

P&C RISK REVIEW

A PUBLICATION OF THE PROFESSIONAL LIABILITY INSURANCE NETWORK



FINANCE INSURANCE, LTD.
Quality Service For Your Insurance Needs

VOLUME 009, 2015

For More Information Contact:

Alan Taguchi

Tel: 522-5580

Fax: 522-2082

email: ataguchi@financeinsurance.com

To Drone or Not to Drone

This material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, confer with a qualified professional who can provide guidance that considers your unique circumstances.

Unmanned aerial vehicles, commonly referred to as UAVs or "drones," have received a lot of airplay in the A/E community during the last few years. Architects, engineers, contractors, developers and others are fascinated with the possibility of using unmanned aircraft on their next big project.

Why all the interest, besides drones being fascinating "toys" that have spurred a burgeoning recreational field? Drones offer real advantages, including significant savings in time and money, as well as increased safety, over traditional tools used to provide aerial photography, such as manned helicopters and small planes. With a small, lightweight and relatively inexpensive drone armed with a digital camera, Wi-Fi and a GPS, a firm can photograph and map out a large job site or completed project in great detail within an hour.

Drones offer virtually all firms the opportunity to create and capture an aerial view of undeveloped land, hazardous conditions, active building sites, finished projects (inside and out) and all steps in between. This allows design firms to quickly and cost effectively provide their clients and their project managers with extremely accurate visual representations of a project. Those representations can include photos, videos, thermal readings, infrared scans, 3D topography models

and other data that can be imported into a design firm's or a client's computer using standard design software programs.

From initial land surveying through final project walk-throughs, drones are amazing tools that promise increased efficiency and effectiveness in serving client needs. Indeed they will likely raise the bar for the types of services and data clients will soon expect from their designers and contractors.

So why aren't more designers, contractors and developers using drones on their projects? Largely because drones are currently being grounded by a lot of red tape as the Feds struggles to come up with rules and regulations governing the commercial use of unmanned aerial vehicles.

The FAA and Commercial Use of Drones

Currently, architects, engineers, contractors, developers -- even wedding photographers for that matter -- are generally prohibited from using drones for commercial purposes. The Federal Aviation Administration (FAA) rightfully cites safety concerns for not allowing the unregulated commercial use of drones. Yet recreational users face no such regulations other than a few simple guidelines such as:

- The aircraft, including any loads, must weigh less than 55 pounds.
- Don't fly the drone more than 400 feet in altitude.
- Always keep the drone within visual sight.

- Keep at least five miles away from airports, and remain clear of any manned aircraft.
- Keep away from large crowds and stadiums.
- Don't fly carelessly or recklessly

So, in a sense, it's not what you do, but why you do it, that matters to the FAA. Fly a drone to capture video for fun and it's no problem as long as you follow their guidelines. Fly a drone to capture a video to make money, and you are breaking the law unless you can secure a special waiver.

The Section 333 Waiver

A waiver for the commercial use of drones can be secured under Section 333 of the FAA Modernization and Reform Act of 2012. According to the FAA, any aircraft operating in the national airspace requires a certificated and registered aircraft, a licensed pilot, and operational approval. Section 333 grants the Secretary of Transportation the authority to determine whether an airworthiness certificate is required for a unmanned aerial vehicle to operate safely in the National Airspace System. This authority is being leveraged to grant case-by-case authorization for certain unmanned aircraft to perform commercial operations prior to the finalization of the Small UAS (Unmanned Aircraft Systems) Rule, which will be the primary method for authorizing small UAS operations once it is complete. The Small UAS Rule is expected to be completed in 2017.

So, under Section 333, architects, engineers, contractors and others can file for an exemption from current federal regulations on a case-by-case basis and, if granted the exemption, use drones for commercial purposes -- at least until the final Small UAS Rule is issued. Through mid-June 2015, approximately 600 petitions have been granted by the FAA.

According to the FAA, a Section 333 petition must be filed at least 120 days before the date of operation. For further details on filing a petition for an exemption, go to the FAA Website page:

www.faa.gov/uas/legislative/programs/section_333/how_to_file_a_petition.

Also, be aware that some states and municipalities have their own laws regarding the use of drones, commercial and recreational. These can provide obstacles even if a Section 333 exemption is obtained from the FAA.

Take to the Air?

Drones are undoubtedly flying into the future of many design and construction projects. Over the next decade they will likely become an indispensable part of an architect's or engineer's tool kit. For now, it seems architects and engineers who wish to use drones for commercial purposes can take one of four courses:

1. File for an exemption under Section 333.
2. Subcontract the use of drones to a firm that already has obtained a Section 333 exemption for the type of work being executed.
3. Break the law and fly drones without the exemption.
4. Wait until the final Small UAS Rule is issued, supposedly in 2017.

If a decision is made to move forward with the use of drones, now or in the future, be aware of the liability issues. A wayward drone can cause both physical injury and property damage. Therefore, check your commercial general liability policy (CGL) to see whether the use of a drone would be covered.

Most CGL policies specifically exclude liability that arises out of the ownership, maintenance or use of aircraft. Work with your agent to determine the exact language of your policy and whether a drone would be classified as aircraft. If so, you may be able to negotiate an exception to this aircraft exclusion that only applies to lightweight drones used for a specific purpose or purposes. If an exception cannot be obtained, you may need to purchase a separate aviation policy to get the coverage you need.

Finally, professional liability issues could also crop up with the use of a drone. Failure to perform up to the current standard of care regarding the operation and application of the UAV and the accuracy, dissemination and use of the information gathered could lead to an errors or omission claim.

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.