



# Emergency Services

In the aftermath of disasters—earthquakes, hurricanes, floods, mudslides, fires, explosions and other calamities—people turn to architects and engineers to provide much-needed assistance. These professionals willingly come forward to help protect the public and to speed recovery efforts. They may inspect a damaged building to determine if it is safe to enter or inhabit, examine a bridge for structural integrity or monitor an embankment for stability following an earthquake—often under difficult and sometimes dangerous conditions, and frequently for little or no fee.

## The Problem

After you have done your best to help your neighbors, it seems so unfair to get your thanks in the form of a lawsuit! True, under the exigencies of the moment, you may not have had sufficient time to do your usual professional analysis and give careful consideration to all the available options. But when the aftershocks have ceased, the ashes have cooled or the winds have died down, victims sometimes forget the conditions under which you were forced to work. They only know that they are facing a huge loss, and they may cast about for any and every source of recovery—including the well-intentioned, public-spirited consultant.

The law provides only limited help. A few states <sup>1</sup> have adopted “Good Samaritan” statutes that provide immunity from liability to those who provide voluntary services in connection with a declared emergency. These statutes, however, vary widely as to the kind of immunity they offer and to whom. Not all of them protect design professionals.

## The Solution

Obviously, in the midst of an earthquake or its immediate aftershocks, you won’t be thinking about asking your neighbors to sign a broad-form indemnity. If it is truly an emergency that involves an immediate threat to life or property, caring individuals will do what they can at the moment and deal with the consequences later.

In the aftermath of a disaster, however, you should get some kind of written agreement for your services, even if you are not accepting a fee. Rest assured, it doesn’t have to be a full-blown contract. On the contrary, a very simple agreement will suffice. Establish a scope of services, and make it as complete as possible given the circumstances. If you can, also indicate what services you will not be providing.

The EJCDC and AIA both have short-form agreements. <sup>2</sup> Some firms have developed their own short-form Emergency Services Agreements. Many send their personnel into the field with a pad of these documents and have them executed on the spot by homeowners or other distressed parties. Other firms prefer to send a simple letter agreement to the client that contains waiver and indemnity provisions. (See **Indemnities** for a related discussion.)

Remember, when you are helping individuals who have just suffered a big loss, they aren’t likely to have their attorney standing by to advise them. They need your help to understand what they are facing. Take the time

to sit down with them, explain the services you will and won't be providing and discuss your agreement. You will be doing both of you a favor. Don't let your desire to help cloud your judgment regarding your staffs capabilities, your firm's capacity or a realistic schedule. Never promise more than you can deliver. The client will then know just what he or she can expect, and there will be less chance of a misunderstanding later when the smoke clears or the waters recede.

If the client is unwilling to sign, then you are faced with a moral dilemma. You are under no legal obligation to provide these services. If you accept the project, however, you have the absolute duty under your license to protect the health and safety of the public and to reasonably exercise your professional skill and knowledge *under the circumstances*. Although emergency situations create unusual circumstances, the difficulty is recreating these circumstances and expectations when defending a claim months or years later.

In **Appendix 1**, you will find an example of a short-form Agreement for Emergency Professional Services for you and your attorney to review and adapt to your firm's practice and philosophy.

If you choose not to use a short-form agreement and prefer to use letter agreements for post-emergency situations, you might consider including a waiver and indemnity such as the following:

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#### EMERGENCY SERVICES

**The Client understands that emergency conditions exist because of [specific emergency situation]. The Client further recognizes that time and circumstances do not permit the Consultant to perform his or her services with the degree of skill and care normally provided under nonemergency circumstances. The Client desires, however, to have the Consultant use reasonable efforts to perform his or her services under these emergency conditions. In consideration of the substantial risks to the Consultant in performing these emergency services 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 providing emergency services for or on behalf of the Client 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 emergency services.**

**The Client acknowledges that (1) the Consultant has discussed the risks and difficulties of performing services under the existing emergency conditions; (2) the Client is aware of the legal implications of agreeing to the waiver and indemnity provisions; and (3) the Client enters into this Agreement freely and without reservation.**

Initialed:     Client

Consultant

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Notice that the waiver and indemnity provisions are stated in two separate paragraphs. This lessens the likelihood of having both provisions disallowed by a judge. The third paragraph is intended to prevent a client

from later claiming you buried the clause in your letter or forced him or her to sign the agreement on a “take-it-or-leave-it” basis. This may sound harsh. The pros and cons of this should be thoroughly discussed within your firm and with your attorney. You should consider the provisions content and enforceability as well as your firm’s moral and philosophical position on providing services under unfavorable conditions.

When using a letter agreement in emergency situations, you should describe and limit the scope of your services to prevent future misunderstandings. Here is a sample of rather protective wording you might adapt to your situation:

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**The Consultant is a structural engineer [or architect, etc.], and all observations, opinions and conclusions are limited to structural review. The Consultant cannot investigate any possible electrical or mechanical damage nor can the Consultant render an opinion on the existence of asbestos or any other toxic material or contaminants on the site.**

**The Consultant has not had the opportunity to review plans, calculations or soils data for the structure or other information normally available to consultants, nor has the Consultant been able to perform detailed analyses or structural calculations. Because of the existing emergency situation, the Consultant’s opinions and conclusions are based on limited visual observations and, as such, should be considered preliminary only. The Client must have these opinions and conclusions verified by detailed analysis once the emergency period has passed. No other warranty, either express or implied, is made or intended.**

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Before disaster strikes, educate all your key employees on the liability exposures associated with providing emergency services. Instruct them to keep careful notes (as good as the circumstances allow) on all their disaster-site visits. (Video or still cameras and tape recorders are especially helpful in these situations.) Field staff should document their observations and recommendations to your client in writing as soon as possible.

Finally, check to see if your state has a Good Samaritan law. If it does, work with your professional society and licensing boards to broaden existing legislation to provide better protection. If your state does not have such a law on the books, you and your colleagues should urge your state legislators to enact one. Contact your national professional association for model language and guidance.

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<sup>1</sup> Including California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Michigan, New Mexico, New York, North Carolina, Oregon, Utah, Tennessee, Virginia and Washington. A few states provide immunity for design professionals who volunteer under the direction of a public official, and some, including Connecticut and Missouri, have established programs in which the design professionals who have enrolled with the states emergency management agencies are granted immunity from liability.

<sup>2</sup> In the wake of Hurricanes Katrina and Rita, The AIA published the short-form B191™-2005: *Emergency Services Standard Form of Agreement*. And the EJCDC offers E-520 (2002 edition): *Short Form of Agreement Between Owner & Engineer for Professional Services*.


**See Also**

- Excluded Services
- Indemnities
- Inspection
- Limitation of Liability
- Public Responsibility
- Scope of Services
- Standard of Care
- Appendix 1 – Agreement for Emergency Professional Services



Design Professional unit

The information contained herein is intended for informational purposes only and does not constitute legal advice. For legal advice, seek the services of a competent attorney. Any descriptions of insurance provisions are general overviews only. THE INSURANCE POLICIES, NOT THIS DOCUMENT, FORM THE CONTRACT BETWEEN THE INSURED AND THE INSURANCE COMPANY. The policies contain limits, exclusions and conditions that are not listed in this document. All coverages are subject to individual underwriting judgments and to state legal requirements.
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