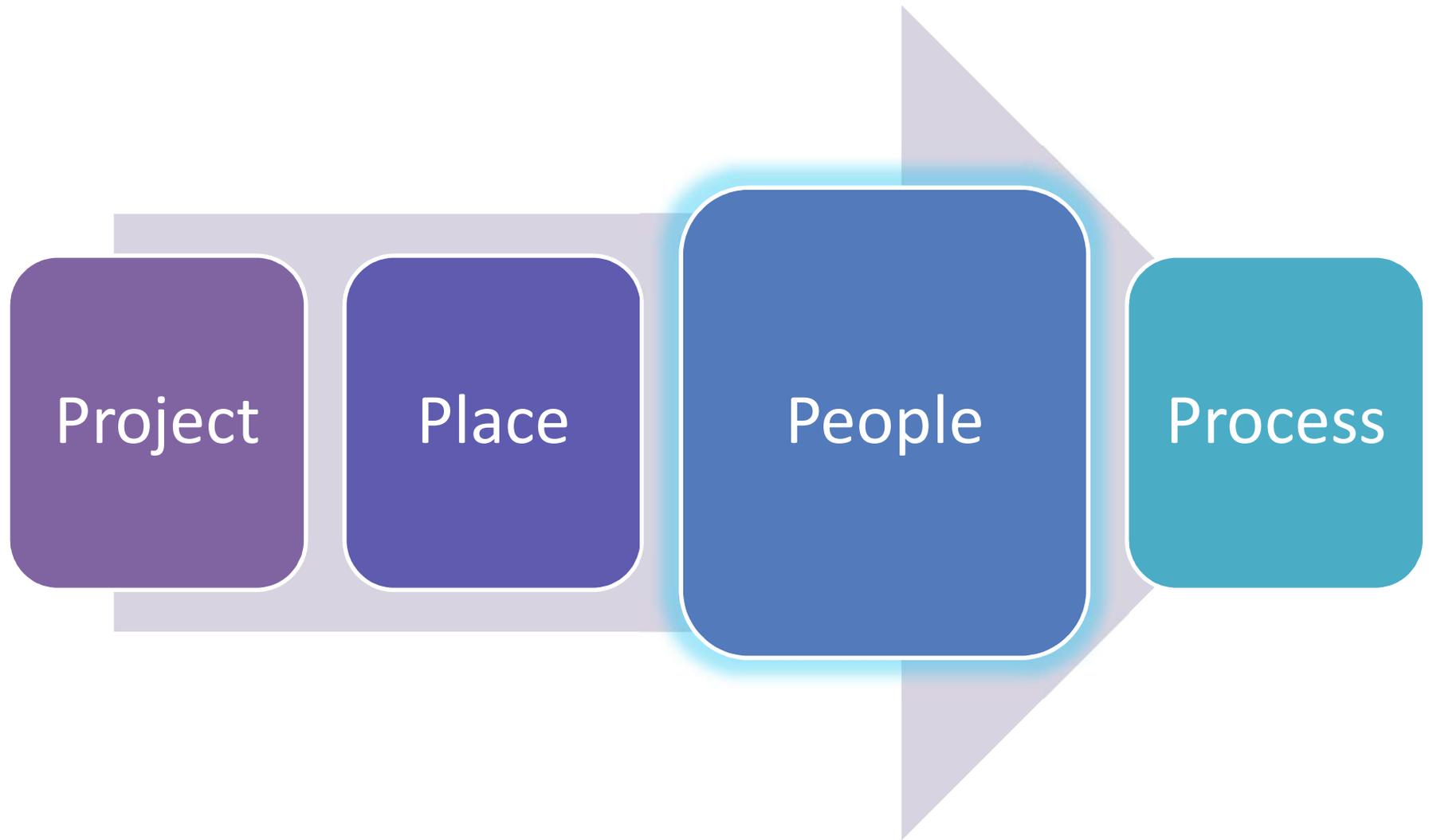
Gain greater awareness of the impact client selection can have on the overall assessment of project risk

Review payment provisions in contracts and strategies to improve receipt of payment

Identify suspension rights as a first step in handling difficult clients

Understand the pros and cons of invoking termination rights with problematic clients

Risk Categories



“Red Flag” Things We Hear

“We need this work for the fee that will be generated.”

“This is a long-time client.”

“This could become a repeat client.”

“If we don’t do this project, someone else will.”

“We haven’t gotten paid, but I’m sure we will. We’ll just keep working.”

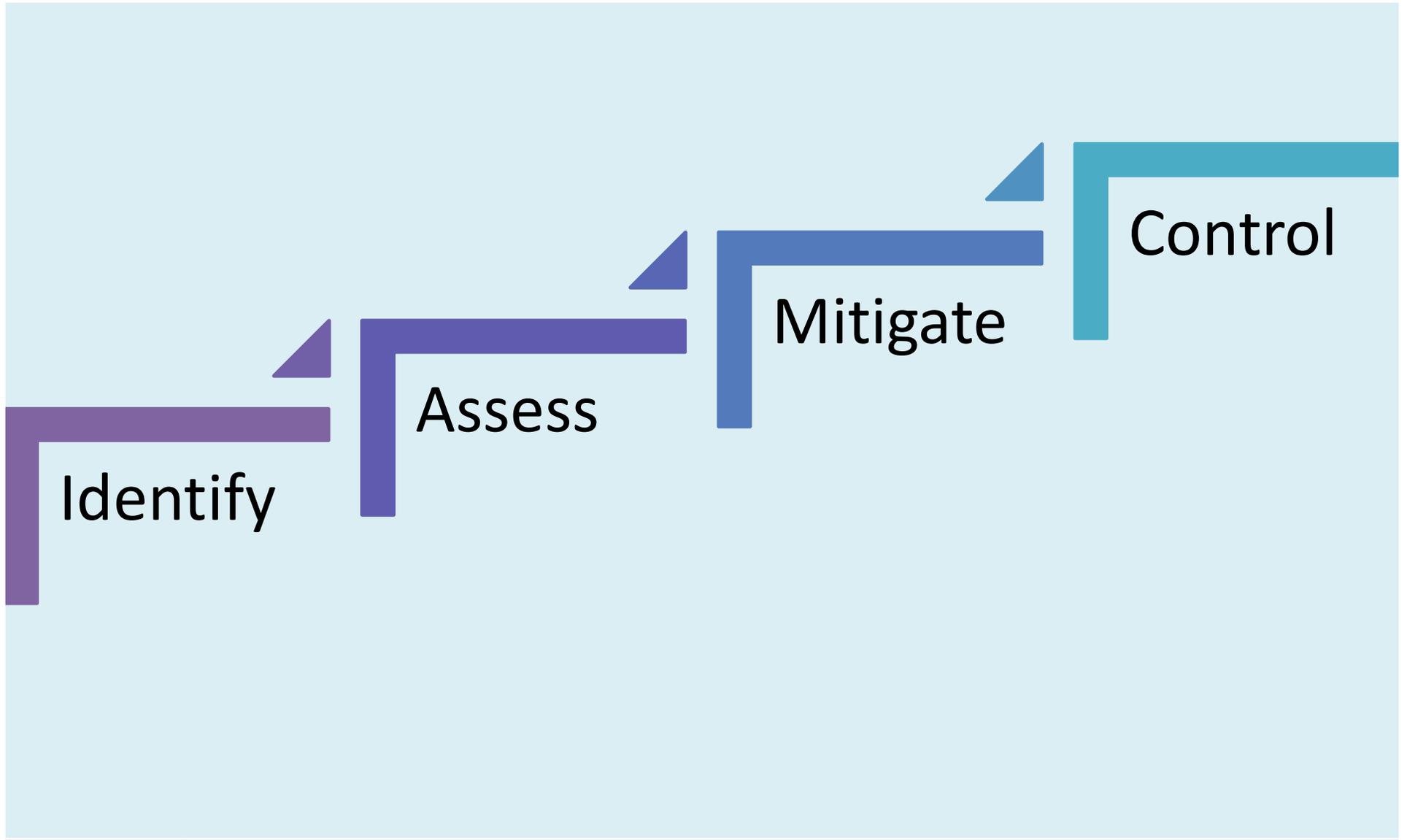
“We don’t need a written contract.”

Client Selection

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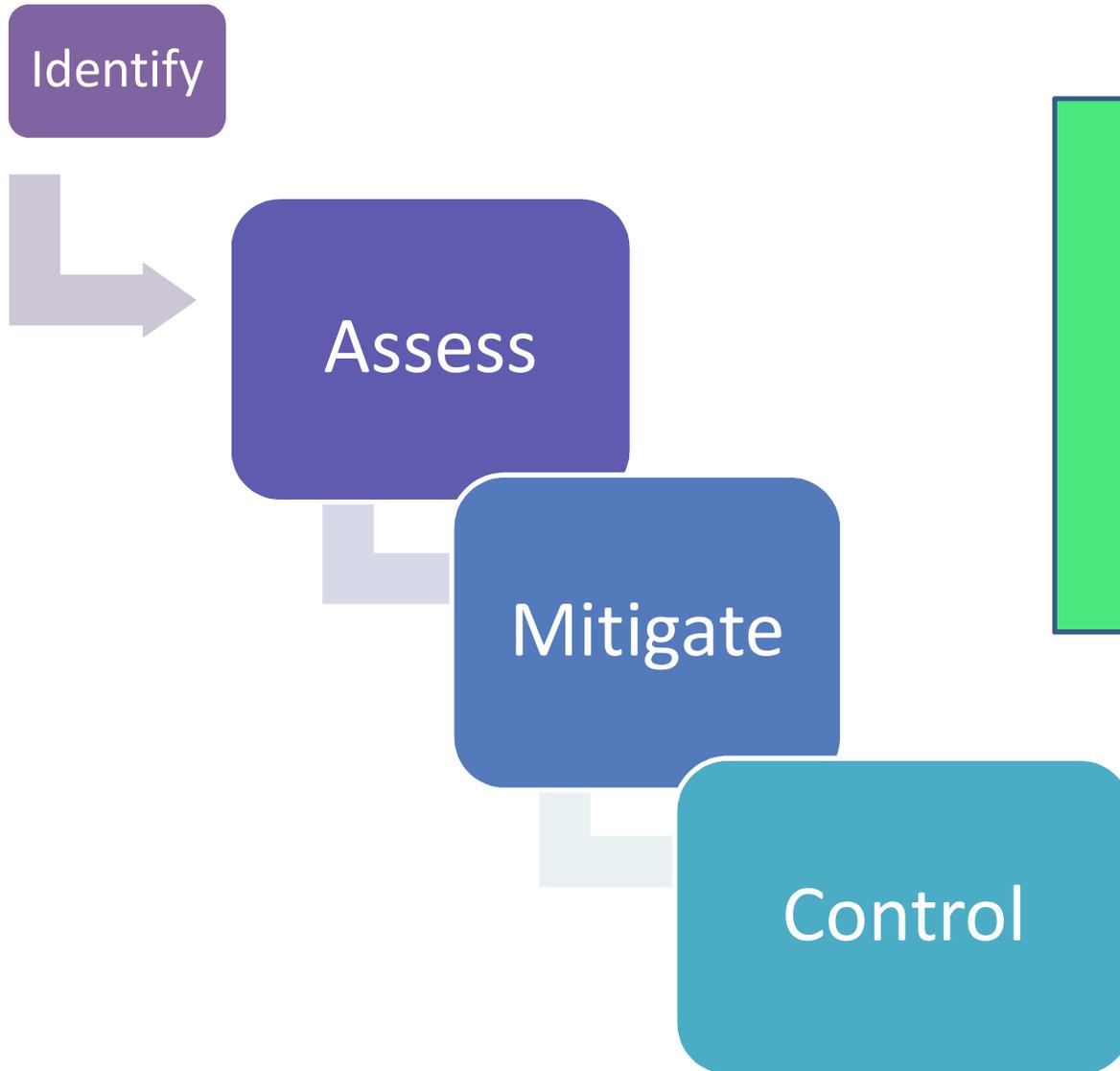
Risk Assessment



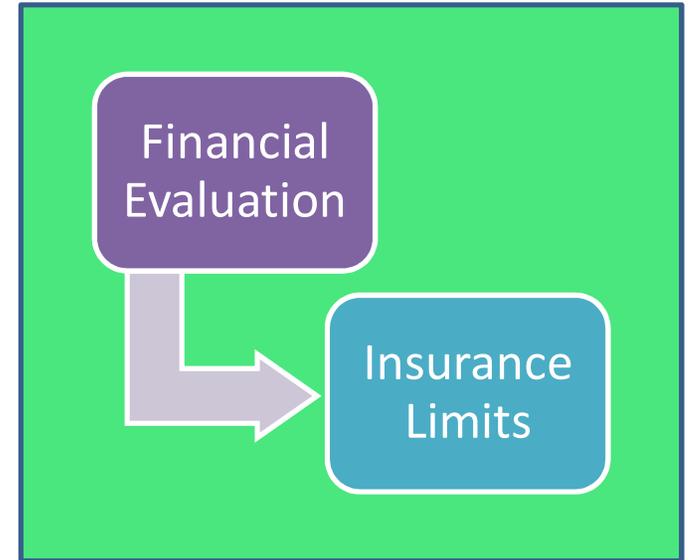
Client Risks to Consider

- 
- Type of Client
 - Decision maker(s)
 - Financial stability
 - Expectations
 - Project type experience
 - Claim history

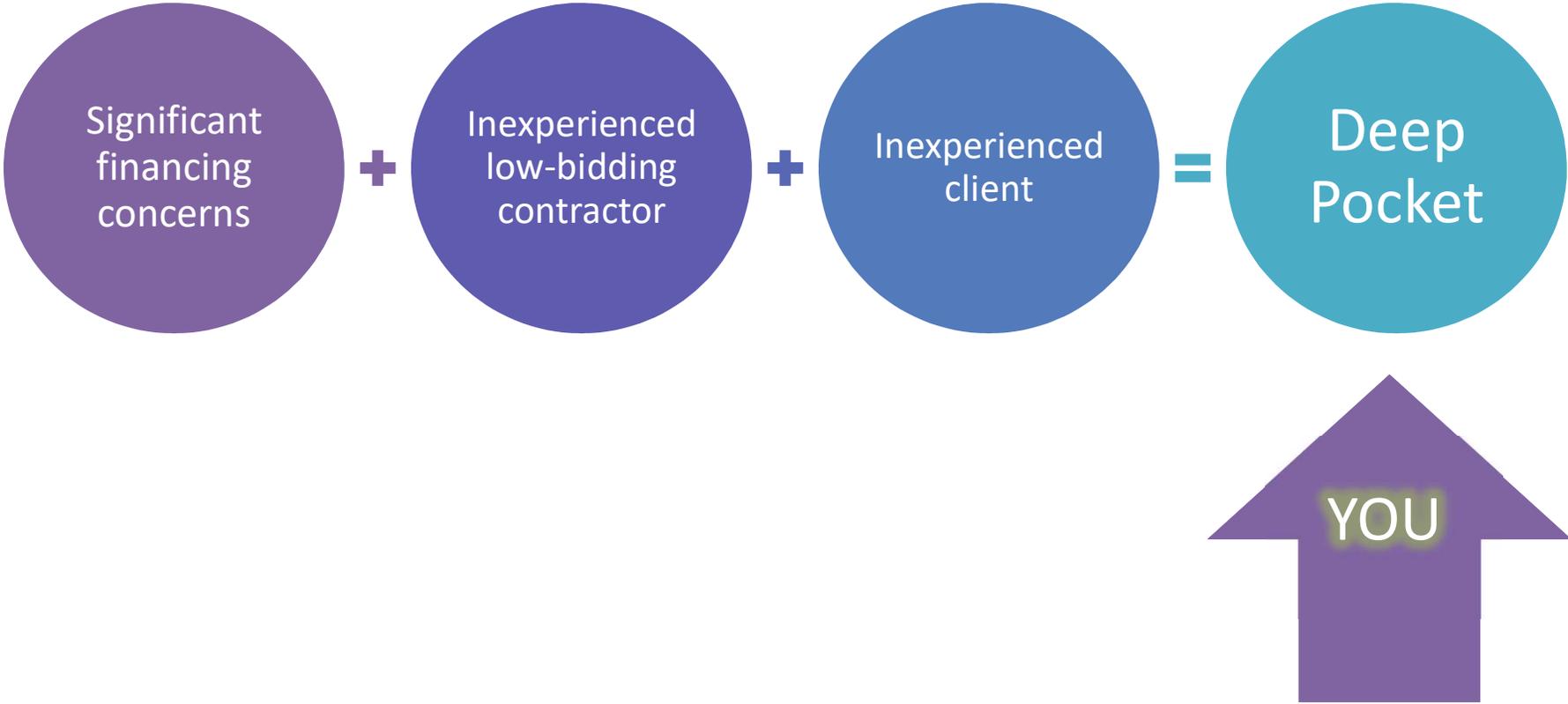
Risk Management Steps



Example:



Case Study – Rockridge Elementary School



Risk Management Strategies



Funding

- Financing adequacy
- Lender requirements



Point Person

- Designated representative



Unrealistic Expectations

- Limitation of liability?
- More detailed scope?



Litigious Client

- Mediation first?



Warning Signs

- Unreasonable time frames
- Unfair sample contract terms
- Unwillingness to negotiate
- Want everything for nothing (\$\$)
- Slow to pay
- Inadequate experience with project type
- You have difficulty telling a client “no”

Securing Payment

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Timing

Different notice timing requirements

- Delays
- Change orders
- Invoicing

Submit invoices on time to receive payment on time

- Missed deadline = no payment or loss of rights

Legal claim timing

- Alternative Dispute Resolution
- Litigation
- Mechanics liens

Format

Payment
Applications

Invoices

Change
Orders

Include all required information

Special Owner requirements

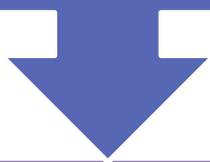
- Owner's project name and number
- Owner's forms/format
- Other documentation required to be submitted

Follow-Up

Monitor payment status closely



Follow up promptly and regularly regarding outstanding payments



The longer an invoice is outstanding, the harder it is to collect

AIA Payment Terms

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of \$_____ shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

AIA B101-2017

AIA Right to Terminate for Non-Payment

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give *seven days' written notice* to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

AIA B101-2017

AIA Right to Terminate or Suspend

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension... expenses incurred in the interruption and resumption of the Architect's services... fees for the remaining services and the time schedules shall be equitably adjusted.

...

§ 9.6 If the Owner terminates this Agreement for its convenience... or the Architect terminates this Agreement... the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination...

§ 9.7 ...if the Owner terminates this Agreement for its convenience... or the Architect terminates this Agreement... the Owner shall pay the Architect the following fees:

1) Termination Fee:

2) Licensing Fee:

AIA B101-2017

2017 Update to AIA Termination/Suspension

Keeps:

- Termination and suspension rights
- Compensation for services, reimbursable expenses, attributable termination costs

Removes:

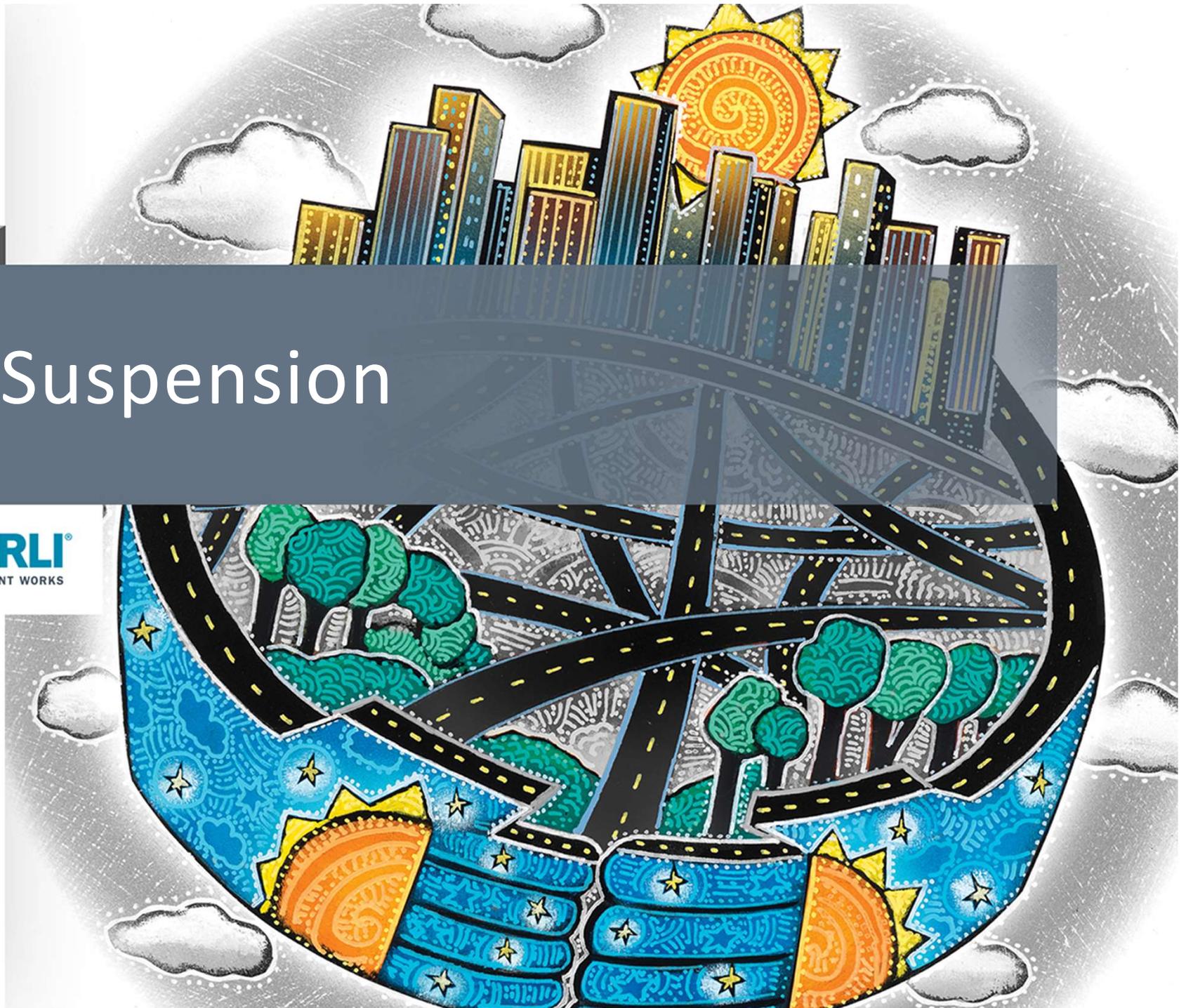
- Termination Expenses

Adds:

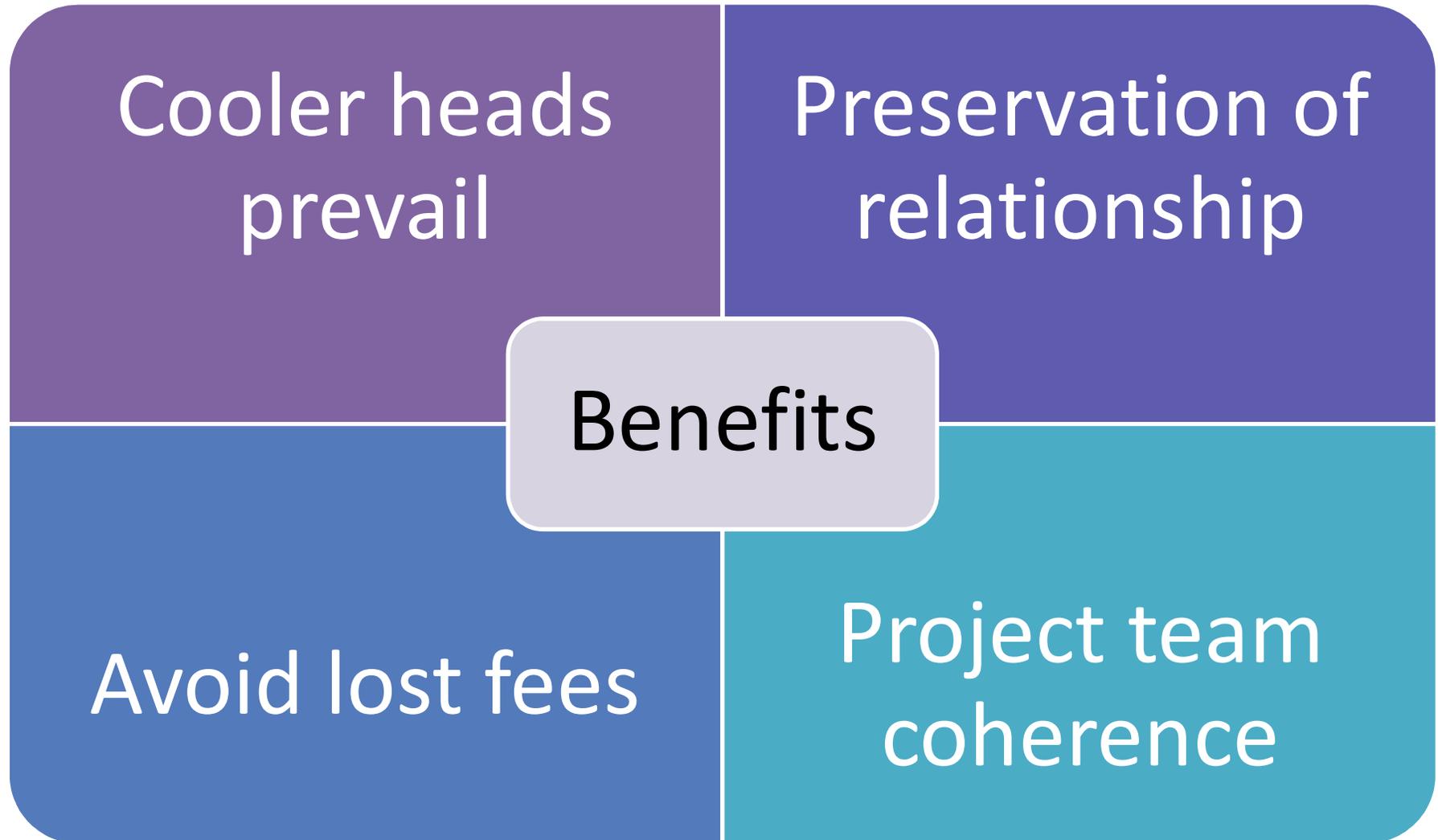
- A **negotiable** termination fee and licensing fee if Owner will **continue to use** your Instruments of Service
- **Automatic** termination date - **one year** from substantial completion

Suspension

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Design Professional Initiated Suspension



Client Initiated Suspension

Considerations:

- Number of days that are required before you can terminate your services
- Paid within x days for any and all services performed and reimbursable expenses
- Paid within 30 days for all suspension costs
- Right to apply any retainer held by client against outstanding billings
- Compensation for reasonable time and costs required to restart services
- No liability for any delay or other claims resulting from suspension

Termination

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Lessons Learned

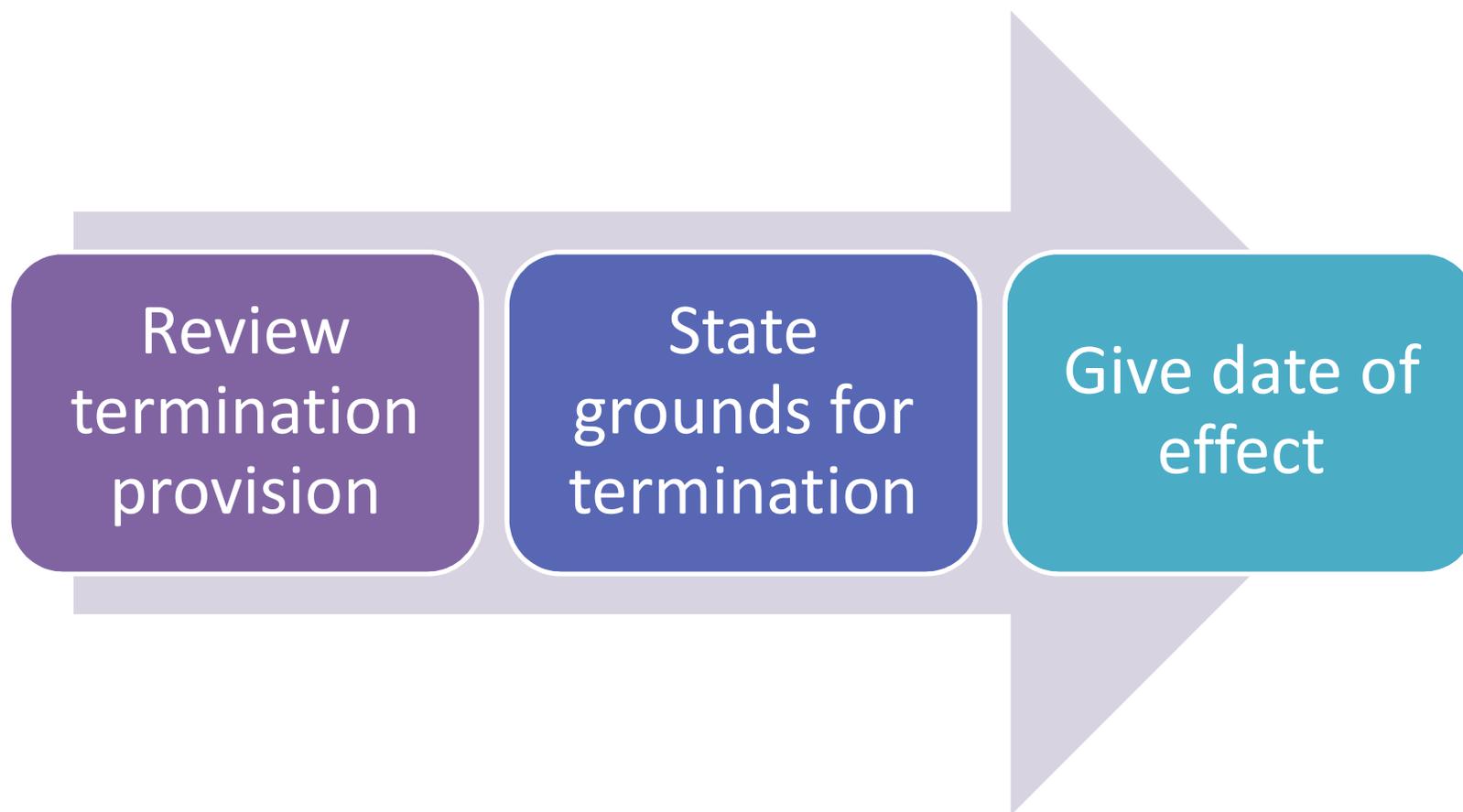


Giving Notice

Notice

Requiring written notice of a potential breach of contract is the single most important clause to prevent dispute from occurring

The Notice Process

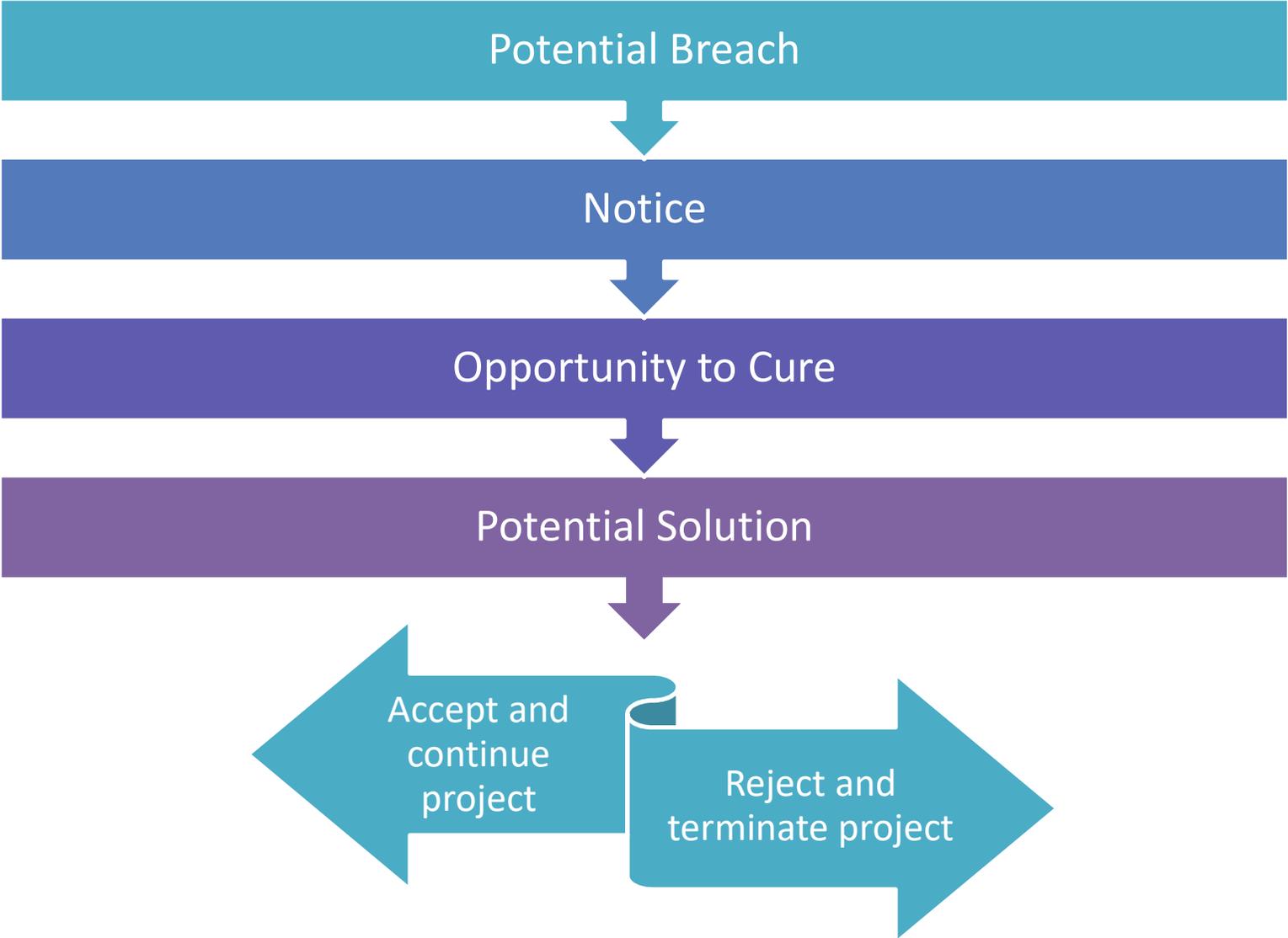


Opportunity to Cure

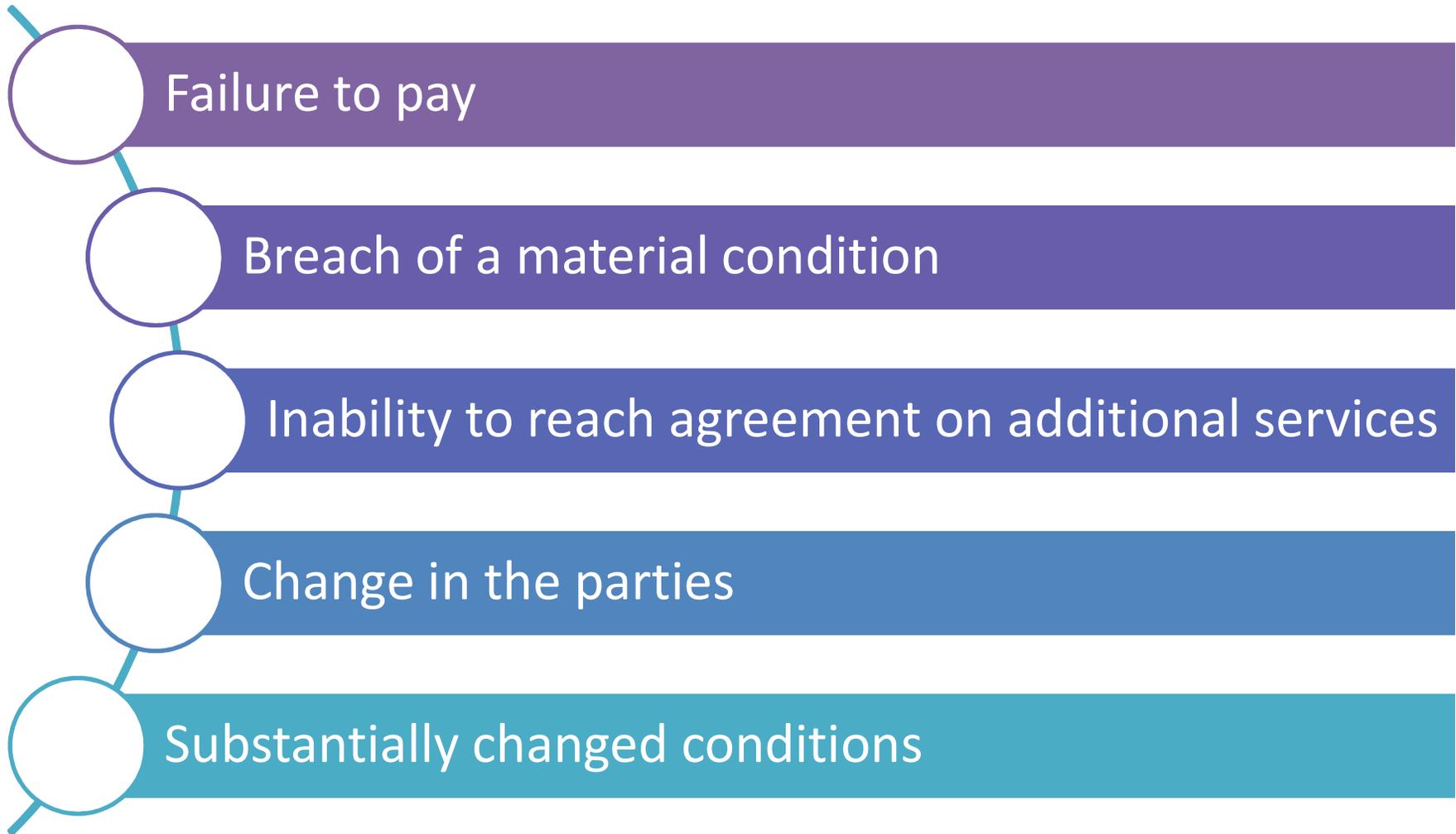
Opportunity to Cure:

- Requires the dissatisfied party to contact the other party, explain what they are not satisfied with, and give time to resolve the issue before terminating the contract or filing a lawsuit

Opportunity to Cure Process



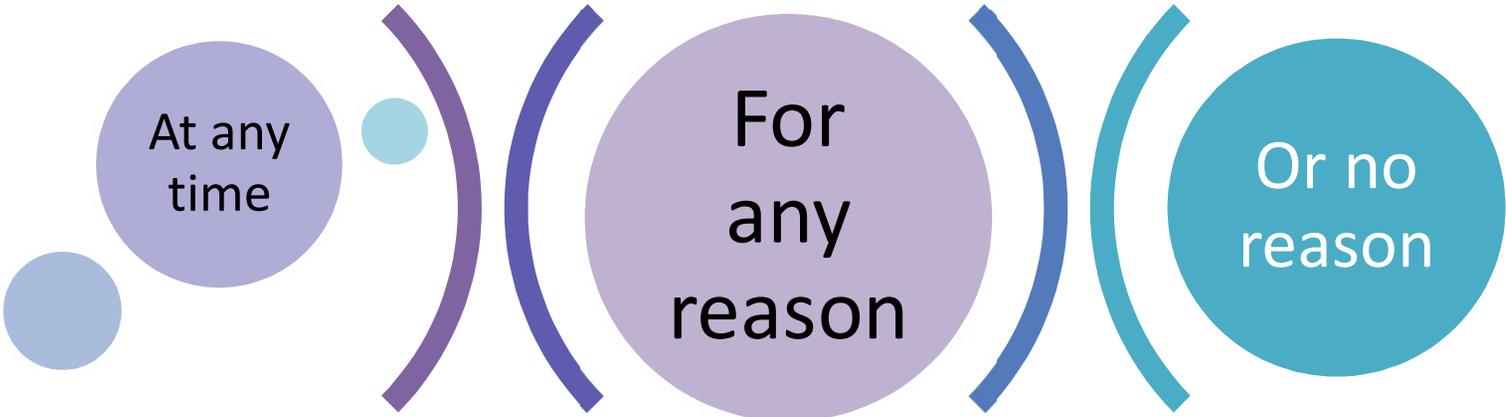
For Cause



Material Breach



For Convenience



Lasting Liability Scenario

Make it clear in your scope

Include contract provisions for:

- Indemnification
- Unauthorized changes to design
- Replacement
- Ownership
- Limitation of liability
- Dispute resolution

Indemnification Wording Example

“In consideration of the mutual covenants, conditions, and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner agrees to waive any and all claims against the Design Professional and to defend, indemnify and hold the Design Professional harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the use, reuse or alteration of the Design Professional’s Documents by the Owner or any other entity or individual. The Owner will remove markings on the Documents that would be sufficient to identify the Design Professional as the author of the Documents.”

Ownership Wording Example



“To the fullest extent permitted by law, the Documents prepared by the Design Professional, regardless of form, shall remain the property of the Design Professional. The Design Professional shall retain all common law, statutory and other reserved rights, including, without limitation, the copyrights thereto.”

What Not to Do...Don't:

Threaten

Burn bridges

Be unprofessional

Disappear

Break notice timing requirements

Risk Analysis Resource

Access
On-Line

Submit as
Part of
Renewal

Receive
Credit at
Renewal

<https://www.rlicorp.com/dp-risk-management>

Thank you for your time!

QUESTIONS??

**This concludes The American Institute of Architects
Continuing Education Systems Program**

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