

## Lending Institutions – Architect’s Certificates

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### Summary

Many clients arrange for construction financing for their projects with lending institutions (lender.) It is not uncommon for the lenders to request from the architect a certification of the status of the project and the value of the construction completed. In order to lessen potential exposure to liability, architects are advised not to sign and submit any lender forms or to send any information directly to the lender.

Architects are further advised to consider the addition of appropriate qualifying statements to documents provided to the client which may be forwarded to the lender.

### Background

Conflict of interest arises if the architect is asked to provide advice to two parties with divergent interests, in this case the architect’s client and the lender. Therefore, lenders should retain their own advisors to serve their separate purposes.

The architect has no contractual relationship with the lender. However, the completion of the lender forms which are addressed directly to them can create a duty of care between architects and lender.

The lender can request copies of the architect’s certificates for payment and general review reports from the client. Standard forms are prepared and recommended by the profession. The wording of such forms is compatible with the standard client/architect contract and the performance standards of the profession. The authorities having jurisdiction, e.g. building department, also accept these recommended forms.

In contrast, many of the forms created for use by the lending institutions contain wording which will increase the architect’s liability by requesting assurances through certification of matters over which the architect has no knowledge or control and/or constitutes an impossible extension of professional services beyond the client/architect contract. These forms are often prepared on behalf of the lender by individuals who lack an understanding of the architect’s professional services with regard to the design and contract administration of a project.

### Suggested Procedure

1. Ascertain if client intends to submit architect’s certificate for payment and site reports to a lender and if so, add a disclaimer to the documents.

“It is understood and agreed that the information contained herein is for the client’s use, without any responsibility or liability of the architect to any lending institution, person or entity (lender) who may rely on the said information in relation to the lender’s financing of the client’s project.”

**This is suggested wording only and is not a substitute for involvement of your own legal counsel. You are advised to discuss specific wording and requirements with your own legal counsel.**

2. If requested to complete customized forms prepared by the lender:
  - Advise the client that in lieu of completing the lender’s forms, the information that will be provided, through submission of certificates for payment and general review reports, fulfills the requirements of standard client/architect contracts, construction contracts, e.g. Canadian Construction Documents Committee (CCDC), and authorities having jurisdiction;

- Advise the client that copies of the above-noted architect's documentation can be forwarded by the client to the lender. A disclaimer similar to item 1. above will be inserted in the document to indicate that the information is provided solely for the use of the client without responsibility on the part of the architect to other parties. The lender may decide whether to retain an independent consultant to review the work in progress; and
  - If the client still insists that the lender's customized forms be completed, contact your liability insurer and own legal counsel.
3. If the client should try to amend the client/architect contract by requiring the architect to complete the lender's forms, do not agree to such an amendment without contacting your own legal counsel and liability insurer.

The Ontario Association of Architects (OAA) Practice Advisory Services also offers assistance in regard to this matter.

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*The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.*

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