



Providing Pro Bono Services

Design professionals are often asked to provide pro bono services but they are just as likely to volunteer their services after catastrophic events or to lend a hand to nonprofit organizations they support.

Pro bono providers can unwittingly incur liability for their good deeds.

"Architects and engineers are often surprised to learn they can be sued even if there's no fee involved," says John Petrizzo, Head of Claims for XL Catlin's Design Professional business. "But whenever you provide professional services—gratis or not—you still need to meet the standard of care." Petrizzo worries that pro bono projects are frequently done without the benefit of a written agreement or contract. And, he points out, "The client may be inexperienced and is usually on a very tight budget, the very type of situation that, in for-fee projects, would normally present a red flag for the A/E."

For emergency situations consider using the [Agreement for Emergency Professional Services form](#) and [contract language](#) recommended in the XL Catlin Contract eGuide and read [When \(Natural\) Disaster Strikes](#).

Altruism has many benefits

Working for the public good is also an integral component of professional practice. Most professional associations encourage their members to provide pro bono expertise and services to nonprofit causes. For example, the AIA's 2012 *Code of Ethics & Professional Conduct* states, "Members should render public interest professional services, including pro bono services, and encourage their employees to render such services."

Volunteering can keep staff engaged in and positive about their work, especially when providing services following a natural catastrophe. Designers often feel removed from their work, especially those working in large firms. Many might be working on documents for projects half a world away, projects they'll never see. But working on local volunteer projects allows them to feel personally connected to a project's success.

Professionals report that pro bono work can help improve firm morale, giving staff that otherwise might not know each other a chance to work together. It also gives staff an opportunity to be more creative, develop expertise on new project types and hone their skills.

Pro bono services can provide design firms with greater visibility. For-free projects can become portfolio pieces that could pave the way into new markets. They can give a firm good publicity, enhance credibility and improve client relations. Some large design firms have even partnered with their corporate clients to donate their time and expertise to nonprofits.

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A Few Suggestions

If the client has drafted a contract for your pro bono work, review it carefully, just as you would any agreement. Look for an appropriate standard of care and workscope, and guard against attempts to shift inordinate risk to you.

If you're thinking about providing your services pro bono, do your research. A good place to start is [AIA's B106-2010, Standard Form of Agreement Between Owner and Architect for Pro Bono Services](#).

Approach the project as you would any for-profit project, and assess the client, the project and the schedule. Talk to members of the community to learn their expectations.

Find out if the project will be subject to start-and-stop or other funding issues. Following a natural catastrophe, these issues may be difficult to discern, especially if it is not clear whether any losses are covered by insurance. Consider whether you really have the resources and time to make a commitment. (Pro bono projects tend to entail scope creep, as inexperienced clients lean heavily on professionals. How will you deal with that?)

No matter how small or worthy the project, get a written contract. Even if it's not required in your jurisdiction, you'll be doing yourself and your client a favor, not only by committing your roles and responsibilities to writing but also by obliging your client to think through issues he or she may not have considered. Make sure you also address the services you will, and will not, provide.

For smaller projects, you might adapt EJCDC or AIA short-form agreements. Whether you are providing professional services for compensation or not, you should always be afforded the full protections under the law.

Regardless of the contract form you might use, you should also make sure to:

- Include a waiver of claims and an indemnity. The *XL Catlin Contract eGuide* provides this example:

Pro Bono Services

In consideration to the Consultant for providing professional services on a voluntary basis and without monetary or other compensation for or on behalf of the Client, the Client agrees to the fullest extent permitted by law to indemnify and hold harmless the Consultant against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or resulting from the Consultant's voluntary services, excepting only those damages, liabilities or costs arising directly from the sole negligence or willful misconduct of the Consultant. In addition, the Client agrees, to the maximum extent permitted by law, to waive any claims against the Consultant arising out of the performance of these voluntary services.

- If that's not possible, ask for a Limitation of Liability provision that limits any liability to gross negligence or to a relatively small amount of money, like the amount of your fee if it is a small project. Consult with competent legal counsel in your jurisdiction to determine the correct amount and learn of any specific rules interpreting these clauses in your jurisdiction.
- Get named as an additional insured on the client's commercial general liability (CGL) policy. Consider asking the client to make sure the contractor names you as an additional insured on their CGL policy, too.
- Request a grant of immunity if you are providing services to a municipality or other public entity.

[For more information contact your XL Catlin broker.](#)



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