



## Who Protects the Good Samaritans?

By Randy Lewis, CPCU

In many jurisdictions, design professionals who volunteer their services following disasters should be concerned about liability. Having effective Good Samaritan laws can help.

It was quite a year. With hurricanes, floods, wildfires, tornadoes, and more, 2017 set records for natural disasters in the U.S., costing lives and over \$300 billion in damages.

We also saw many good people, architects and engineers included, step forward to protect their fellow citizens and speed recovery efforts. Their expertise in assessing structures and infrastructure was crucial to local, state, provincial, and federal governments overwhelmed by the need to perform numerous inspections in a short period of time. They performed these tasks under difficult or dangerous conditions and, in many cases, for no fee.

If you were among these volunteer A/Es, you might have unwittingly incurred liability for your good deeds. It depends on the laws where you live or work.

### Good Samaritan Laws

In many U.S. jurisdictions, the law does not provide much protection from liability for negligent acts, no matter how good your intentions. While most states have enacted some form of Good Samaritan legislation to protect individuals from liability for negligent acts committed while voluntarily providing emergency care, some of these laws do not explicitly extend protection to architects and engineers. The laws in Canada do not provide legal protection or immunity to an architect or engineer providing professional services on a voluntary basis, but according to the claim staff of XL Catlin in Canada (the author's company), this does not

appear to be a major driver of claims and there has been no vocal push for federal legislation.

What this means is that, in those states with no – or weak – Good Samaritan A/E laws, architects and engineers could be sued for merely trying to do the right thing in the midst of, or immediately after, a crisis. The threat of being sued can be enough to drive A/Es away from trying to help.

For example, following the September 11, 2001, terrorist attacks, many New York architectural and engineering firms that volunteered to help their fellow citizens later found themselves entangled in massive lawsuits that had little or nothing to do with their services. Consequently, in the wake of 2012's Superstorm Sandy, New York and New Jersey A/Es, eager to help assess damaged properties, feared they could be sued if a property owner disagreed with their assessment. At the time, neither state had Good Samaritan laws that extended to design professionals.

On the other hand, after devastating tornadoes hit Alabama in 2011, which had passed its Good Samaritan law in 2005, many design professionals felt it was safe to step forward to provide crucial assistance, inspecting thousands of buildings for safety.

### State Laws Vary

In 36 U.S. states, Good Samaritan laws specifically protect architects and engineers. However, these statutes vary widely as to the kind of immunity they grant and to whom.

For example, Massachusetts has a broad law that grants immunity to licensed professional engineers, architects, environmental profes-

sionals, landscape architects, planners, land surveyors, contractors, sub-contractors, and suppliers who volunteer in a natural disaster or catastrophe within 90 days of the end of the emergency.

Elsewhere, Good Samaritan laws are less comprehensive. For example,

### Resources

- ✓ AIA Disaster Assistance Handbook/ AIA Safety Assessment Program <https://bit.ly/2vx0kvV>
- ✓ The “Emergency Services” and “Pro Bono Services” chapters in XL Catlin’s Contract eGuide for Design Professionals, as well as a sample Emergency Services Agreement, are available on the Learning Management System (LMS). <https://bit.ly/2n724by>
- ✓ Good Samaritan State Statute Compendium <https://bit.ly/2ODKgBo>
- ✓ National Incident Management System online training <https://training.fema.gov/nims>

some states’ laws apply only to architects and engineers, while others may include land surveyors, contractors, and equipment operators. Some states limit the period for immunity to 30 or 60 days following a disaster. A few states extend protection to structural inspections only, while others include architectural, damage assessment, engineering, or surveying services. One state, South Carolina, only gives immunity to licensed architects and engineers who provide emergency services at the request of the governor. Most states’ laws exclude protection for acts of gross negligence or willful misconduct by the A/E.

To learn more about the laws in your state, the American Institute of Architects has an excellent resource, the *Good Samaritan State Statute Compendium*. The document discusses the advantages of Good Samaritan laws, details each state’s protections for architects, and includes model legislation for those interested in understanding and advocating for the adoption of such legislation by states. (See sidebar)

### Federal Protection

At the federal level, there is not much help for A/E Good Samaritans. The 1997 Volunteer Protection Act (VPA) offers immunity for volunteers serving nonprofit organizations or government entities. Currently, the VPA only limits third-party suits but allows lawsuits by the government and non-profit sponsors. States can also opt out of the VPA or place additional constraints on eligibility.

There have been several unsuccessful efforts to pass a federal law that would protect

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architects, engineers, and construction volunteers following an emergency. A federal law would provide coverage nationwide, which would negate the differences between state statutes. Ideally, it would also mean that design professionals could help across state lines without worrying about licensing issues.

## Recent Legislative Activity

Good Samaritan bills have been introduced in a few states in recent years – with mixed results. In 2016, New Hampshire enacted a law to give design professionals immunity when they volunteer during a natural or human-made disaster. In 2015, Ohio passed a bill that provides immunity to architects, engineers, and surveyors, as well as contractors and tradespersons, who volunteer their services during a declared emergency. New Jersey passed Good Samaritan legislation for A/E/s in 2014.

However, a 2016 bill failed in Mississippi and, despite several attempts, New York still has no law on the books.

## Help from Professional Associations

The American Institute of Architects (AIA), American Council of Engineering Companies (ACEC), National Society of Professional Engineers (NSPE), and other organizations have long advocated for state laws that provide immunity from liability that arises from voluntary architectural or engineering services. Many offer model Good Samaritan laws that states may adopt.

Most of these organizations also advocate a uniform federal statute that would provide civil immunity for design professionals providing volunteer services. (*See sidebar*)

## What Can You Do?

**Find out if your state/province has a Good Samaritan law.** If it does and falls short, work with your professional society and licensing boards to broaden the legislation to provide better protection. If your state/province does not have such a law on the books, you and your colleagues should urge your legislators to enact one.

**Get disaster assistance training.** The AIA's Safety Assessment Program trains engineers, architects, and other certified professionals as building evaluators. These individuals help local governments evaluate the post-disaster safety and habitability of homes, buildings, and infrastructure. Additional disaster response

training is available from the National Incident Management System's online courses.

**Sign up for a volunteer network.** Many state and local agencies have programs in place to use volunteers with appropriate disaster assistance training. In some states, volunteers who are registered with disaster response programs are entitled to workers compensation and liability protection.

**Get an agreement, if possible and practical.** In the aftermath of a disaster, try to get a written agreement for your services, even if you're not accepting a fee. A simple agreement will suffice; the AIA and EJCDC both

publish short-form agreements, and the XL Catlin Design Professional team has a sample *Emergency Services Agreement* available in their Learning Management System.■

The online version of this article includes a detailed reference. Please visit [www.STRUCTUREmag.org](http://www.STRUCTUREmag.org).

Randy Lewis brings over 20 years working in the insurance industry. Currently Randy manages the risk management and client education programs of XL Catlin, a recognized leader in the AEC community. ([randy.lewis@xlcatalin.com](mailto:randy.lewis@xlcatalin.com))



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## Reference

National Oceanic and Atmospheric Administration: Billion-Dollar Weather and Climate Disasters: Overview. [ndbc.noaa.gov/billions](https://www.ndbc.noaa.gov/billions), accessed January 8, 2018.