



Mergers & Acquisitions

RLI[®]
DIFFERENT WORKS

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DIFFERENT WORKS

Course Description



- ✓ **Mergers and Acquisitions are on the rise.**
- ✓ **About 1 in 5 Architecture firms are involved in M&A.**
- ✓ **Engineering and Construction Industry saw a large increase in activity in 2021.**

Learning Objectives

Participants in this session will:

PART ONE:
Understand how M&A transactions are impacting the A&E space

PART TWO:
Develop a framework for understanding common transactional issues

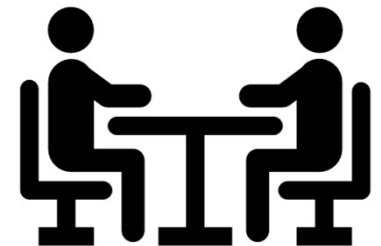
PART THREE:
Evaluate and discuss important tools and concepts to promote a successful transaction

PART FOUR:
Evaluate risk allocation in the context of M&A transactions

Underlying Theme

Underlying Theme: How professional service firms can manage transitions in management and ownership through a merger or acquisition.

M & A = Transition of ownership in an entity through some sort of transaction structure.



Hypothetical M&A

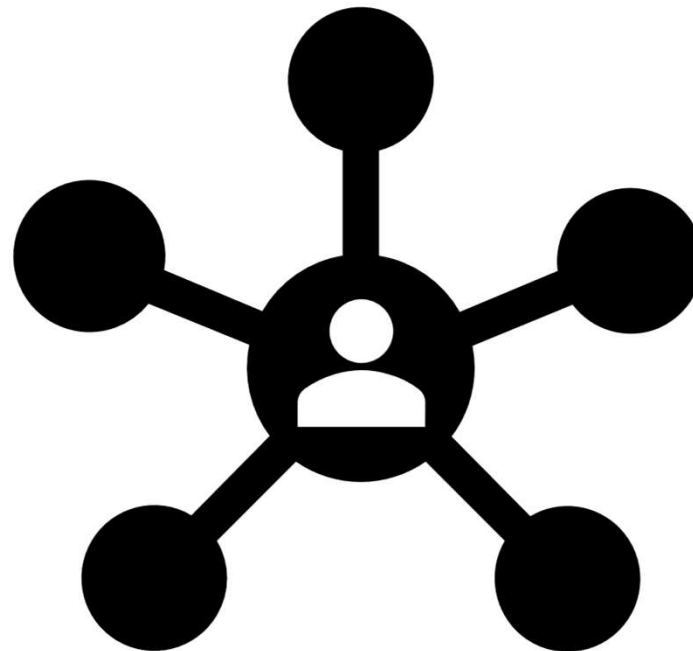
Options

Retirement

Alternatives

Sale

Competition



The Offer

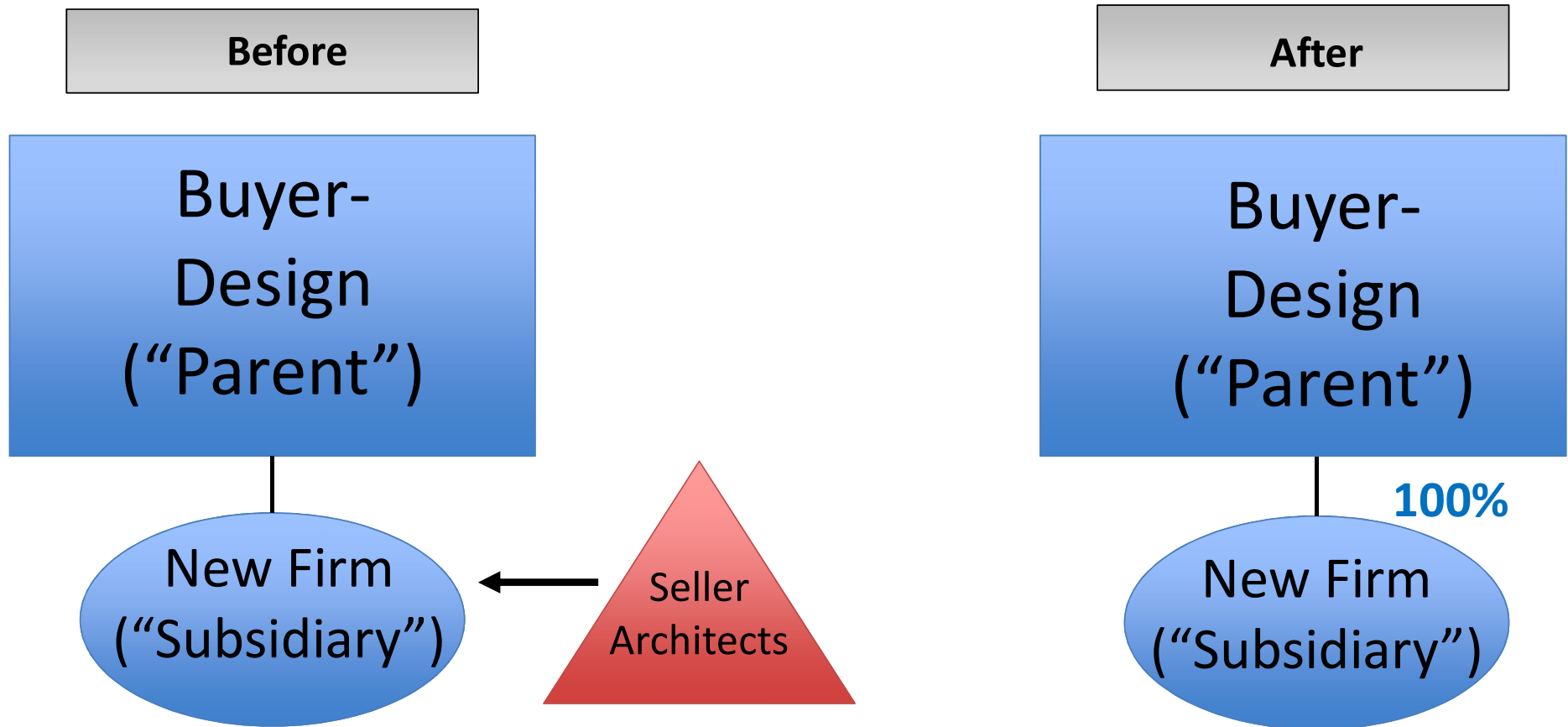
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Will you take the bait?

The Transaction



The Agreement

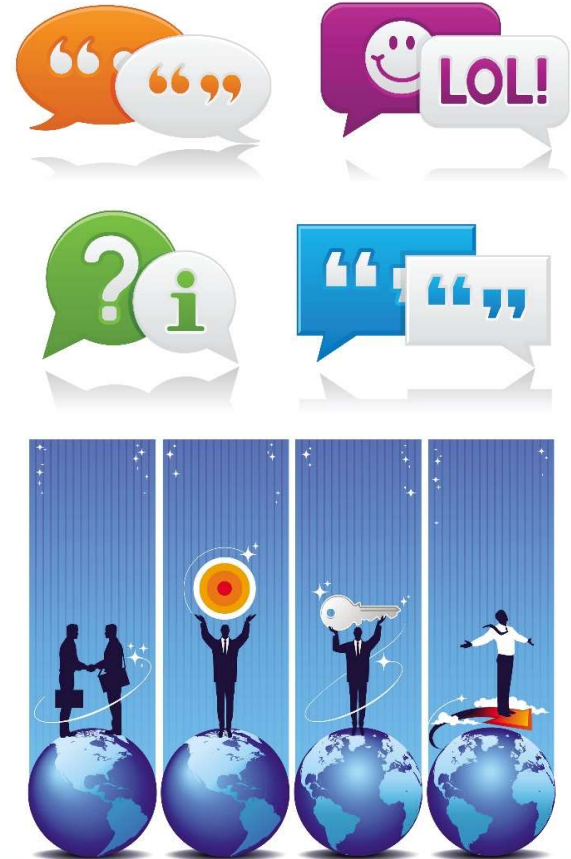


M&A Activity in Review

Two major reasons for increase in M&A transactions

(1) Succession Planning – Management Differences

(2) Larger firms seeking to advance presence in specialized areas



M&A Activity in Review

Asset Only Purchase

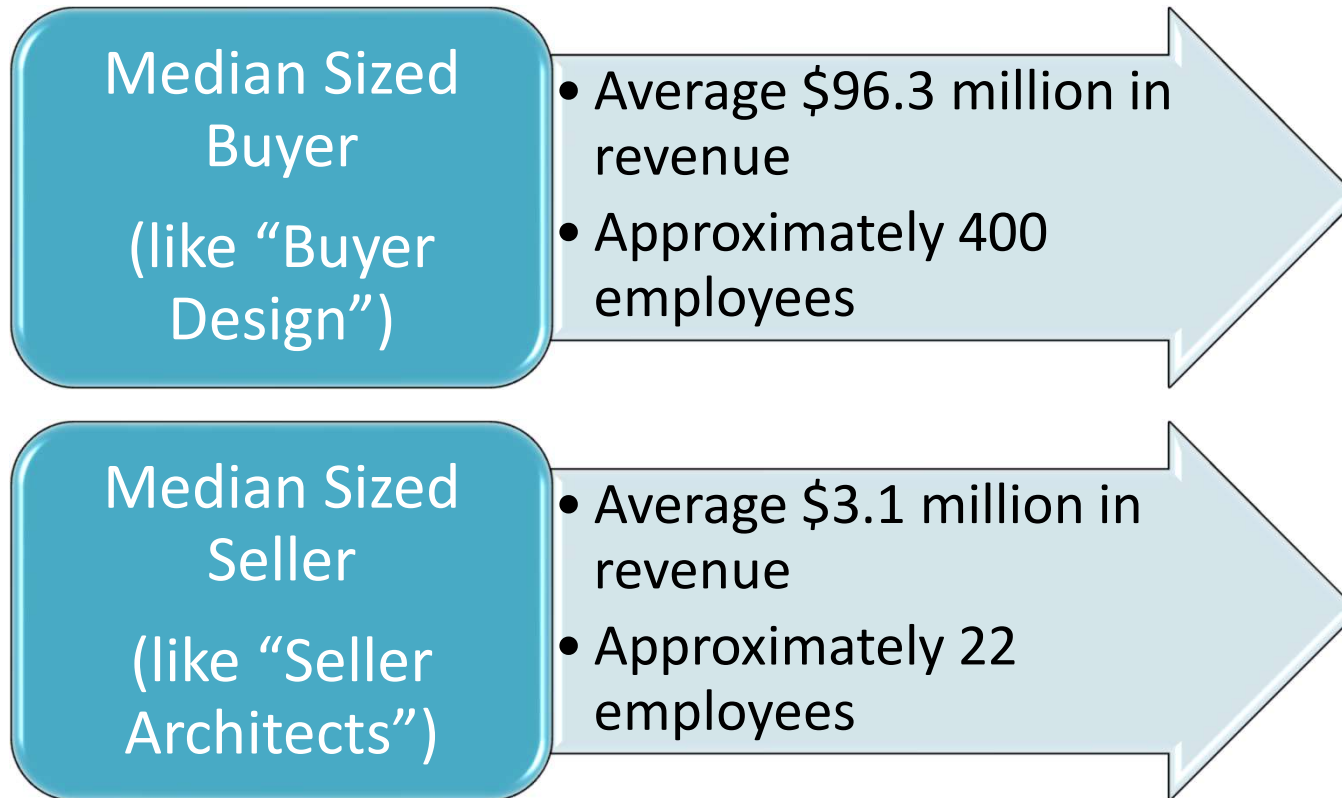
- Only the valuable assets of the acquiree are purchased.
- No past liabilities are acquired.
- Avoids uncertainty and risk associated with past liabilities of the acquiree.

Purchase of all stock/partnership interest

- Includes purchase of all assets and liabilities.
- Allows perpetuation of ongoing work, retention of staff, and rights to predecessor firms' entire portfolio of work.

Source: <http://www.morrisseygoodale.com/2015-Mid-Year-Review.html>

M&A Activity in Review

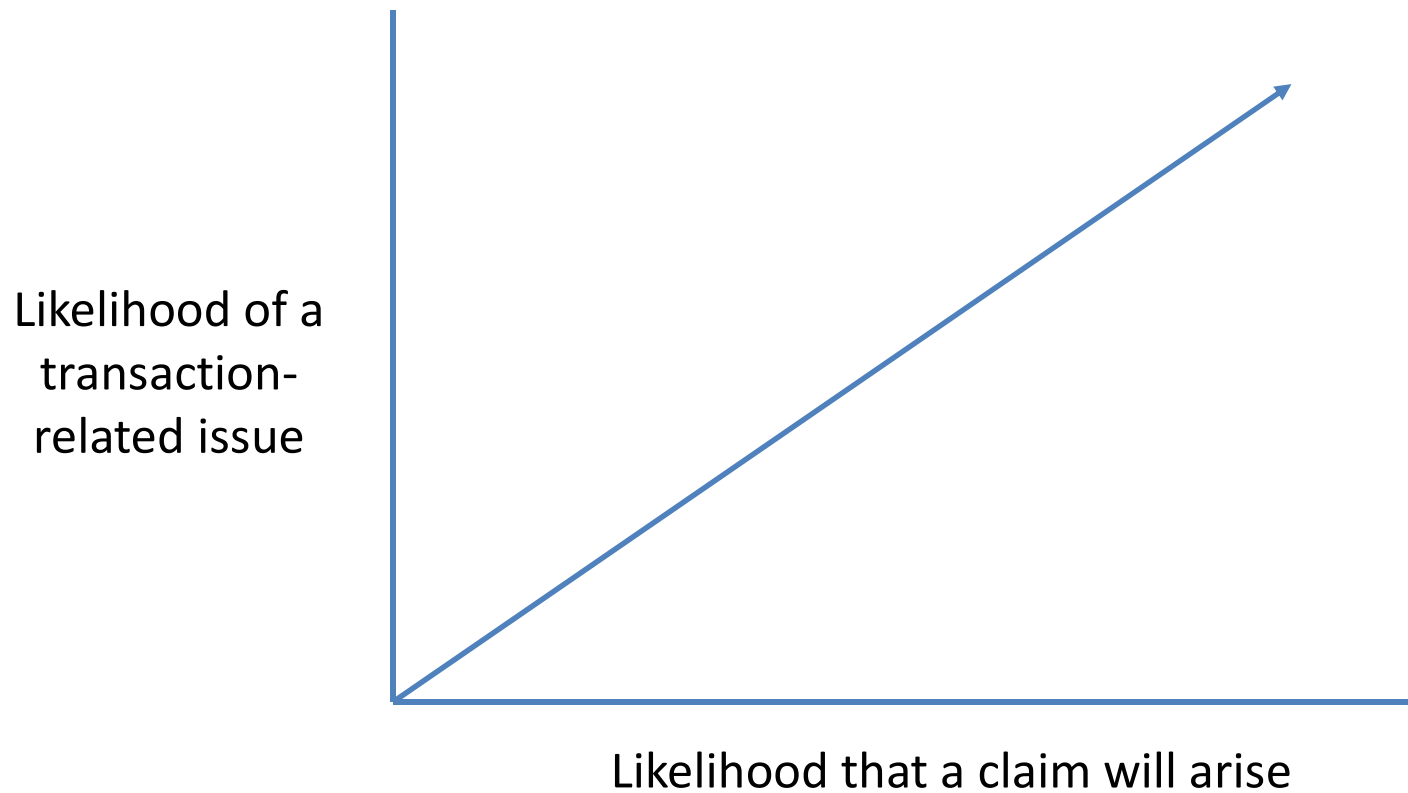


Source: [MG-M&A 2021 Infographic - Mid Year Review \(morrisseygoodale.com\)](https://www.morrisseygoodale.com)

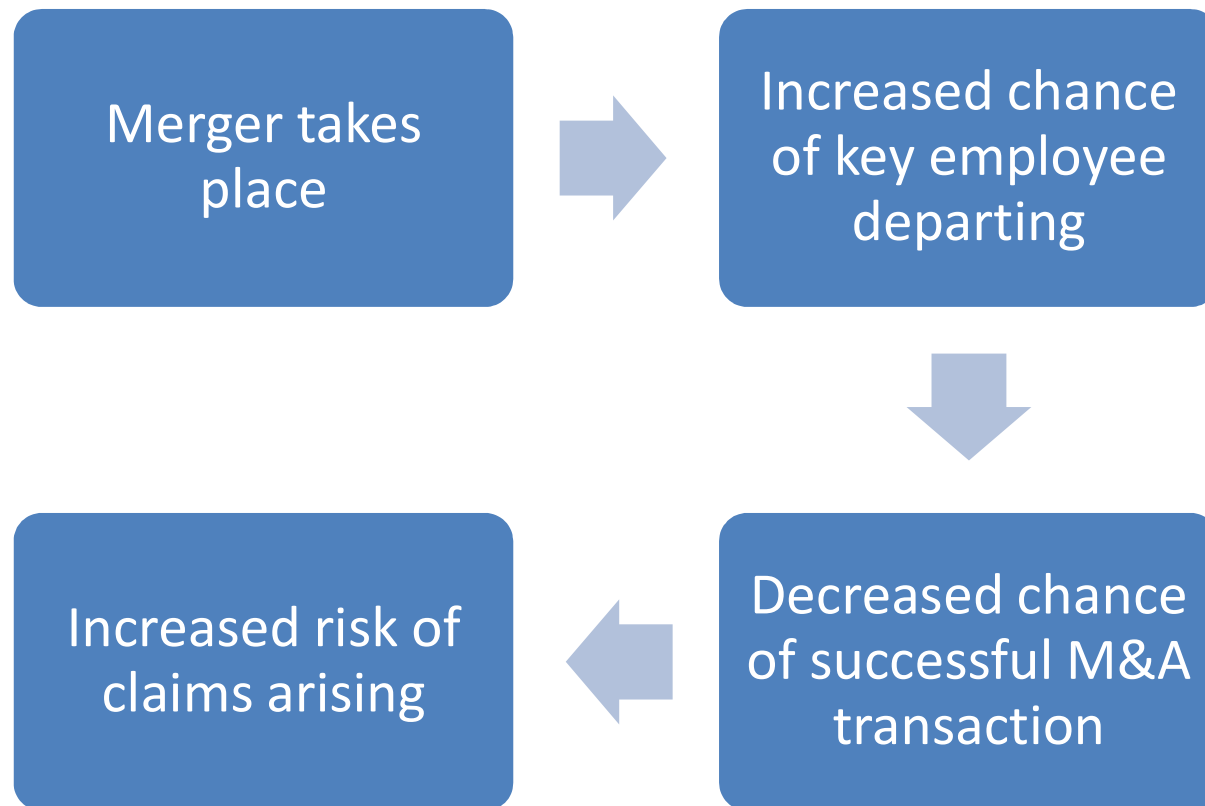
PART TWO

Building a Framework

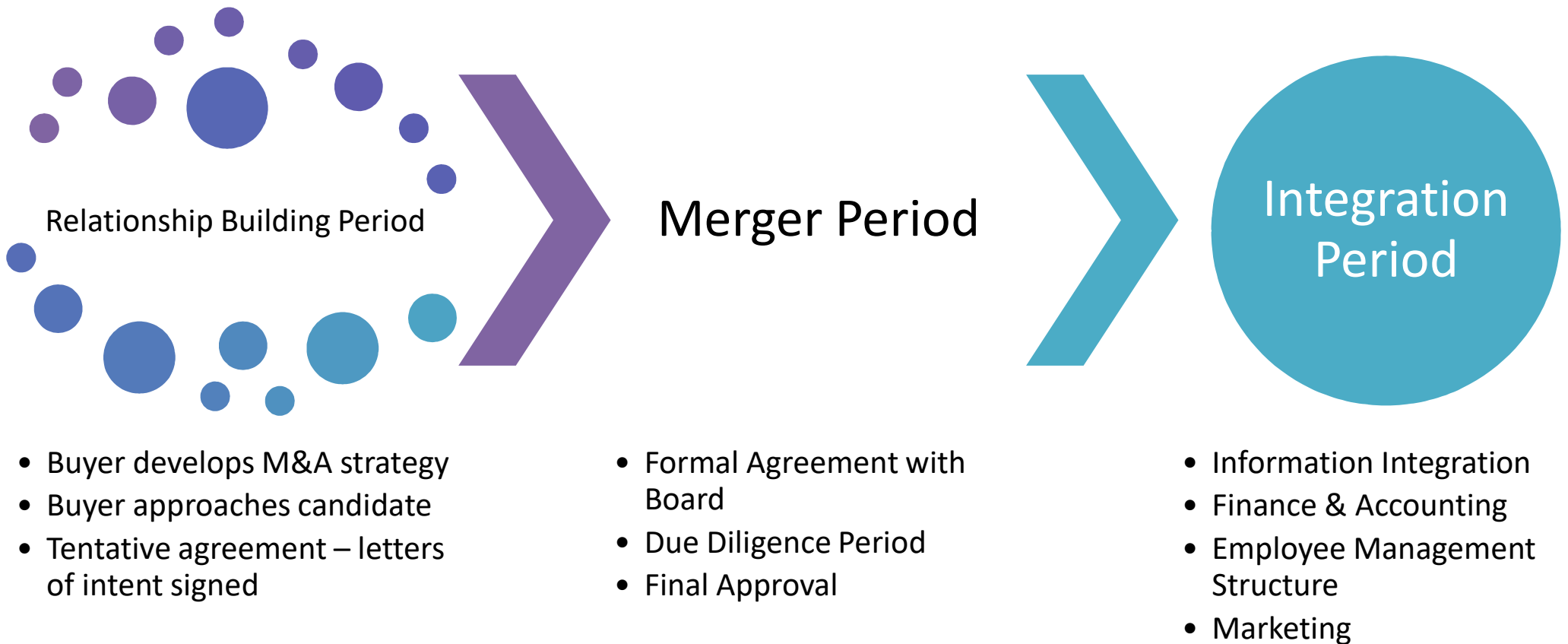
Relationship between transaction-related issues and claims-related issues



Relationship between transaction-related issues and claims-related issues

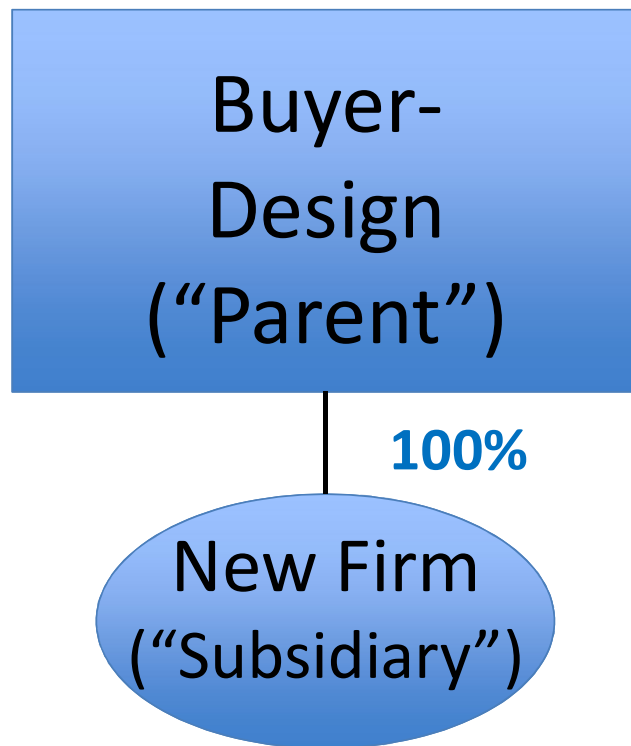


When can things go wrong?



Tools for a Smooth Transition

Problems on the horizon...

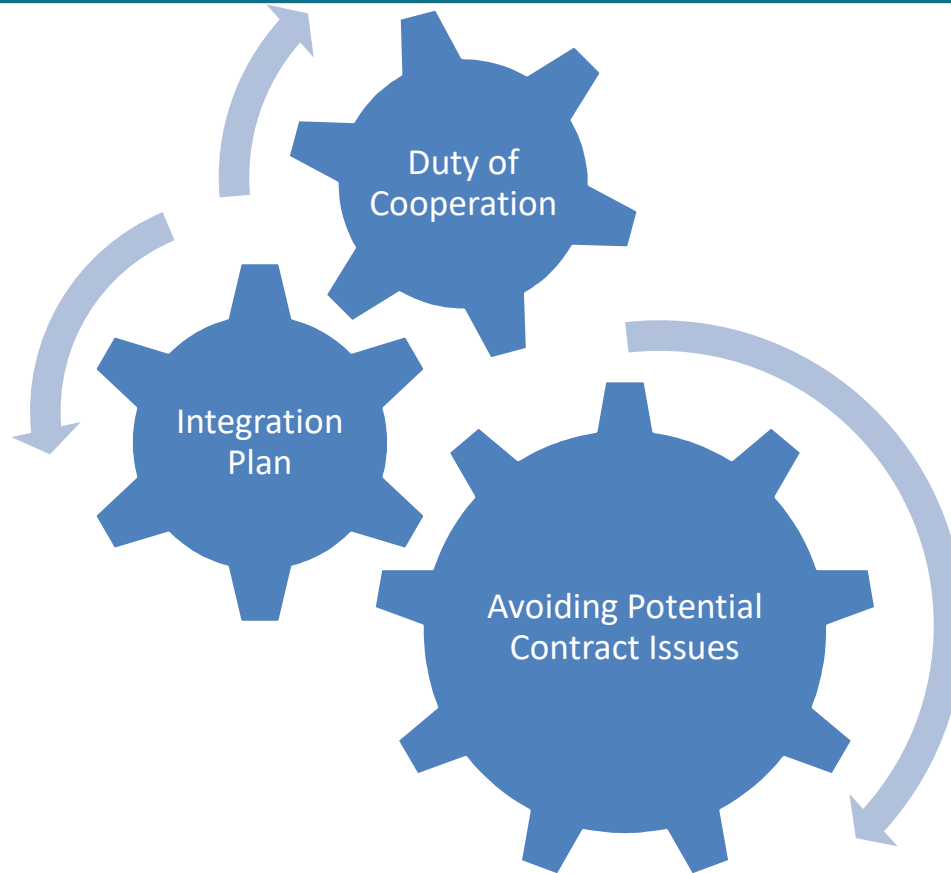


Mr. Badguy vs. ...

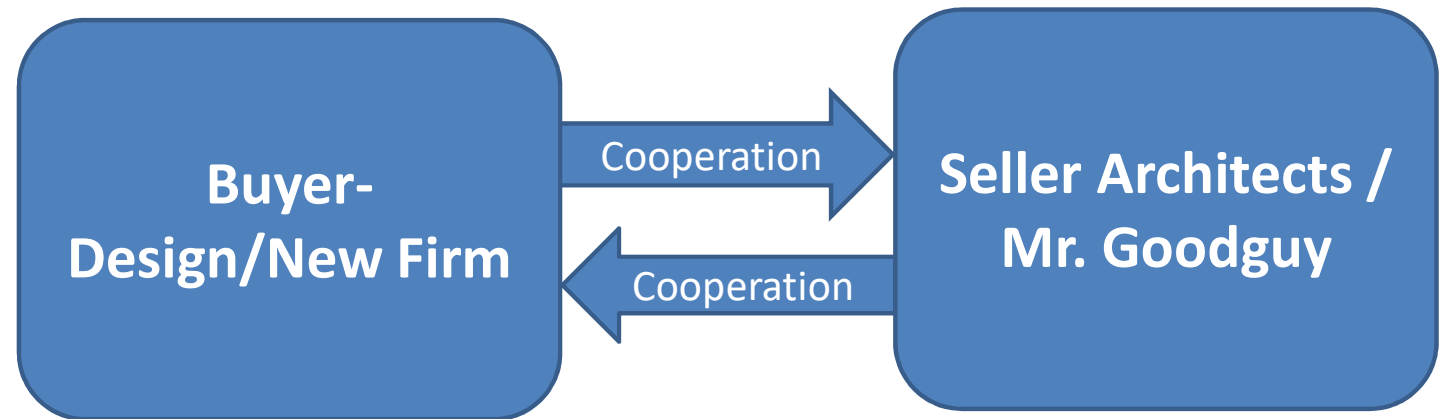
- Seller Architects
- New Firm
- Buyer Design
- Mr. Goodguy



Tools for a “Smoother Transition”

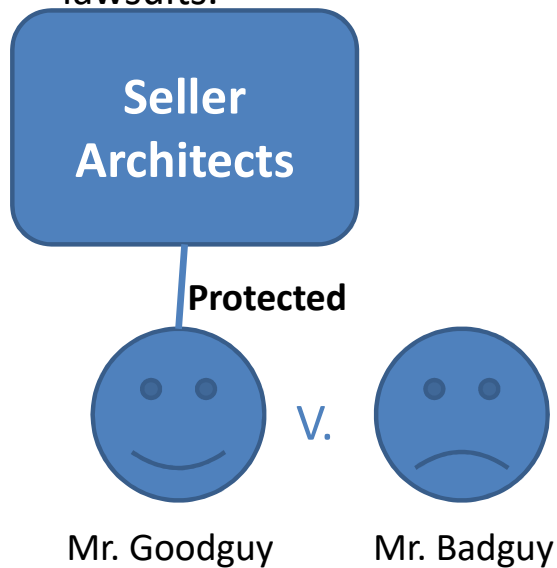


Duty of Cooperation

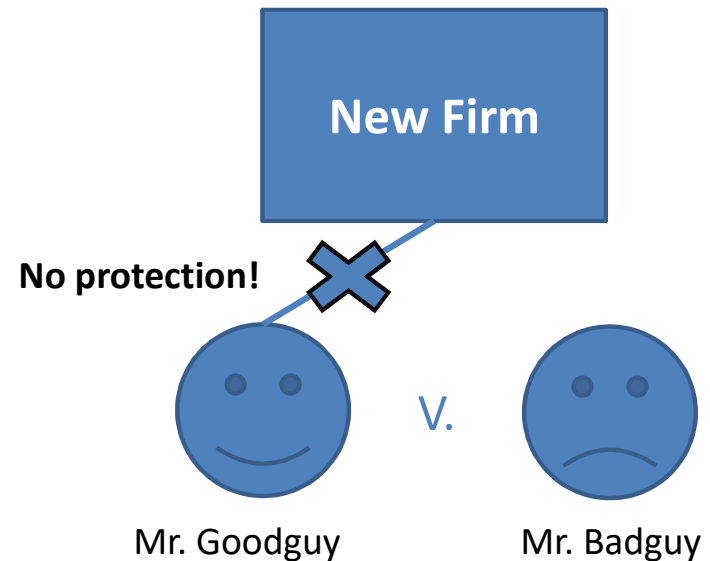


Duty of Cooperation

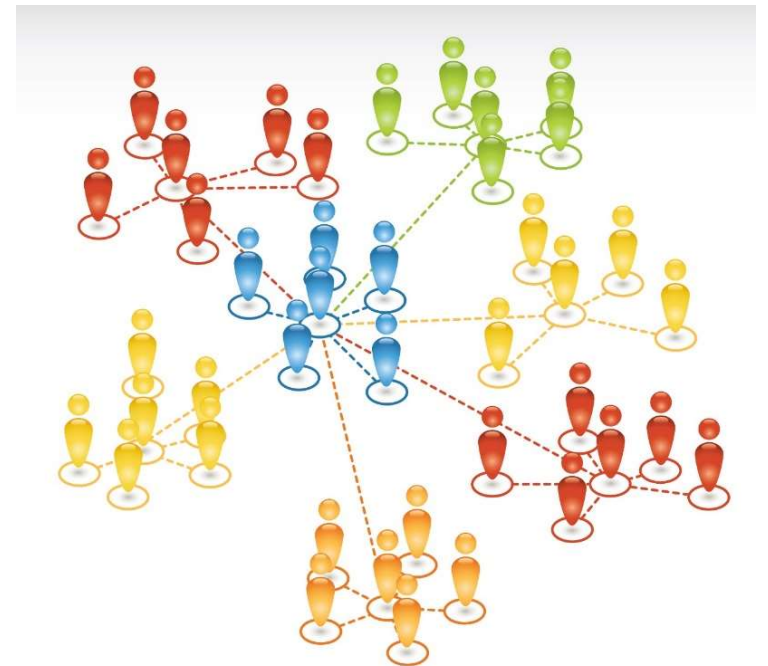
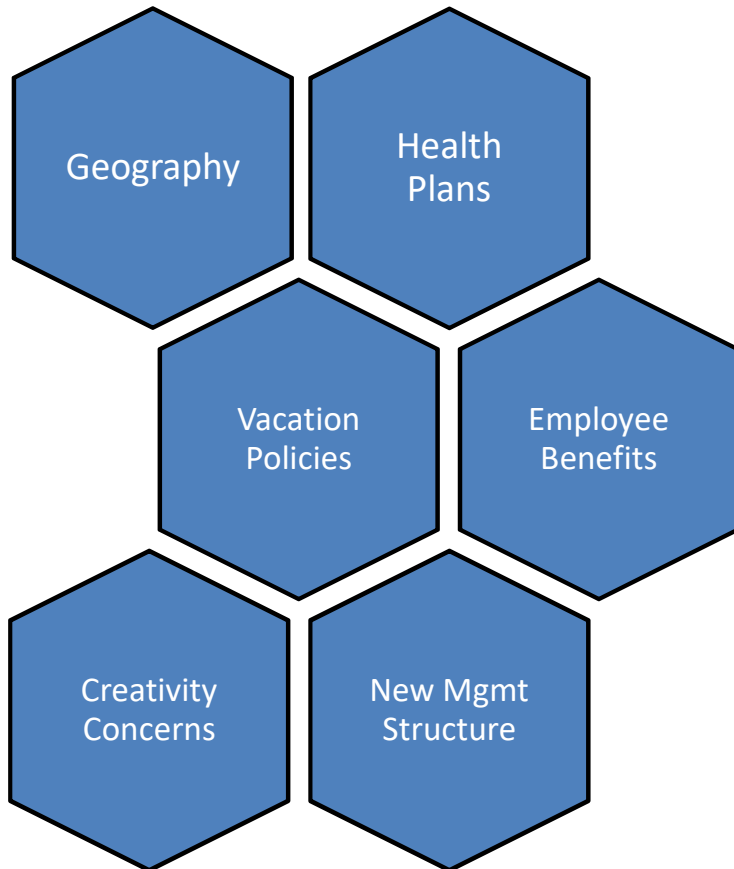
Where Mr. Goodguy has ownership in Seller Architects and/or is an employee of Seller Architects, Seller Architects will defend and indemnify him against lawsuits.



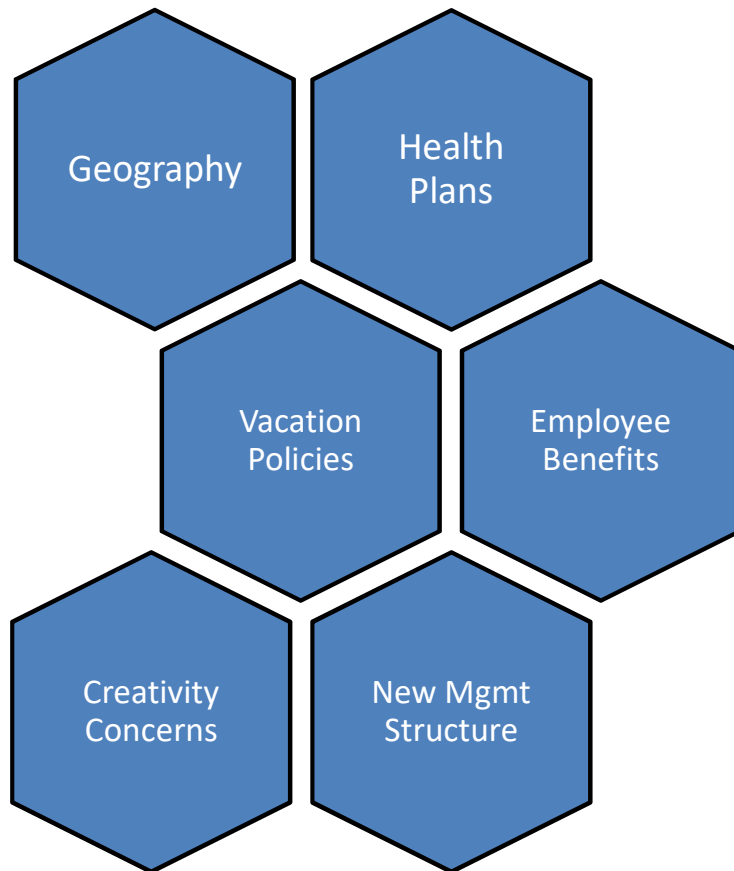
Where Mr. Goodguy has NO ownership in New Firm and/or is NO LONGER an employee of Seller Architects, New Firm has no reason to defend and indemnify him against lawsuits.



Integration



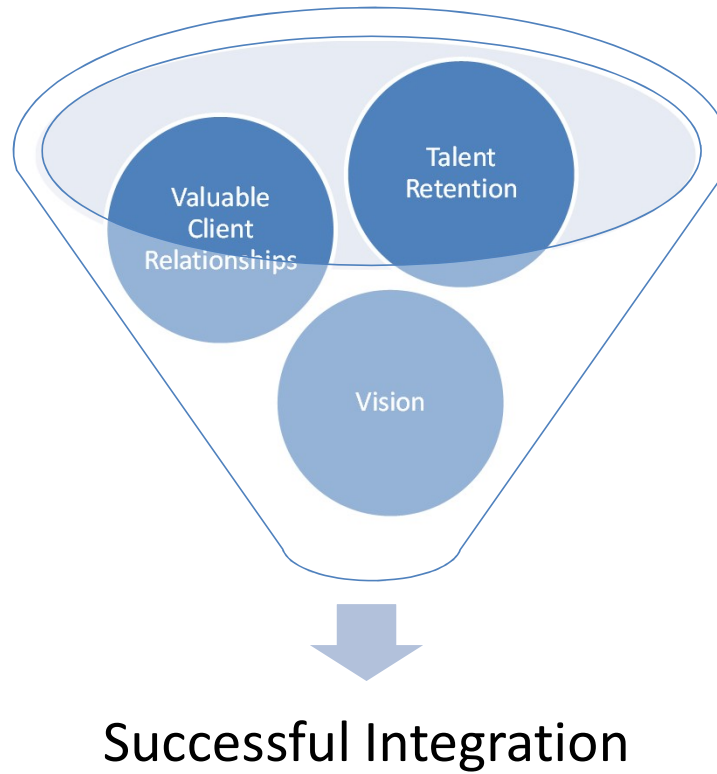
Integration



**Seller Architects: 25 employees prides itself on
“creative and innovative work”**

**Buyer-Design: 450 employees and considered
“one of the largest firms in the land”**

Integration

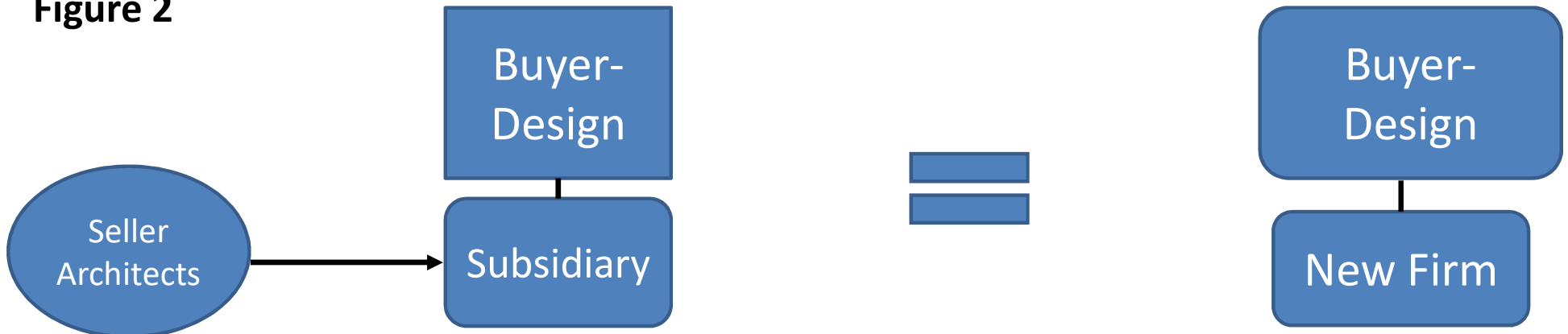


Integration

Figure 1



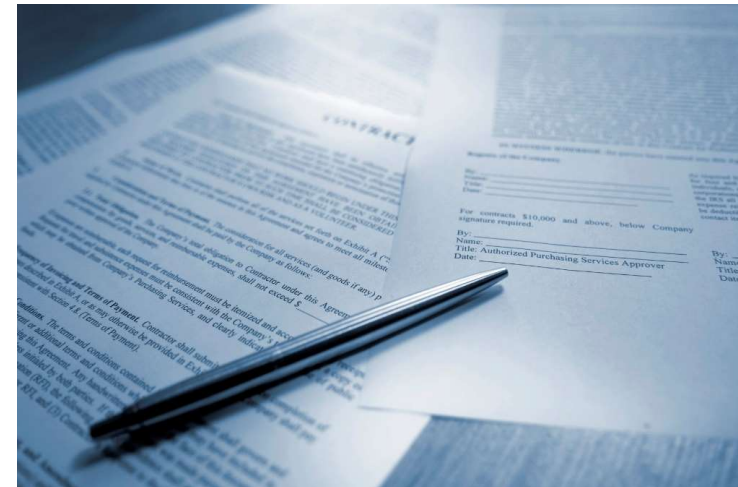
Figure 2



Assignment of Contracts

“Freely Assignable” = one party to the contract can assign, or “transfer,” the contract to a third party without obtaining the express consent of the other original party to the contract.

General Rule Regarding Assignability: Contracts are freely assignable unless the contract itself, a statute, or public policy dictates otherwise.



Assignment of Contracts

Example of a “Simple Anti-Assignment Clause”

(AIA 101)

- “The owner and architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement.”

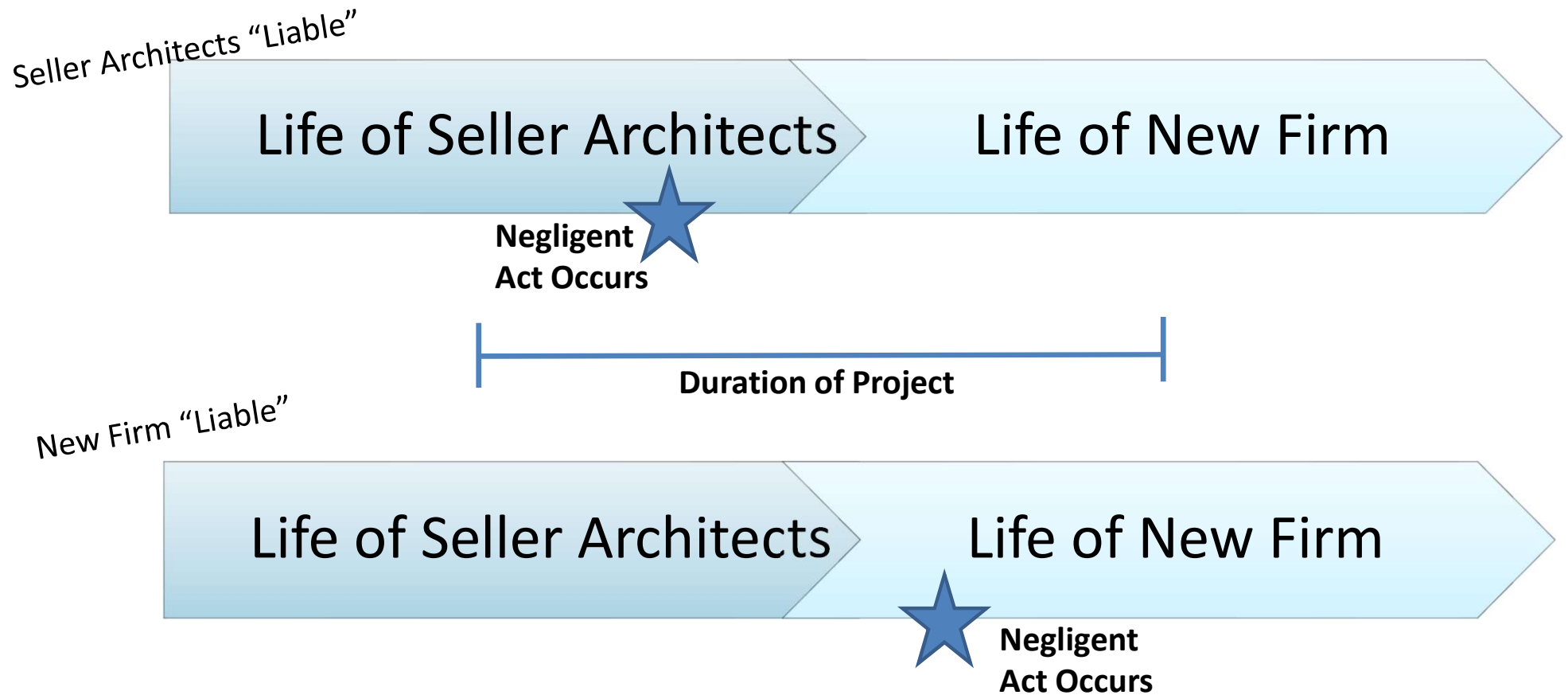
Additional Contract Issues



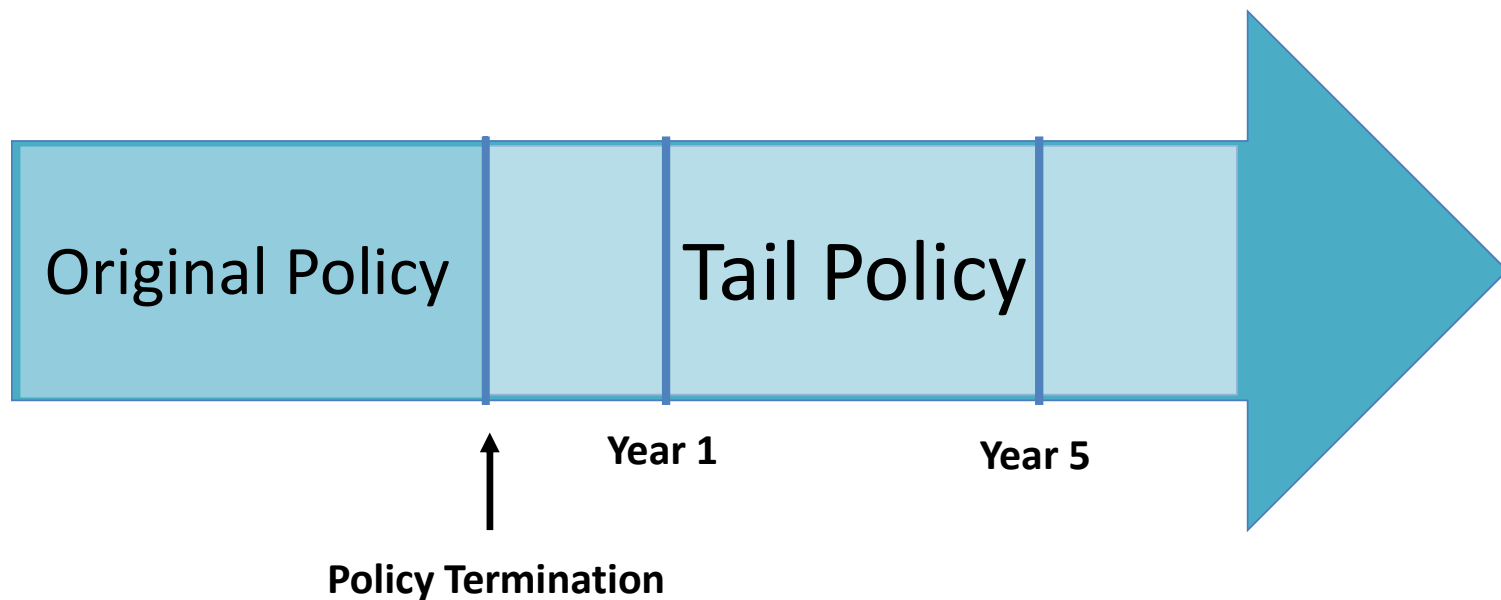
PART FOUR

Allocating Risk

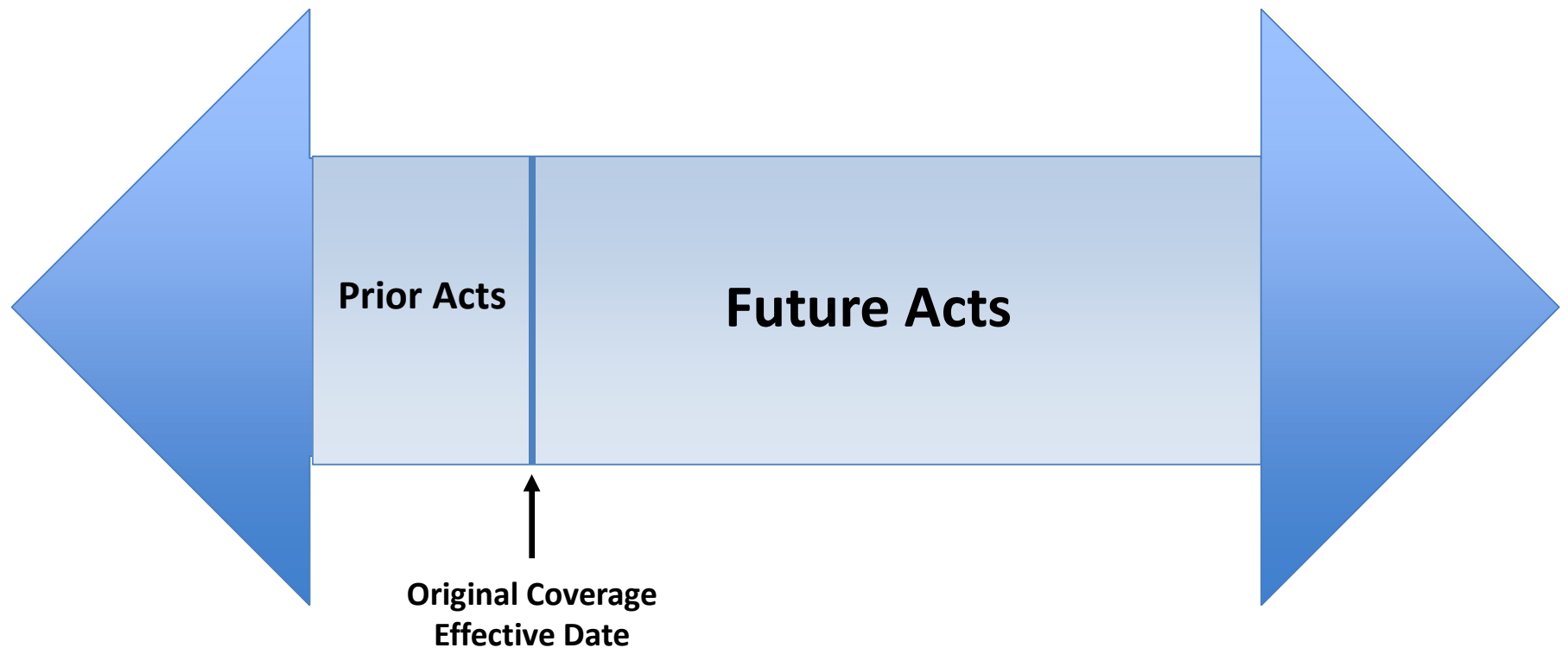
Allocating Risk



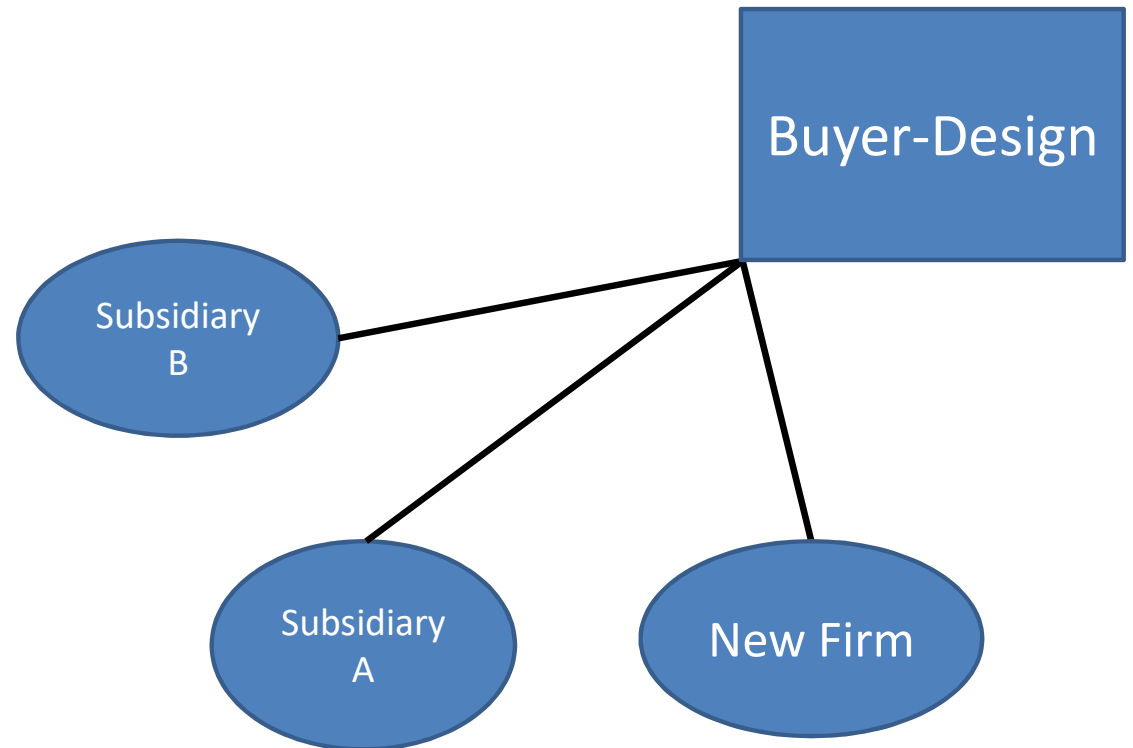
Allocating Risk: Insurance Coverage – The “Tail” Policy



Allocating Risk: Insurance Coverage – Prior Acts Coverage



Allocating Risk: Insurance Coverage – Who bears the cost?



Allocating Risk: Asset-only purchases and indemnification

Indemnification = (1) Holding harmless, (2) paying on behalf of and (3) making whole.



Assets

Current Assets

Cash.....10
Acc. Rec.....50
Prepaid Ins.....40

Property

Land.....5
Buildings.....10
Equipment.....7

Liabilities

Current

Notes payable.....2
Accounts payable...3
Unearned rev.....4

Stockholders' Equity

Common stock.....5
Retained earnings...5

Allocating Risk: Indemnity and Financial Guarantees

Understand how M&A transactions are impacting the A&E space



Develop a framework for understanding common transactional issues



Consider important tools for promoting successful transactions



Evaluate risk allocation in the context of M&A transactions



Thank you for your time!

QUESTIONS?

This concludes The American Institute of Architects
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