

Ask Vic!

Q: I often have trouble collecting my fee from my clients. Should I be concerned? If I'm aggressive in trying to collect my fee, I'm worried that my client will claim that my services were inadequate.

A: You should be concerned! One of the most valuable proactive risk management tools at your disposal is a process for collecting fees when due. After all, receiving payment for services in a timely manner is essential to the financial health of your business. When your firm is financially sound, there is less "temptation" to cut corners in order to save on cost. Cutting corners may result in poorly performed services, which may lead to claims. Establishing and enforcing contractual payment provisions can help you avoid professional liability claims.

Your firm is a cash-flow operation. You are not in a position to finance your services to your clients. It will be difficult for your firm to remain profitable if you allow clients to dictate all payment terms or write off a significant amount of professional time on projects.

You can preserve your right to payment, reduce the need to surrender part of your fee, and avoid the time, deductible costs, and insurance impact of "retaliatory claims" from your client.

Retaliatory professional liability claims are sometimes in response to attempts by you to collect your fee. To protect yourself from such claims, you should execute written agreements with your clients containing:

- Payment terms;
- A schedule when payments should be made; and
- Clear invoicing and collection procedures.

Enforcing the contractual right to payment should be considered a key practice management procedure. Focus on the following:

Evaluate whether fee collection may be a problem

During the risk analysis stage of a prospective project, you should routinely check the financial capability of the client. The client selection process works best if you understand the availability of funds for the services to be performed. Looking at the client's history with other firms, the client's internal systems, and payment authorization procedures can indicate how long a client takes to pay its bills and the likelihood that fees might go uncollected when due. Clients such as homeowners may not have internal systems or payment procedures, but the need to evaluate this client's ability to timely pay for services is equally important.

Establish payment terms in a written agreement

Oral agreements create problems. Collecting the appropriate payment for services can be difficult unless a written agreement exists. The agreement should carefully tie the fee to measurements that are understood by the client and documented by you. Unclear or unspecified payment terms and untimely billing and collection often generate disputes.

Where appropriate, a contract should also clearly state who is authorized to approve payments on behalf of your client and to increase the scope of services.

While the basis for payment can vary from hourly to value-added, the application of the fee system should be documented.

Equally important to a contract's payment terms is the consistent and timely enforcement of such terms. Invoices should be submitted consistently and within the time frame indicated in the agreement. Failure to properly invoice clients for payment or to consistently enforce other payment terms may be used against you in an action to collect your fee.

Retain control over services and deliverables

You should retain the right to the project documents at least until all fees are paid. The right to suspend your services if payment is not received according to the contractual obligations of the client is essential.

Avoid financing the client by requiring a retainer

This is a basic element of good business practice. You should be careful in negotiating the specifics of a termination for the client's convenience provision, including who has control over the documents in progress and whether lost profits are recoverable.

Avoid giving the client the right to withhold payment

Increasingly, firms are faced with clients who want to be able to withhold fees on an arbitrary basis, with no independent

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