

# OSBORN

## **PRO BONO PRACTICE FOR MAXIMUM IMPACT: PICK SOMETHING TANGIBLE AND WITHIN YOUR CORE PRACTICE**

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Contributing time, effort and funding is an important law firm commitment. Law firm involvement with creating affordable housing, combating specific diseases, fighting for civil rights and feeding the homeless are essential roles which most often lack effectiveness without private support. Lawyers are uniquely positioned – they are in the business of communicating and are successful at galvanizing support among other lawyers, clients, community leaders, advocacy groups and government officials.

### **Choosing A Pro Bono Project Within Your Core Area Is a Win-Win**

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Looking for a pro bono commitment in an area of familiarity can help the end product. In our case, we chose to volunteer our services to assist an organization serving meals, a "soup kitchen," to the disadvantaged in impoverished communities in Brooklyn known as Neighbors Together. We became involved through our active involvement in the Building Owners and Managers Association of Greater New York (BOMA New York), as BOMA New York spearheaded the effort of obtaining contribution of labor, materials, professional services and equipment.

This opportunity is unique because our law practice concentrates in representation of clients who own real estate and also those architects, engineers, environmental consultants and contractors who serve owners in developing, constructing, designing and renovating properties. Our firm also has comprehensive experience in dealing with government – another feature discipline needed in putting this type of project together.

The task at hand was to arrange for the purchase of a property to house the soup kitchen. Our knowledge of the government, in this case, the New York City Department of Housing, Preservation and Development, allowed for us to assist in untangling the red tape to clear the way for the soup kitchen to purchase the property.

The other aspects required are also familiar to our practice. That is to work with a team including an architect, a mechanical engineer, a structural engineer, an environmental consultant and a code consultant to plan and design the project.

The next phase of the project will involve putting the donated services, materials and equipment into place. Everything from design and construction services to scaffolding and kitchen equipment has been pledged to the project. The total pledges in services, materials, and equipment aggregate over \$1 million.

Clearly the base legal and administrative skills required for carrying out this project are uniquely suited to the law firm's practice. Still, all of this does not guarantee success.

## Overcoming Difficulties Are Part of the Equation

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Quite often, the biggest issue in carrying out a pro bono project is training the recipient of the donated services, equipment and property to administer the construction and renovation process and to expand their capabilities to meet the demands of the new facility and expanded capacity. During the construction process, owners, whether not for profit or otherwise, must have staff dedicated to making sure that the project proceeds on schedule, that the needs of the owner are best served, and that the project is completed to expectation.

Very often, as here, not for profits are staffed by volunteers, some of whom are part time and change at various times of the year. Volunteers, even when present every day, are often not in a position to make critical decisions which will affect the next 20 years of the organization's future. Boards of Directors quite often do not have the construction or facility management expertise required to help them make critical decisions. Further, a Board of Directors may have disparate views on how to proceed.

## Being Both the Attorney and the Client

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In counseling clients carrying out construction and renovation projects, it is frequent that the client's core business is not in constructing and renovating. In this case, investment banks and not for profits experience the same exact problems. In these situations, it is clear that one key client goal is to get through with the project without a scrape – to somehow get the project delivered without detracting from the core business and making sure that the final product is functional for the intended (core business) purposes.

Addressing these issues is most difficult for those whose core business is not constructing and renovating and for those companies who lack in house facilities management and design professional staffs. Clearly, not for profit organizations suffer from all of these disadvantages.

## How Does the Not For Profit Avoid the 10 Most Deadly Construction Sins

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Before embarking upon any type of construction or renovation project, it is important to examine typical mistakes made by owners – whether the owner is a public sector, private sector or a not for profit entity. Without fail, one or more of the "Ten Deadly Construction Sins," will cause problems with the project. Avoiding each of the 10 most deadly construction sins is essential in producing a successful project. What are "The Ten Most Deadly Construction Sins?"

*Lack Of Focus Up Front.* Even before the architect is chosen, it is essential that the owner develop a "vision" for the project to be captured in the written documents. Operating without a roadmap can cause a great deal of trouble for the owner – not for profit owners are no different. In the case of providing volunteer legal services, it is imperative that the attorney providing those services get a clear definition of the owner's needs. This is not an easy task and it is also not easy for the attorney providing the services and who is seasoned in putting together complicated transactions not to assert themselves in defining the goals they perceive the client to have. To some degree, setting up a core organizational structure for the not for profit may become one of the primary contributions a lawyer can make to the process.

*Failure to Choose the Best Method of Project Delivery.* With donated services, the not for profit owner may not have much of a choice on method of delivery, because, after all it is being donated, but as the project team is formulated, it is important to look at the composition of the volunteer team and determine whether design/build or construction management may be best suited to getting the job done. The parties donating the services, materials and equipment can be expected to support the most efficient deployment of services. Even though the contracts do not include price, it is in everyone's best interest for there to be a written scope of work and set of project responsibilities clearly defining the role of each project participant.

*Failure To Assemble the Right Project Team.* Alignment of skills, levels of experience and personalities is essential. Partnering, even when it involves volunteers, is most effective when done at the earliest stage – it is important to make sure that the team fits together and that everyone agrees on the goals from the outset. Adjusting goals and creating coordination can effectively be done through a "retreat" attended by all participants before the project begins. Distrust, rivalry or simple incompatibility among participants on a project destroys quality and progress and has significant detrimental effect.

*Failure To Coordinate the Project* Poor coordination allows defective work to be installed, for coordination of drawings to be chaotic, and encourages frustration and discord. The owner of the project must have a representative kept involved and knowledgeable on a day to day basis. This "Owner's Rep" must act strongly with the design professionals, contractors and professional advisers to keep the project on track. Without the effective execution of this role – all may be lost – volunteers will become discouraged and may even be forced to abandon the project if they feel their time and services are being wasted. It must be remembered that effective coordination of volunteers requires management – just like any other kind of project.

*Failure to Provide a Method of Changing Scope.* Being clear in defining scope of work is an essential ingredient of every project. It would seem basic that the owner, contractor and design professional need to confirm the scope of work before it begins and to keep track of it as the project proceeds. It is hard to believe, but the basic ground rules are often neglected, and, as practical experience shows, construction projects most often fall apart over failure to clearly define scope of work.

*Failure to Understand (Truly Understand) Local Conditions.* Local requirements relating to Building Department work rules apply to not for profits as they build; safety and insurance requirements must be clearly defined and addressed – just because labor is donated, it does not mean that an accident cannot happen. Look into safety, insurance and code requirements as would be done on any project.

*No Accurate Schedule or Too Elaborate a Schedule or Lack of Accurate Updates.* Easy to follow and easily updatable schedules are essential. Elaborate schedules have drawbacks because they cannot be readily understood or updated. A simple bar chart, showing the work of each trade, is often all you need.

*No Periodic Meetings; Failure to Keep Job Meeting Minutes.* Fixing a time for the weekly meeting is an important requisite for every project from small to large. Meeting minutes create a good way to track major decisions and their rationale. Meeting minutes also create excellent to do lists. Even in a volunteer effort, meeting minutes are a worthwhile exercise, creating efficiency and consistency.

*No Vision on Dispute Resolution.* Major contributors to the process may have large egos. It is very important to select a well respected individual to act as a mediator or peace maker should the need arise. It is important that this selection be made before a problem arises. Creating an appropriate dispute resolution method is essential to the construction and renovation process.

*Failure to Recognize that Quality Wins the Day.* There may be a tension on the not for profit project. Donated labor, material and equipment may be substandard, but it is hard to turn down. The Owner's Rep needs to have the skill to turn down, or ask for an upgrade, without alienating donors.

## Conclusion

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Providing legal expertise to a construction or renovation project can be dynamic and rewarding. In providing this type of advice – both legal and strategic – the whole *can be* greater than the sum of the parts. Neighbors Together is in the middle of the process; we hope to be able to report back with our successes and a passing grade on our 10 Most Deadly Construction Sins Report Card.

John E. Osborn, Esq., is a Partner of the New York City and Chappaqua construction contract litigation and environmental law firm of John E. Osborn P.C.