

This is KEY. Even if they are a great Developer, if they are unwilling to sign a contract with the key items discussed below, then you should consider rejecting the project. Most Developers are unwilling to sign the Architect's own standard agreement (be it a modified AIA document or some other form), but we are finding that many of the more prestigious Developers are willing to accept modifications to *their* own standard agreements, and are willing to listen to the reasons why the Architect needs different terms and conditions for condominium projects. Additionally, most Developers, especially those who have initially promised to include you in a Project Policy or Wrap policy, are willing to negotiate more favorable terms once they discover that the Wrap or Project policies are not an option for the Architect for the project at issue.

Our argument is as follows: "Listen Mr. Developer, you originally intended that the Architect be "protected" by your insurance plan, yet now that plan is not an option. We assume that you still intend to "protect" the Architect, and now we are just going to have to do it via the contract. If your intention is to not protect the Architect, then the Architect will consider whether this is the right project in which to be involved."

The following sample clauses must be explored in contract negotiations:

- a. **Complete Indemnification for Condominium Projects.** Start out your contract negotiations asking for the following:

"The Developer acknowledges the risks to the Architect inherent in condominium projects and the disparity between the Architect's fee and the Architect's potential liability for problems or alleged problems with such condominium projects. Therefore, the Developer agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, "Architect") against all claims, damages, liabilities or costs, including reasonable attorneys' fees and defense costs, regardless of the nature of the claim or damage, and including but not limited to claims and damages arising out of or in any way connected with the services performed under this Agreement. The Developer shall not be obligated to defend, indemnify or hold Architect harmless in any manner whatsoever for the Architect's sole negligence or willful misconduct."

**If the Developer rejects the above, then you need to consider whether to accept the job. A mutual indemnity would be the next option.**

- b. **Waiver.** The below waiver should accompany the above indemnity language. Again, if the Developer really wants you, then they will consider such a clause.