



Managing Expectations: Scope of Services and Standard of Care

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DIFFERENT WORKS



■ Course Description

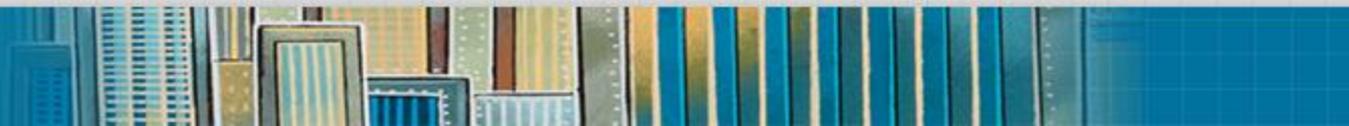
How you define what services you will provide to your client can greatly impact your client's expectations. This course is designed to provide a greater understanding of the **Scope of Services** as well as the **Standard of Care**. We will also provide some suggested best practices in an effort to help you avoid liability for not meeting the required **Standard of Care**.



■ Learning Objectives

Participants in this session will:

- Consider how to more clearly define and draft your Scope of Services
- Understand how to mitigate the risks that can arise out of your Scope of Services
- Gain a clearer understanding of the definition and key terminology related to the Standard of Care
- Review best practices to avoid liability for failing to meet the Standard of Care



■ Scope of Services



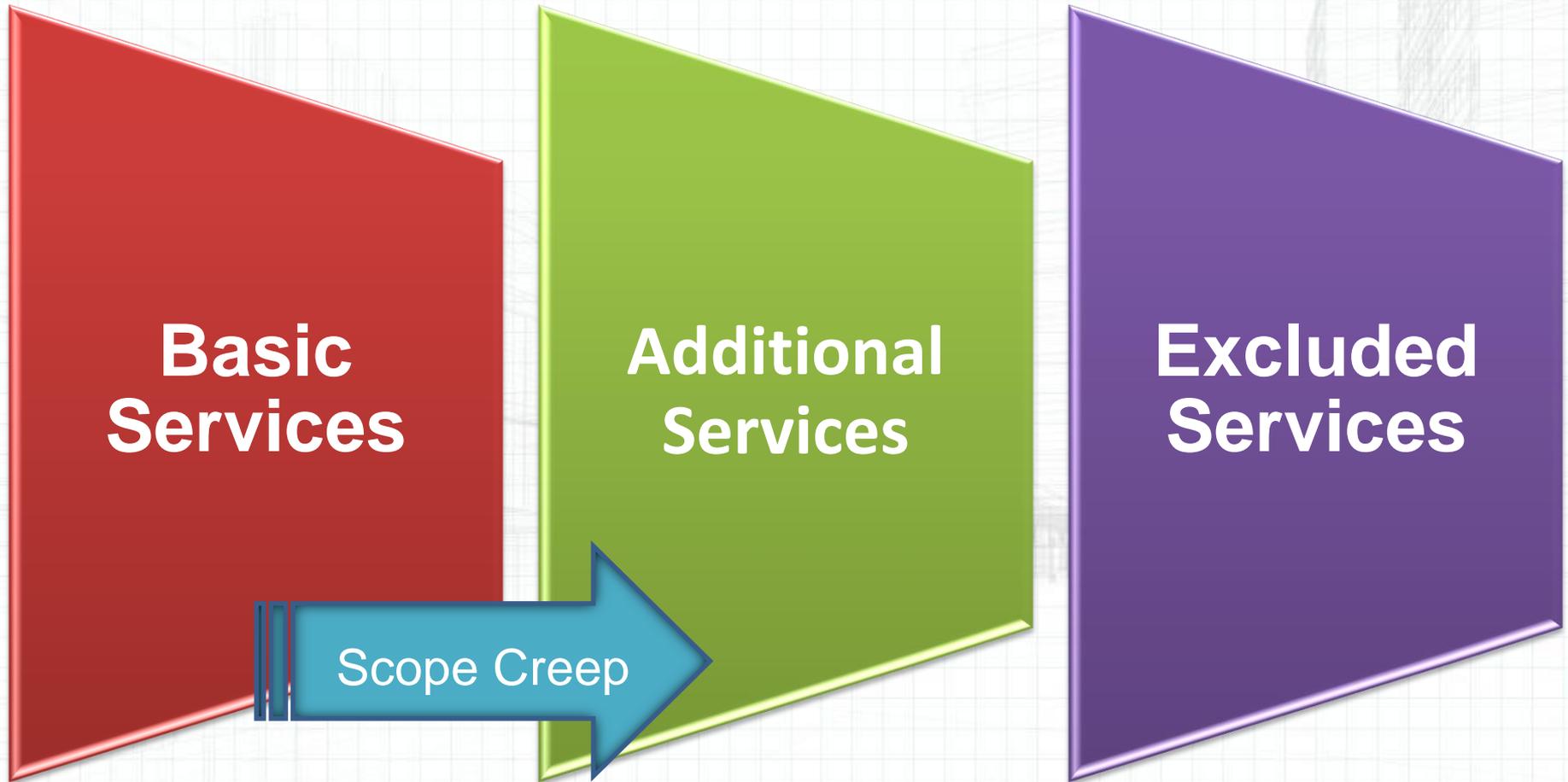
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NOT “all services as necessary to complete the project”

What explicit services you’re providing

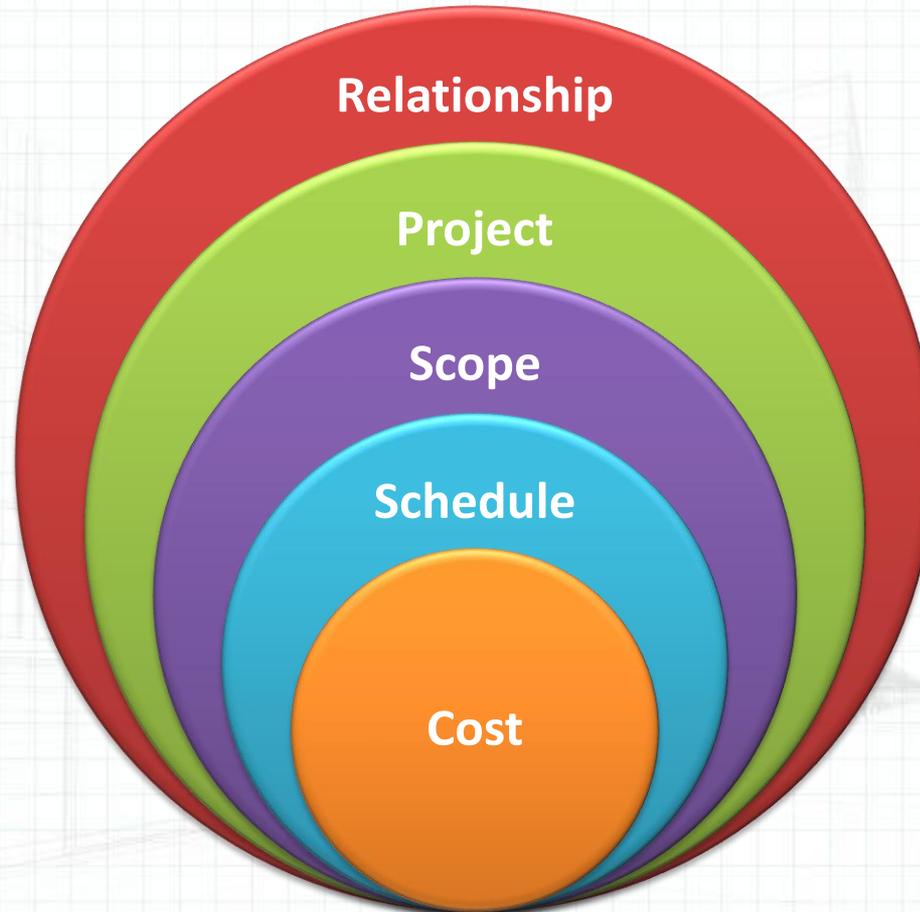
■ Scope Of Services

Three Components to Scope of Services



■ Constraints

Determine which of these is your Client's highest priority...



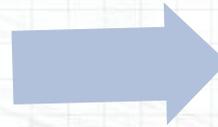
...then tailor your work to fulfill the client's expectations

Location

Physical
Address



Any part of
property that
is NOT
included as
part of the
project site



Location

Assumptions

Assumptions are dangerous

A clause or schedule of assumptions can create a safety net

Putting them in writing means the parties have an understanding of the other's assumptions

■ Changes Clause



Who Has Authority

- Owner vs Professional

Extent of Change

- Direct correlation to general scope

Mechanism for Authorization

- Negotiation and agreement

■ What is the Standard of Care?

Under tort law...

...the design professional is held to use the same degree of care as is ordinarily practiced by other similarly situated design professionals in that discipline.



■ What is the Standard of Care?

M Civ JI 25.31 Negligent *Design*

The defendant had a duty to use reasonable care at the time of design of xxxx so as to eliminate unreasonable risks of harm or injury that were reasonably foreseeable.

Reasonable care means that degree of care that a reasonably prudent designer would exercise under the circumstances that you find existed in this case. It is for you to decide, based on the evidence, what a reasonably prudent designer would do or would not do under those circumstances.

A failure to fulfill the duty to use reasonable care is negligence...



■ How is the Standard of Care Determined?

Spondet peritiam artis

Common Law

*He is responsible for
skill in his profession*

Conduct

Agreement



■ What does the AIA Say?

“The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances.”



AIA



■ Negligence

Negligence is a Technical Legal Term: So What Does it Mean?

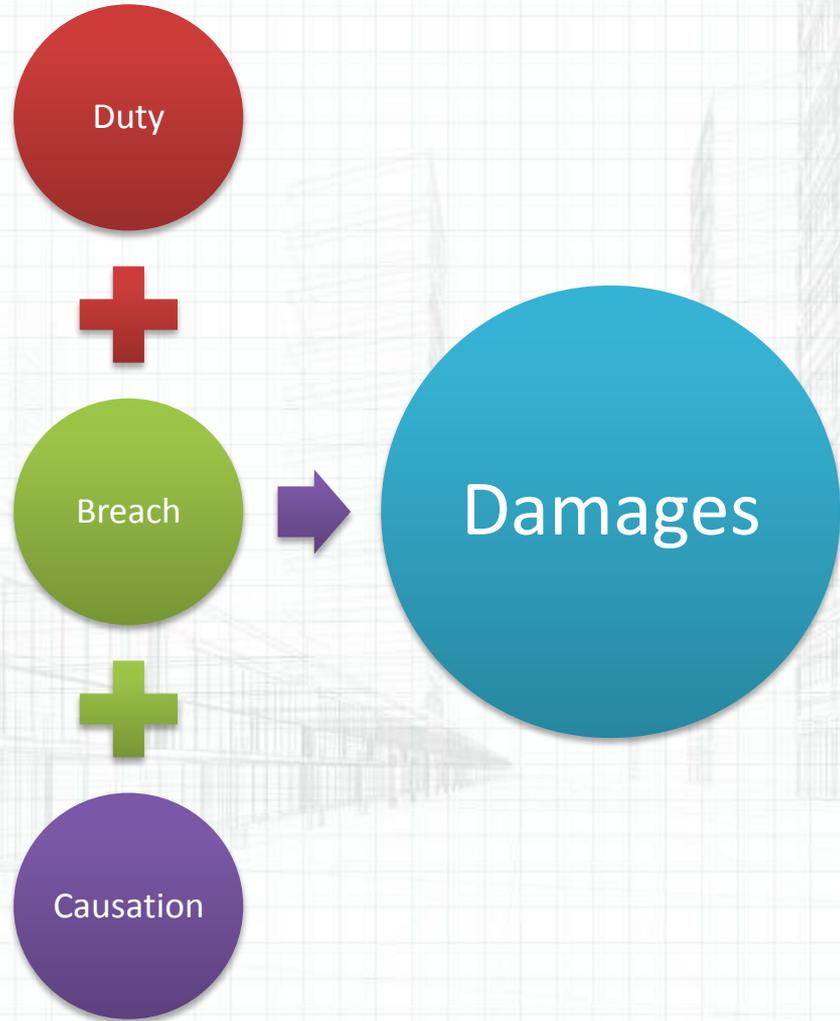
You can be held as negligent if you are not reasonably competent or have failed to exercise due care under the circumstances.

You must possess the requisite skills for the projects you undertake.

You should conduct your professional activities with due diligence and reasonable care.

You should do what is reasonable to do under the same or similar conditions.

■ Negligence in Depth



■ Best Practices

Build
Awareness

Manage Client
Expectations

Choose Words
to Use and
Not to Use

Educate the
Client

Involve the
Project
Manager

Staff the
Project
Properly

Document!
Document!
Document!

■ Build Awareness

Subscribe to and read industry publications

Associate with others in your profession

Attend seminars, workshops, and other continuing education offerings

Examine the work of others in your field

Teach courses, give talks, and write articles



■ Manage Client Expectations

Your Firm

Client

What is legally required?

What is contractually required?

Expectations of your firm

Expectations about the project

Project goals



■ Manage Client Expectations



Communicate to your client that perfection is unattainable and is not required by law

■ Choose Words to Use and Not to Use

USE

Experienced
Familiar With
Ordinary
Specializing In

DON'T USE



dreamstime.com

■ Educate the Client

Help your client understand the contractor is sometimes in the best position to identify errors and omissions

Failure by the client and the client's contractors or subcontractors to notify you of known or suspected design defects shall relieve you of the costs to remedy the defects above the sum such remedy would have cost had prompt notification been given when defects were first discovered.



■ Involve the Project Manager



■ Staff the Project Properly

Picking the right team to handle a project is crucial

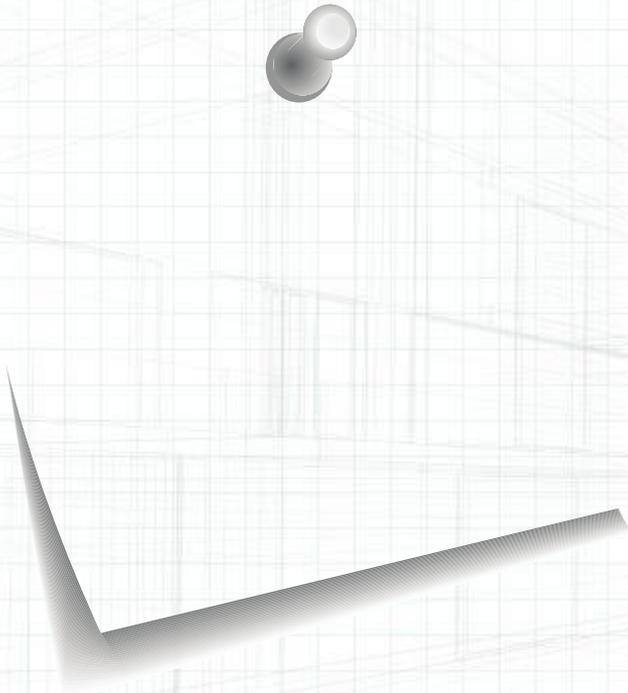


■ Staff the Project Properly



■ Document, Document, Document!

One of the best defenses against unrealistic client expectations is documentation:

- 
- ✓ **Emails**
 - ✓ **Meeting Minutes**
 - ✓ **Memoranda**
 - ✓ **Formal Letters**

■ Outside the Contract

Be careful of how you market your firm on:

Websites

Brochures

Project Proposals

**Other Marketing
Materials**



Your words may raise your performance requirements beyond those of your peers

■ A Note On Proposals

One hundred percent compatible

State of the art

Optimize

WORLD CLASS

MAXIMIZE

Very innovative and precise

First class

Superior



Takeaways

Scope of Services

Basic Services

Additional Services

Excluded Services

Protect yourself when drafting a Scope of Services

Location

Scope, Cost, & Schedule

Changes & Assumptions Clauses

How the Standard of Care is determined

Common Law

Conduct

Agreement

Best Practices

Focus on Project Management & Team

Educate the Client & Manage Expectations

Build Awareness & Document

Thank you for your time!

QUESTIONS??

This concludes The American Institute of Architects
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