

NATIONAL *13th* CONFERENCE ON
BUILDING COMMISSIONING

*LEGAL IMPLICATIONS OF
BUILDING COMMISSIONING*

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When things go as planned, the commissioning process:

- Verifies the proper operation of building systems
- Reduces incidence of IAQ issues and comfort complaints
- Helps designers and contractors deliver a project which meets owner's needs

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**When things go as planned, the
commissioning process:**

- Reduces Change Orders
- Projects delivered on time and within budget
- Reduces contractor call-backs during warranty period

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**When things go as planned, the
commissioning process:**

- Reduces cost of operation and maintenance and equipment
- Improves performance of operations and maintenance staff

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**When things go as planned, the
commissioning process:**

- Improves building's asset value
- Improved occupant satisfaction initially and long-term (perception is reality)

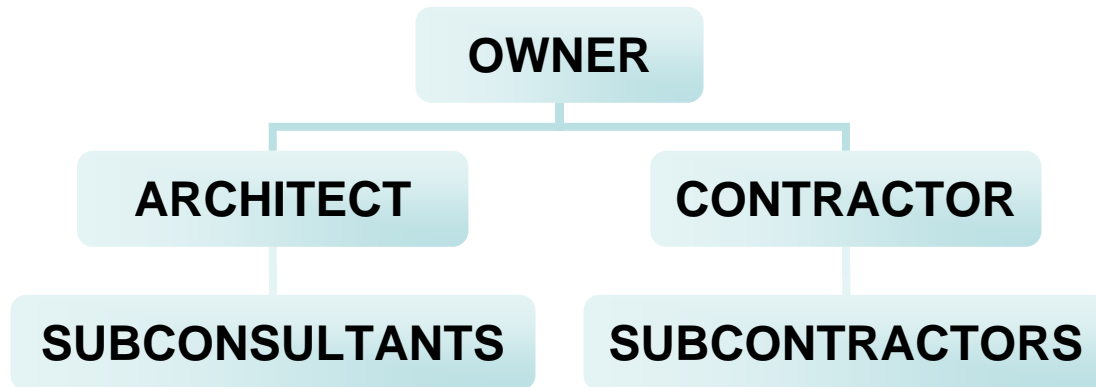
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The Project Relationships

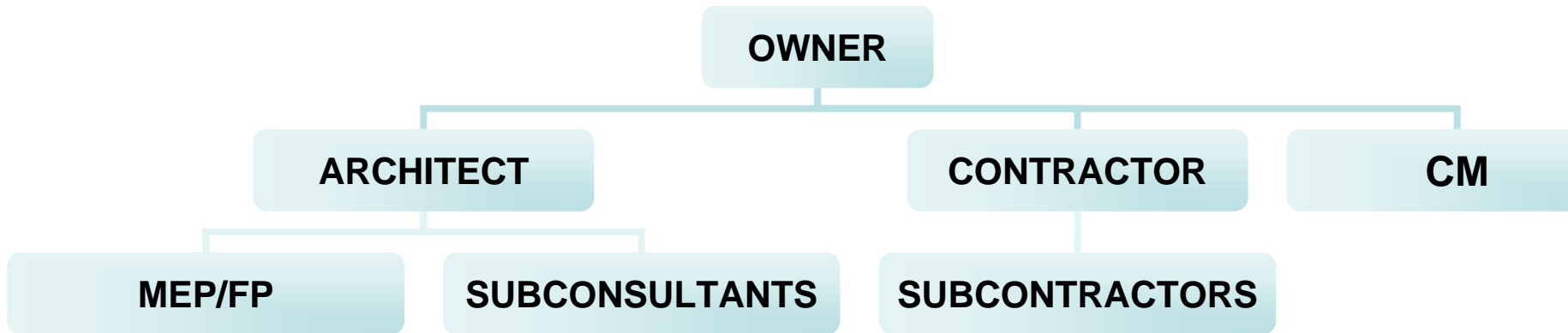
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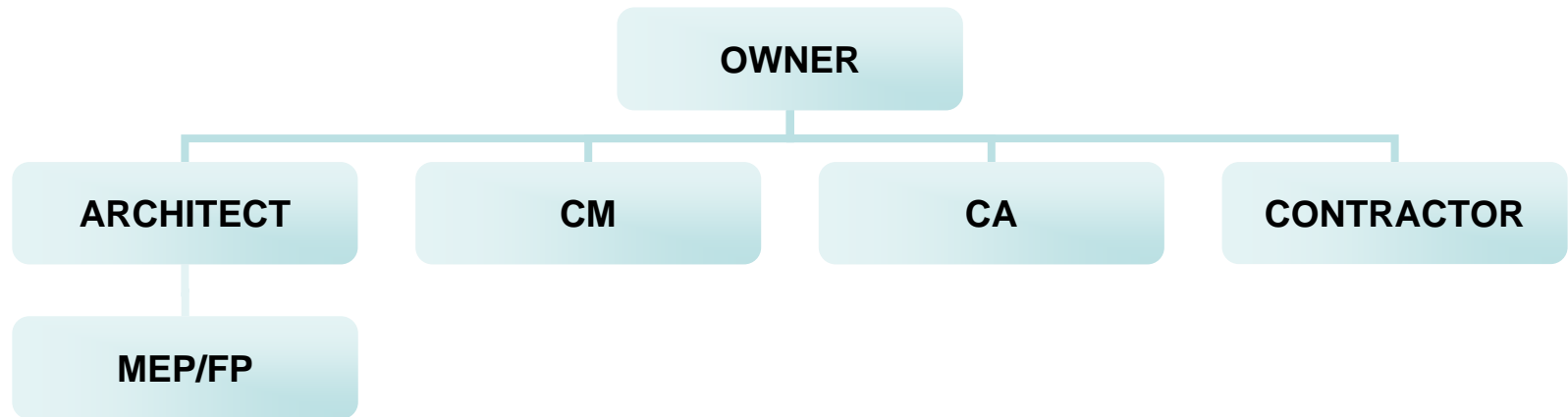
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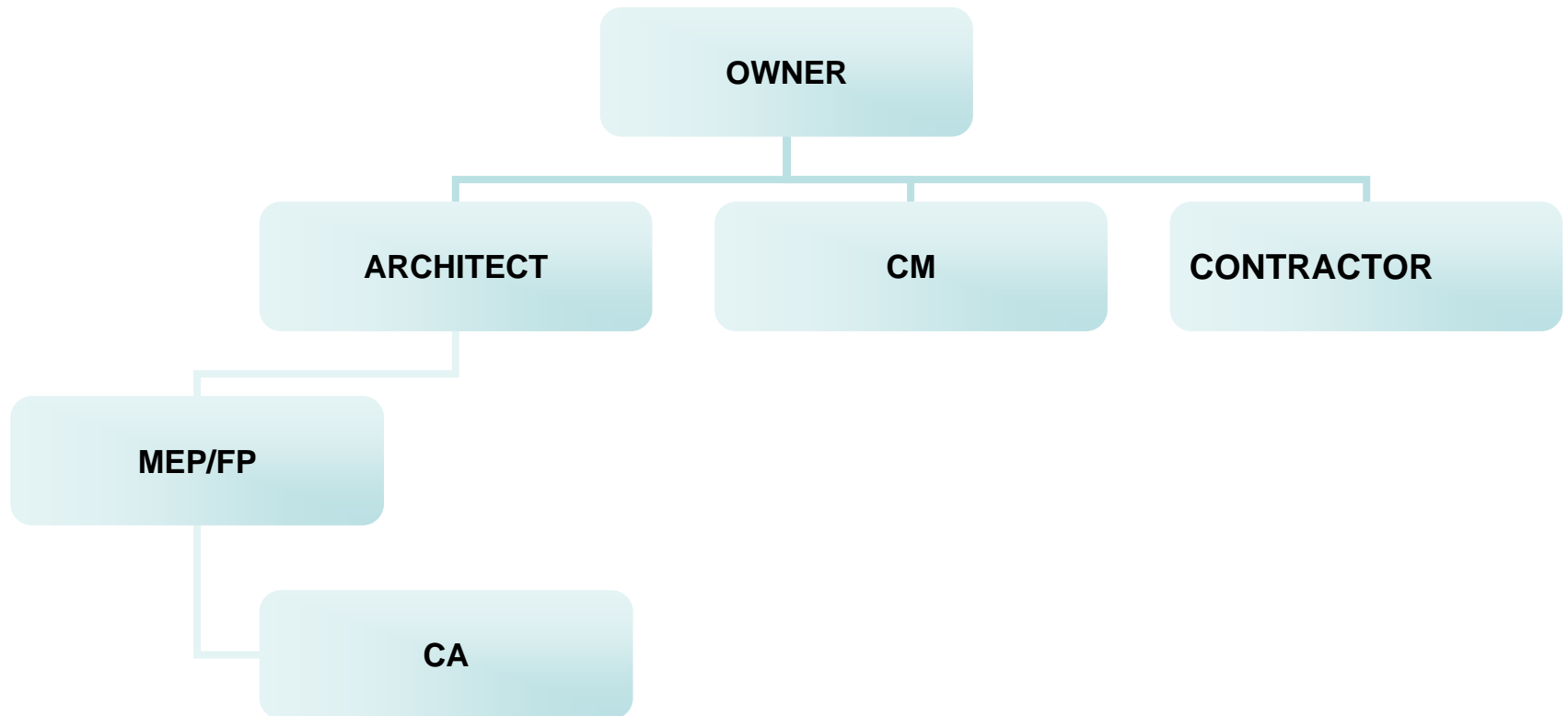
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The Project Relationships Where a Commissioning Agent is Part of the Project Team

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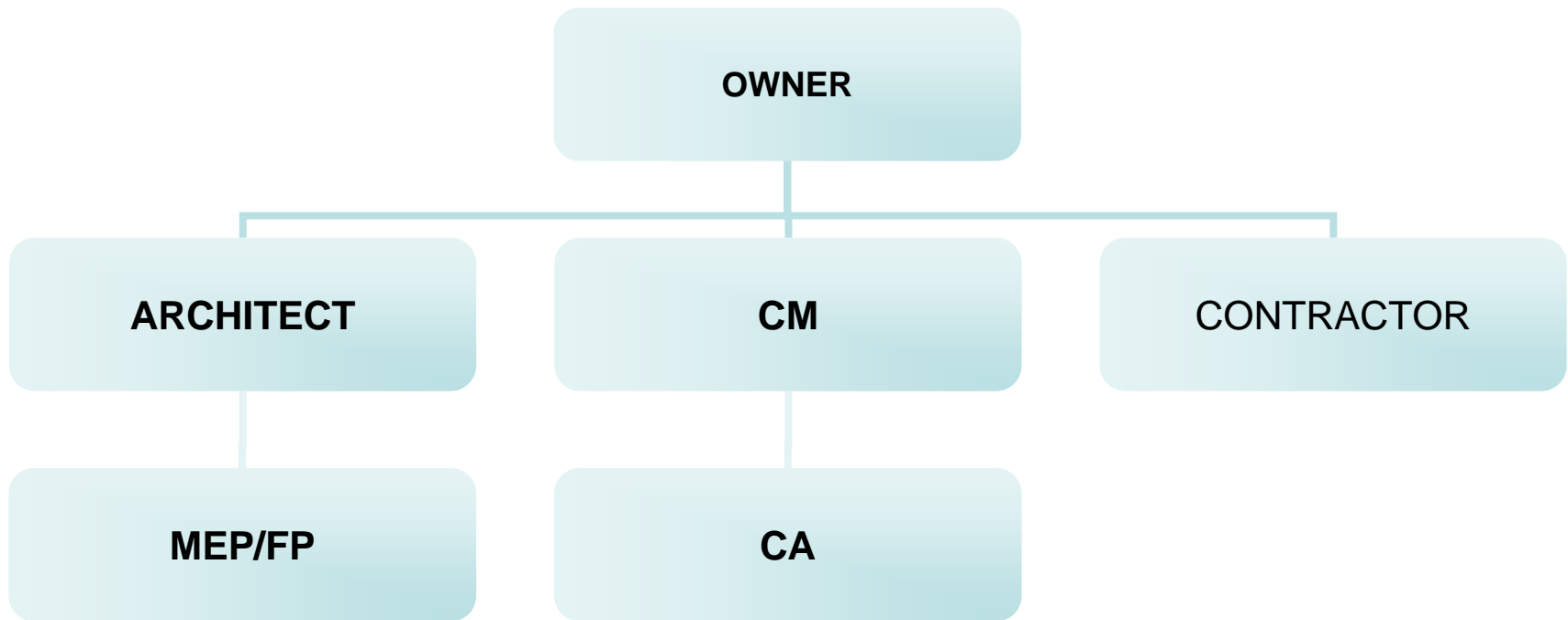
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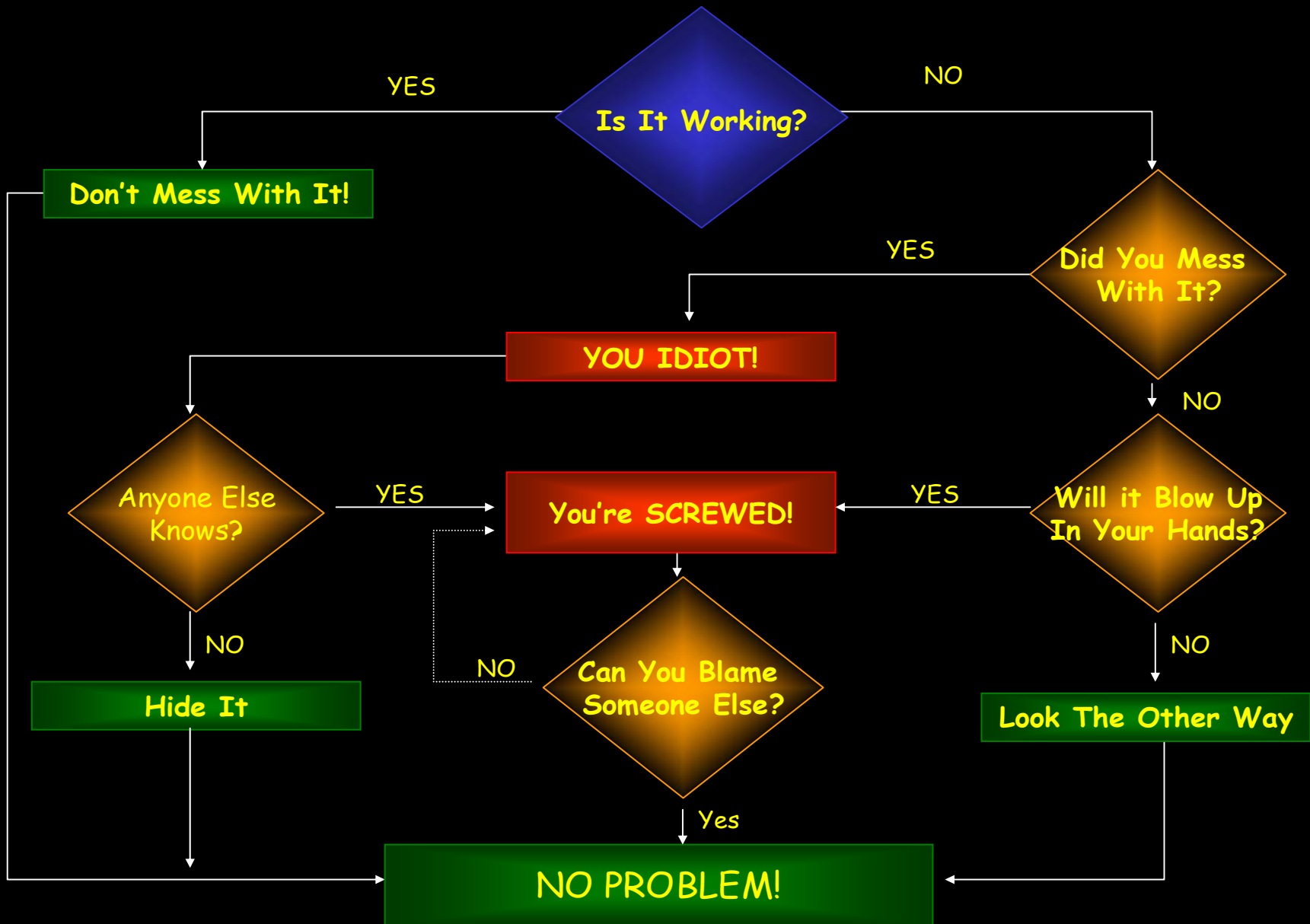
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When things do not go as planned on a
Project, problems result...

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Each Member of the Project Team May
Have a Different Explanation of How, Why
and Whether the Project Went Wrong...

Flowchart For Problem Resolution



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If Problems Are Inevitable, How Can I
Minimize My Risks On Any Given
Project???

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RISK MANAGEMENT

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Manage Risk:

- Equipment Selection
- Training and disclosure

Manage Risk:

- Contract provisions
- Insurance coverage

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Manage Risk:

- Vigilance on Project Site
- Documentation
- Compliance with Industry Standards, References and Guidelines

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Manage Risk:

- Compliance with Applicable laws, codes and regulations
- Modified work practices to include back-up or redundant features
- Seek Counsel Where Appropriate

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Contractual Provisions

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Understand What Your Contract Says:

- Waiver of Consequential Damages
- Dispute Resolution – Consolidation/Joinder
- Audit Rights
- Attorneys' Fees, Costs and Expenses

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What Does the Contract Say???

- Indemnification
- Limitations of Liability
- Notice Requirements
- Duty to Identify Defective Work and Conduct Inspections As Necessary

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What Does the Contract Say???

- Disclaimers of Liability
- Hazardous Materials
- Incorporation by Reference
- Choice of law

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What Are the Potential Liabilities?

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Understand the Potential Bases for Liability:

NEGLIGENCE

- Duty
- Breach
- Proximate Cause
- Injury

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What is Duty?

...To exercise the standard of reasonable care required of members of the profession under similar circumstances...

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Where hold self out as a “specialist”, Duty
may be higher...

i.e. any failure to perform in a manner
consistent with a reasonably prudent
HVAC contractor will subject contractor to
potential liability

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Standard of Care May Vary By Project:

- State of the Art (slide rule vs. CAD)
- Severity of Damage (sidewalk vs. cancer facility)
- Was Damage Foreseeable? (slip and fall vs. 100 year storm)

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To Whom is the Duty Owed?

- To the Owner by Contract
- To any person it is foreseeable may be injured by a failure to exercise standard of care.

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Understand the Potential Bases for Liability:

- Breach of Contract
- Breach of Warranty-Express or Implied

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Understand the Potential Bases for Liability:

- Products Liability
- Negligent Misrepresentation
- Unfair and Deceptive Trade Practices

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Understand the Potential Bases for Liability:

- Personal Injury
- Indemnification

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What Damages Am I potentially Liable For?

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Know the Potential Damages for Liability:

- Direct and Indirect
- Cost to correct or repair defective work
- Cost to correct damaged property

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Know the Potential Damages for Liability:

- Consequential Damages
- Double or Treble Damages
- Attorneys' Fees
- Expert Fees/Costs

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