

DESIGN PROFESSIONAL TIP

Business Information Modeling (BIM)

If you are a customer of the Design Professional group of XL Insurance, please refer to XL Insurance Trend Alert: *Making the Leap to Building Information Modeling* for risk management advice, and to *The XL Insurance Contract Guide for Design Professionals* for recommended contract provisions. For other readers, consider the following excerpts that could be of great benefit to your firm.

Design Professional has researched risk management issues pertaining to building information modeling. Here are some pointers on how to protect yourself and lower your liability when considering a move BIM project delivery:

Building information modeling's popularity has grown due to its ability to streamline the construction process, enhance communication and produce fewer change orders. As its use increases, A/Es must think through BIM's consequences both in terms of design and relationships among project stakeholders.

Here are several measures that will aid in your transition to BIM:

- **Anticipate the time and expense of implementing BIM.** Technology research and acquisition must be properly managed and training should be regarded as a continuous process. Your staff will also need to become proficient in other areas, such as cost and quantity estimates. Project management skills will become even more important, especially in the areas of team building, coordination, conflict resolution and communication.
- **Discuss risk and expectations with your clients.** Make sure your client has a thorough understanding of what BIM entails and how it can alter the normal course of a project. Your client's requirements and expectations should be fully articulated and documented during the programming phase.
- **Use your two-party contract to address potential problems.** Consider how you will use BIM on each project. Will you use the approach only internally or from the design phase right through construction? How many other parties will you collaborate with to develop the model? Determine the format, version and use of BIM-generated documents in advance. Add a "no third-party beneficiary" clause and use a strongly worded provision or letter of agreement that helps protect you against unauthorized changes or reuse. Also include language that preserves your right to rely on information provided by others without performing excessive checking.
- **Consider using a project-wide agreement for all collaborating parties.** Define each party's duties and responsibilities and allocate an appropriate portion of risk to each party based both on the party's ability to control risk and the benefits the party stands to receive. Spell out what constitutes the "design." Consider a mutual waiver of consequential damages due to errors in the model. Specify who retains ownership of models, drawings and other instruments of service and who will host, or manage, the model. List the permissible downstream uses of the digital data and the permitted re-use of the data developed in the model's design. The contract should also address security, access, archiving and document tracking, and specify the software platform, data format and version to be used by all parties.
- **Create and follow BIM procedures for your projects.** Set up standard procedures for transmitting electronic documents, including logging all files sent and received and maintaining backup copies. Retain "snapshot" copies of all transferred data. And don't let your use of BIM override your regular protocol of design checks and quality controls.
- **Document all design decisions.** As with any project, if a dispute arises, you'll need to demonstrate that you exercised due diligence.
- **Don't go it alone.** To properly educate yourself about the potential liability exposure resulting from BIM, speak with your attorney and an XL Insurance agent/broker. Make sure there are no gaps in your coverage.

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.

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