

Ask Vic!

Q: I've been told that failure to collect fees for professional services in a timely fashion can lead to trouble. Is this true? What should I do if my client does not pay me when invoiced?

A: One of the most valuable and proactive risk management tools a surveyor possesses is the ability to collect fees. Receiving payment for services in a timely manner is essential to the financial health of a business. By establishing and enforcing contractual payment provisions, firms may be able to avoid professional liability claims. Retaliatory professional liability claims from clients sometimes result from attempts to collect fees. Executing written professional services agreements and enforcing the payment terms of that agreement can help surveyors preserve their right to payment, reduce the need to surrender part of their fee, and avoid the time and insurance impact, including deductible cost, of retaliatory claims. The written agreement should contain payment terms, a schedule when payments are to be made, and clear invoicing and collection procedures.

Evaluate Whether Fee Collection May Be a Problem

During the risk analysis stage of a prospective business arrangement, successful firms routinely check the financial capability of the client. The client selection process works best if the firm can determine the availability of funds for the services to be performed. Looking at the client's history with other firms and payment authorization procedures can indicate how long a client takes to pay bills and the likelihood that fees might not be collected when due. This may be difficult when working with individual residential property owners, but a discussion regarding timely payment for services or the ability to obtain a retainer can indicate a client's ability and willingness to pay in a timely fashion.

Establish Payment Terms in a Written Agreement

Collecting the appropriate payment for services can be nearly impossible unless a written agreement exists. The agreement should carefully tie the fee to service measurements, such as completion of collection of field data, which can be understood by the client and documented by the firm. Unclear or unspecified payment terms and untimely billing and collection often generate disputes. The contract should also clearly state who is authorized to approve payments on behalf of the 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.

Retain Control Over Services and Deliverables

Firms should retain the copyrights to their surveys and other prepared documents, at least until all fees are paid. It is essential for surveyors to retain the contractual right to suspend services if payment is not received according to contractual obligations. Firms that accept a termination for the client's convenience

provision should be careful to negotiate the specifics of such an option, including who has control over the survey and other 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 finding of fault. Fee negotiations can be rendered meaningless if a client can withhold professional fees to a firm at the client's discretion. Remember that any client-drafted provision that empowers the client to make a unilateral determination of fault or responsibility for damages creates a business risk. Professional liability insurance is intended to respond to allegations of professional negligence. The withholding of fees is not the same as a demand for money or services that would trigger professional liability insurance coverage, meaning that the surveyor would not be covered should a dispute arise over a no-fault provision.

Develop a Collection Strategy

The professional services agreement should contain appropriate payment terms, a payment schedule, and invoicing procedures. Firms need to have a system for pursuing unpaid balances and resolving payment problems. A collection strategy should incorporate contractual language, such as the charging of interest on late payments and the suspension or termination of services for payment defaults. Such a collection strategy must be followed consistently.

A collection strategy can be used at all stages of the billing process. The strategy should include:

- Frequent communication with the client;
- Timely and accurate billing; and
- Invoice procedures that meet the client's information needs and accounting requirements.

Some firms include contractual language that allows them to collect legal fees if they have to pursue collection through litigation. Such "prevailing party" provisions, however, often work against the firm when a retaliatory claim is filed. The threat of having to pay the client's legal fees if a claim is lost can result in coercion that ends up causing greater loss than the write-off of the fee. Additionally, such contractual obligations are not within the scope of professional liability insurance coverage. Researching a client's history, incorporating contractual language that details fees and procedures, and following practice management procedures that carry out the fee collection process is basic to a firm's viability and professional liability risk management.

[Do you have a question regarding an insurance or practice management issue? Email your question to AskVic@Schinnerer.com and look for your answer in a future issue of the ACSM Bulletin. Victor O. Schinnerer & Company, Inc., is the underwriting manager for the CNA professional liability program. Schinnerer and CNA have been the commended program of the American Congress on Surveying and Mapping since 1965.]

