

Retirement Planning and Insurance

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Why Retirement Planning Matters for Architects

When you're starting out or running an architectural practice, thinking about retirement—and the risks that come after you leave—probably isn't top of mind. But it's important to plan ahead, because unfortunately your professional liability doesn't end with your last day in the office, and so you can still be held legally responsible for your work long after you stop practising.

Why ongoing Professional Indemnity insurance is critical for your protection

Professional indemnity (PI) insurance protects you if a client (or a third party) claims your professional advice or design caused them a financial loss. In New Zealand, PI insurance is written on a "claims made" basis. This means you're only covered if you have insurance in place at the time a claim is made against you, not when the work was originally done. Key point: if you cancel your PI insurance when you retire, you won't be covered for any claims that are made after you stop—even if the work was done years ago. This is why it's vital to keep your PI insurance going after you retire, often through what's called "run-off" cover.

Risks for different types of architectural practice

Sole Practitioners

You are personally liable for all the work you did while practising.

- If you sell or merge your practice, you should make sure that any new insurance arrangements cover your past work.
- If you just stop practising and cancel your insurance, you remain exposed to claims for years afterwards.

In both cases, the proper archiving of any project files is imperative.

Example:

You retire and close your one-person firm. Two years later, a client claims there's a problem with a building you designed. If you don't have run-off cover, you'll have to pay for legal costs and any damages yourself.

Partnerships

If you retire but the partnership continues:

- You're still liable for work done while you were a partner.
- The partnership agreement should spell out who has the responsibility for keeping the insurance in place for a retiring partner for past work.

If the partnership closes or merges:

- You (and your former partners) are still liable for work done before closure or merger.
- New partners (from a merger or sale) usually aren't liable for your old work, unless agreed otherwise.

Example:

You retire from a partnership, but the firm keeps trading. Five years later, a problem arises on a project you worked on. You and your former partners can be sued, so you need insurance to be in place at that time.

Corporate Practices (Companies)

If you retire as a director but the company continues:

- The company is liable for work you did, but you're personally liable if you were negligent (i.e. for some reason you failed to exercise the standard of care that a reasonably competent architect would under similar circumstances).
- Note: it is important that the shareholders agreement and/or any retirement agreement deals with the responsibility for maintaining insurance cover for the retiring Director.

If the company closes or is sold:

- The company is liable for past work until it's wound up.
- You're still personally liable for your own mistakes.

Examples:

You retire as a director from a company, but the business keeps running. If there's a claim about a project you managed, the company's insurance should cover it (for example NZACS/Aon PI covers former principals, directors and employees provided insurance is continued) — but if the company folds, you could be personally financially exposed if you don't have run-off cover.

If you are a retiring sole practitioner, operating as a company, the company will provide no liability protection to you, whether or not it is wound up.

Retired Principals staying involved

If you stay on as a consultant or employee to a partnership or company, you're still responsible for your own professional mistakes.

Staying on as an employee:

- Employers in New Zealand are usually legally liable for mistakes employees make while doing their jobs. Employees are generally protected from personal liability for ordinary mistakes made at work, unless they act outside their job or do something seriously wrong.
- Employers don't have to indemnify employees by law in every case, but this is common practice and often included in employment agreements.

Staying on as a consultant:

- If you contract or consult back to the practice, then you would usually require your own PI insurance.
- The NZACS/Aon PI typically covers retired principals who keep working for the same practice, as long as you are not taking on outside work i.e. you work exclusively for the practice and the practice intends to offer their insurance indemnity to you.

In these cases, professional indemnity insurance is an important safety net for both employers and employees.

The importance of "Run-Off" cover

After you retire, claims can still arise from your past work. Run-off cover is specific PI insurance that protects you for claims made after you stop practising. Without it, you could be personally liable for potentially expensive claims, even years later.

If you're a sole practitioner, run-off cover is essential.

If you're retiring from a partnership or company, make sure the relevant agreement covers who is responsible for keeping insurance in place to cover past work.

Currently the NZACS/AON PI policy offers free supplementary run-off cover for life for some retiring principals, but this is at NZACS/AON discretion, so check your situation. You must be fully retired from all practice activity and have been associated with an insuring NZACS member for a minimum of 10 years continuous membership.

Why keep PI insurance after retirement?

There are several reasons:

The Claims Made Basis of PI policies - you're only protected if you have active insurance when a claim is made, not just when the work was done.

Long-Tail Risks - problems with buildings can show up several years after completion.

Personal Liability - especially for sole practitioners and partners, you can be personally on the hook for claims.

How long should run-off cover be maintained for?

6-years is something of an industry norm to maintain run-off cover, coming from the Building Act 2004 limitations around liability, but there are provisions for the period to extend to 10-years and beyond. How long you choose to maintain run-off will depend on many factors such as the type of work that was being carried out and a risk assessment of likely liabilities arising from that work. This is a matter that should be discussed with your insurance broker.

Summary

No matter how you practise—as a sole practitioner, partner, or director—your liability for past work doesn't end when you retire. Keeping professional indemnity insurance in place (especially run-off cover) is crucial to protect yourself and your finances. Make sure your retirement plans and business agreements address who will maintain this cover.

The advice given in this article is of a general nature. If you're unsure on any matters, seek advice from the NZACS insurance broker Aon.