

Using an Owner's Representative on Large Projects

Preconstruction Through Dispute

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The Owner's Representative is the most underused risk-control tool on a large project

The OR works directly for owner. They support the owner as agent by observing, advising, and reporting across four phases.

Phase 1

Preconstruction

- Define scope
- Reduce risk

Phase 2

Contract

- Rep guidance
- on the contract

Phase 3

Controls

- Build the record
- Manage schedule and money

Phase 4

Disputes

- What the record means later

P H A S E 1

Preconstruction

Define scope. Reduce risk.

The OR helps the owner build the playbook before anyone breaks ground

- Defines the owner's program with the owner:
 - Goals
 - Budget envelope
 - Key milestones
 - End-use requirements
- Maps what the contractor will do:
 - Delivery method
 - Scope of self-performed work
 - Intended sub-tier structure
- Maps what the designer will do:
 - Design phases
 - Deliverable cadence
 - Sign-off points
 - What gets owner review
- Builds the playbook for how all participants interact:
 - Who talks to whom, in what order, with what authority

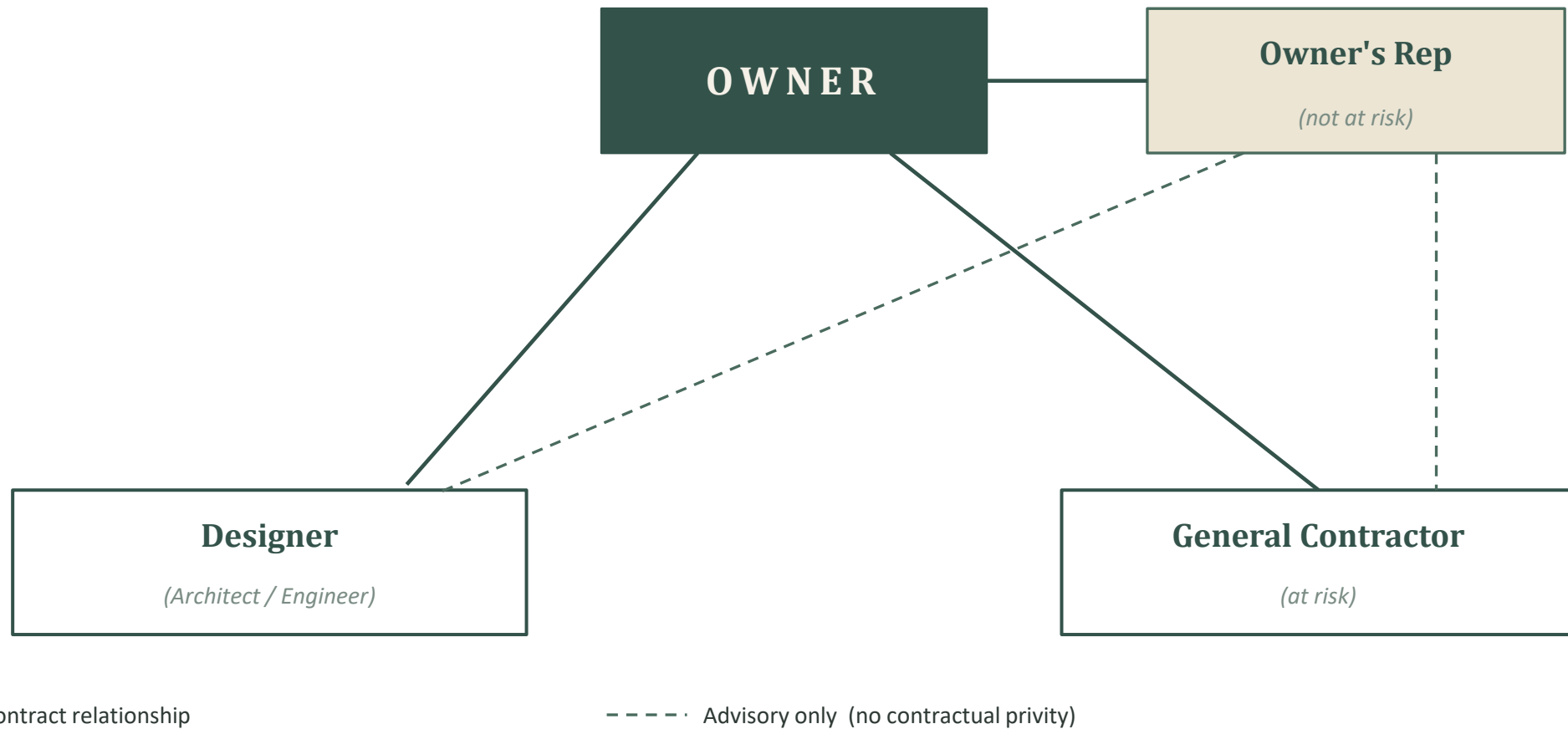
If the OR is in the room when the program is set, the contract phase gets simpler.

P H A S E 2

Contract

Rep guidance on the contract.

How the project is delivered and where the OR sits



The OR is your eyes and ears, not your signature

- The OR observes, advises, and reports, thereby keeping the owner informed in real time.
- Authority to bind the owner flows only through the GC agreement or the design agreement, not through the OR engagement.
- Generally, neither the GC agreement nor the design agreement should give the OR authority to bind the owner. Resist requests to add it.
- A clear OR role gives the contractor and designer a known point of contact without confusing who can commit the owner.



P H A S E 3

Project Controls

The record gets built here.

What the OR advises on during Project Controls

Topic	What the OR brings
RFI response timing	Flags slow responses before they affect the critical path; pushes design team to close items on schedule.
Field direction	Watches what's being directed in the field; flags when it diverges from the drawings or specs.
Change order guidance	Reviews pricing, scope, schedule impact, and backup. Advises owner and counsel before signature.
Schedule	Reviews baseline and updates; calls out float consumption and critical-path drift.
Termination	Documents the conditions that support termination for cause; supports owner and counsel through the process.

The OR is the owner's early-warning system on schedule

- Reviews the baseline schedule at acceptance:
 - Flags logic ties, float allocation, ownership of float.
- Tracks monthly updates against the baseline:
 - Watches for soft logic, retained float, and critical-path drift.
- Pushes back when schedule narratives don't match the schedule data.
- Documents schedule erosion in real time
 - Thus, the conversation happens before mediation, not during it.



Note: this is oversight, not forensic schedule analysis. Forensic work is expert territory.

The OR manages the money on the owner's side

- Reviews each pay application against actual physical progress — site walks, photos, schedule updates.
 - The OR does not certify; that's the architect's role.
- Tracks retainage through substantial completion.
 - Keeps the punch-list reserve separate from retainage.
- Collects partial lien waivers with every pay app, final waivers at substantial completion.
- Documents the basis of each pay-app recommendation, so the recommendation holds up if challenged.
- Flags inflated line items, double-billed work, and unsupported claims before they get paid.



P H A S E 4

Disputes

What the record means later.

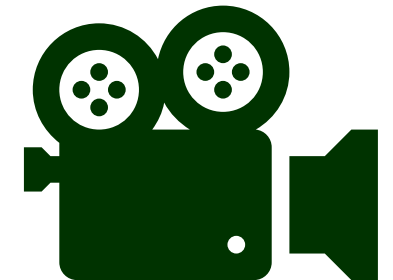
Contemporaneous records win cases

- RFIs, change directives, and delay notices papered the day they happen, not reconstructed months later.
- Meeting minutes are evidence. The OR drafts them, not the GC.
- Photo and progress logs at defined intervals — tagged, dated, and stored outside the GC's system.
- Reconstructed records are weaker than contemporaneous ones, and discoverable as reconstructions.



The OR will be deposed

- Every email, RFI response, and meeting minute the OR touched becomes exhibit material.
- Issue the litigation hold to the OR on day one of any claim.
 - The OR's hold is broader than the owner's.
- Preserve OR project files in original format.
 - Metadata wins arguments; printed PDFs lose them.
- Prep the OR early.
 - Testimony habits start during the project, not the week before the deposition.



Privilege depends on how the OR is engaged

PATH A — LIKELY NON-DISCOVERABLE

Counsel ↔ Owner ↔ OR

With written consulting agreement engaging the OR at the dispute stage, under counsel's direction.

When a dispute is on the horizon, engage the OR through counsel under a consulting agreement. The OR is then assisting counsel in giving legal advice. Communications made in that capacity are generally protected.

Recommended at the dispute stage.

PATH B — DISCOVERABLE

Owner → OR → Counsel

No consulting agreement. OR is acting as a transmittal channel between owner and counsel.

Sending facts to counsel through the OR does not create privilege. The OR's transmittal email is fair game. Routing strategy through the OR waives privilege over what the OR saw.

Avoid as a default communication path.

QUESTIONS

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