

# RECLAIMING the ARCHITECT'S AUTHORITY

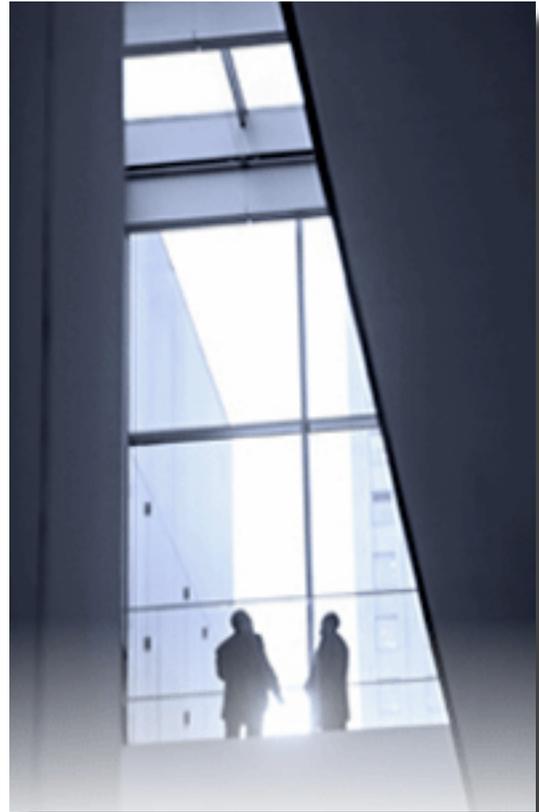
By Alexander D. Tuttle, Esq.

**S**ince the advent of construction managers some forty years ago, architects have witnessed their authority over construction projects erode. Architects no longer serve as the “Master Builder.” Instead, they are relegated to the sidelines of the construction process upon completing their design documents.

The construction industry is our nation’s most inefficient industry in terms of productivity. It has become laden with bad management, an inability to use modern technology for timely completing projects, and ineffective supervision. Most significantly, the industry has resisted accountability for completing projects on time and on budget.

This is largely due to the lack of true fixed-price construction contracts and the absence of intermediaries in the form of owner representatives (formerly architects) who aggressively represent owners’ interests. It is time for that to change.

Armed with an understanding of how contractors can take advantage of their owner clients, architects can reclaim their “master builder” status. They can, once again, serve as effective and efficient intermediaries within a project. Architects can simultaneously align themselves with owners, furthering their business goals, and work collaboratively with contractors. Through this effort, architects can lead industry reform.



## THE LOST ARCHITECT

Architects were once key players in construction projects. They were as involved during construction as they were during design. Indeed, the term “master builder” was quite appropriate, as architects not only conceived and drew plans for structures, but also supervised construction and controlled costs for owners.

Today, architects design less than five percent of America’s construction projects. Their power has been ceded to construction managers and owner’s representatives. In the wake of this transition, owners have lost the benefits that architects once brought to their projects.

Construction managers and contractors can act as monopolists of a project. They control project cost information, accept minimal risk, and operate unchecked without any real fear of being replaced. Invariably, projects soar over budget and are delayed, with more than \$120 billion wasted annually in the U.S. (i.e. more than ten percent of the \$1 trillion in construction work performed each year).<sup>1</sup>

## POLICY SHIFT OF THE PROFESSION

In the 1960s and 70s, insurance carriers provoked a shift in the architect’s role. Insurers

<sup>1</sup>See *Broken buildings, Busted Budgets: How to Fix America's Trillion-Dollar Construction Industry*. Barry B. LePatner Chicago: University of Chicago Press, 2007.

became increasingly concerned about malpractice and liability claims against their insured architects. Through higher insurance premiums and changes to standard AIA agreements, architects were compelled to retreat from their historic role as “master builders.” They no longer were the eyes and ears of a project. As a profession, architects slowly lost crucial construction knowledge and field experience, instead focusing on design.

By the late 1980s, many architects had evolved into architectural stylists. Their design often focused on achieving a “look” that, in many instances, lacked critical elements of functionality and efficiency, and left issues of constructability to contractors. Then, by the late 1990s, the star architect was born. Coinciding with the real estate boom of the early 00’s, the “starchitect” attained celebrity status. As newly-anointed celebrities, they transformed characteristic style into a marketable brand to institutions, corporations, and developers.

Rarely do “starchitects”, or the great majority of architects, commit significant resources to the actual construction of a project. In fact, they often devote a small percentage of their overall fee for such services. In their absence during this phase, building owners’ best interests were left untended.

What the AIA failed to see, and what most architects fail to see today, is that minimizing architects’ construction administration services can actually increase their liability in the long run – especially with the introduction of so-called “fast-track” construction. Fast-tracking is premised on the idea that if contractors start construction before the building design is complete, owners benefit by advancing the completion date. Nevertheless, such practice has opened a Pandora’s Box of liability for design professionals who, by issuing incomplete design documents, face liability exposure for issuing drawings that, by definition, contain errors and omissions. Consequently, architects play on the defensive for every project, as owners have increasingly looked to their design professionals as the cause of their increased budgets and delays in completion.

Only in the past few years have we seen architectural firms, often from a younger generation, challenge the status quo enshrined by the AIA and its professional liability carriers. While some argue that the complexity of today’s buildings makes the architect’s role as master builder less feasible than it once was, it is because of that project complexity that

architects should re-emerge as the best candidates to lead the project.

### **FOXES GUARDING THE HENHOUSE**

Owners need an experienced representative to protect their interests. Without one, owners are too often at the mercy of mutable contracts, expensive change orders and, quite frankly, their own lack of knowledge and experience.

When the AIA revised its standard form agreements in the 1970s – reducing the architect’s construction administration services from “full time onsite supervision” to “periodic onsite observation” – it created a vacuum that the construction manager filled. Not only did this diminish the architect’s status, it also hurt the architect’s clients by turning over complete control of the budget and schedule to the contractors.

While ostensibly acting in the best interest of their owner clients, construction managers are, as many industry insiders admit, simply contractors wearing a suit and tie. Without a classic, construction-savvy architect or any other reliable intermediary squarely on its side, the owner is in the precarious position of having the party most knowledgeable of construction costs be the same party telling everyone what the costs are – without question and very little compromise.

### **GETTING BACK IN THE GAME**

To reclaim “master builder” status, architects must re-establish their onsite construction expertise, restructure their fees, and market themselves accordingly. Most architects allocate more than eighty percent of their fee to completing construction documents. Twenty percent is allocated for periodic site visits and other construction administration duties.

But what if architects could stand behind complete and coordinated design documents? What if owners could obtain contractor bids that ensured true fixed price construction contracts? What if architects could restore owner control over the project budgets? What if, when the design documents were completed, the owner was asked to secure an independent cost estimate that would define the parameters of the costs to be anticipated by the contractor bidders? What if architects promised the owner to assign an experienced field architect full-time and take a more proactive role in reviewing the efficacy of change

order costs? And what if the architects increased their fee by 30% to meet each of these hypotheticals?<sup>2</sup>

You may think that owners would balk at such a fee increase. Consider, however, the generally accepted truth that for every dollar spent on design, ten is spent on construction costs. Conversely, a dollar not spent by the owner on design fees could lead to rushed document production and lack of design coordination. This could in turn result in change orders during construction costing ten times the incremental fee that would have allowed the architect the time to identify the problem early.

Architects need to communicate this point clearly to the owner world. They also need to explain how disasters can occur when architects are not paid to be on site frequently enough to weigh in on questions that arise daily on the job site. Unfortunately, most owners do not see the value in paying their architect additional fees to make additional site visits until it is too late – much like the fisherman coasting along the river with his back to the raging waterfall he’s about to go over.

In a typical project with limited construction administration services, a contractor may advise an owner that the material specified by the architect will cost ten dollars per unit, but a substitute would cost the owner two dollars per unit. The owner might wonder why the architect suggested such an expensive material when there is a suitable and less expensive alternative proposed by the contractor. The truth may well be that the architect is aware of a performance problem with the less expensive material in this particular application. Often the architect is not even consulted in making this decision.

Suppose, however, that the architect’s onsite role was enhanced. The architect could quickly intervene and tell the contractor that the alternative “cheaper” material is a violation of the building code, that its life-cycle maintenance costs will be much more than the specified material, or that if the material fails, the owner could be subjected to lawsuits by its tenants. The extra dollars spent by the Owner for the architect specified material then looks like a bargain.

The bottom line is that the construction industry will change. It has to. Some early signs of reform, such as increasing collaboration among the owner, design, and construction team through Building Information Modeling processes, represent a promising

beginning. Otherwise, there is still too much money being wasted, and the owner is rarely satisfied with the end product.

Industry reform is most dependent, however, on establishing true, fixed-price contracts. And fixed-price contracts will only result from the rise of truly effective intermediaries, together with strict, but fair, contract language.

While reform will be a mighty challenge, architects are best positioned to lead the charge. Architects can assume increased responsibility and change their focus to serve owners and contractors alike. The architect who meets this challenge head on will certainly reap the rewards of increased status, fees, and value to its clients.



**Alex Tuttle** is a Partner at **LePatner & Associates LLP**, a New York City-based construction law firm and one of the nation's foremost construction advisors providing comprehensive legal, business advisory, project management, and investigative services to corporations, real estate developers and investors, healthcare and educational institutions, and non-profit organizations as well as design professionals. Its personnel consist of attorneys, investigators, and construction professionals with diverse design, real estate and construction-oriented backgrounds.

The firm has developed the **LePatner C<sup>3</sup>** model, a complete project process from start to finish that can be utilized for any capital project. Using LePatner C<sup>3</sup>, owners for the first time will benefit from detailed project management tools backed by powerful contracts that provide strong assurances that projects can be completed for a true complete price without the unexpected and unwarranted cost overruns that typically plague nearly all construction projects.

<sup>2</sup> See *LePatner C<sup>3</sup> White Paper*. 3 January 2011  
<<http://www.lepatner.com/media/c3model.cfm>>.