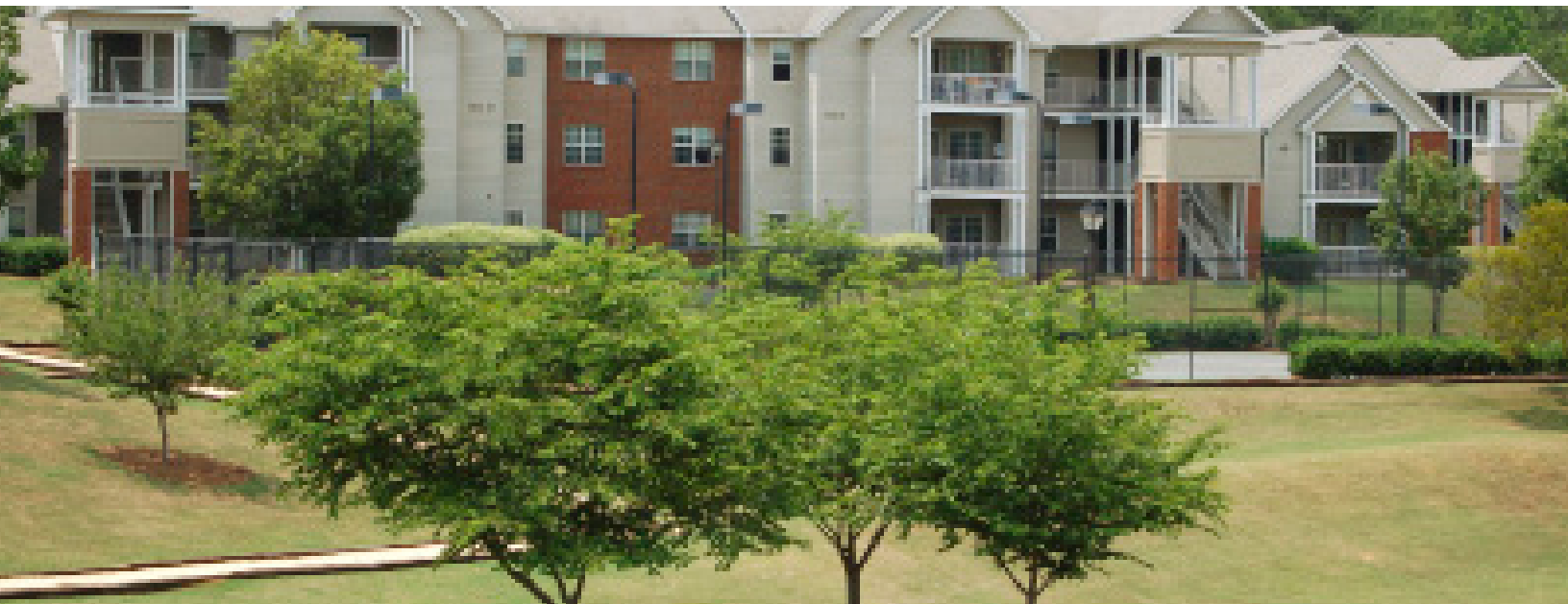


A Slippery Slope



the facts

Gabler Architects was retained by B3B Investments to perform a limited assessment of an apartment complex. Gabler Architects was to verify the accuracy of a previous due diligence report provided by another architecture firm. In addition, Gabler Architects was asked to check the site of a previous slope failure and completed a visual check to determine if repairs were done and if there were signs of any further problems. They checked the slope and saw signs of remediation but the slope did not appear to be in distress. They did note that there was a drainage problem close to the location of the site and recommended a civil engineer be retained to examine the issue and recommend a fix. The apartment complex was then put on the market and sold within a few weeks. Shortly after closing, a significant slope failure caused the owner to have to spend an alleged \$3 million in remediation costs. In an attempt to recover the expenditure, they filed suit against various entities, including Gabler Architects, to the tune of \$3 million.

Risk Factor #1

Gabler Architects needed to clearly indicate the limit scope of its investigation and disclaim any responsibility for unobserved conditions in its report.

Risk Factor #2

A firm must document that it is providing opinions only within its expertise and state that the services are only to be relied on by the client.

It was determined that the cause of the slope failure was a massive underground fissure which was affected by extremely heavy rains. All the experts called in to evaluate the site agreed the presence of the fissure could not have been detected visually without further testing. However, the owner of the apartment complex maintained Gabler Architects should have called for a geotech report and soil testing.

the result

Although it was felt to be a case where Gabler Architects had little or no liability, the decision was made to settle the case in an effort to avoid costly and time consuming legal proceedings. Gabler Architects' insurance company offered \$300,000 only if that amount would settle the claim. The offer was accepted.

In providing services such as studies of existing facilities, project proposal evaluations or site assessments, a limitation of liability provision may be advisable. However, with or without a limitation of risk commensurate with the cost of the service being provided, careful language in the scope of services and in any study or report is vital.

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