



Ask Vic!

Q: Our firm doesn't have enough projects coming in to support our personnel. I've toyed with the idea of retiring for some time now, and it seems like this is the time to do it. Is there anything that I need to do to cover myself? My partner in the firm intends to continue practicing.

A: How a surveyor handles the process of winding down a practice depends on the structure of the firm. For a sole proprietorship, this would mean the end of the firm. For a partnership, one or more partners may continue on under the same name or as a new entity. A corporation might replace the retiring principal with a new surveyor and continue on as before, or dissolve entirely.

If a surveyor is providing services through a corporation, the dissolution of the corporation does not end the professional liability exposure. Professional liability may be attributed to the licensed owners throughout the period of the statute of repose because dissolution does not extinguish the potential for claims. There is a need to maintain insurance coverage for potential exposure to personal liability that attaches to a surveying practice.

Within the surveying profession, dissolutions most frequently occur in partnerships. The liability of partners is, almost without exception, joint and several. Thus, either one or both can be held liable for the wrongful acts, errors, or omissions arising out of the partnership practice. The questions that need to be addressed are much the same as in mergers and acquisitions.

WINDING DOWN A PARTNERSHIP PRACTICE

The activities of the partners after the dissolution must be examined. If all partners intend to retire and cease practice, then there are two distinct possibilities: the purchase of "retired partners'" coverage, or, the continuation of the policy in existence at the time of the dissolution.

Purchasing a retired partners' policy secures protection from claims arising out of the partners' past performance of professional services. Such a policy covers the principals and any former employees.

If the firm instead maintains the existing practice policy, this will also protect any employee for the covered acts, errors, or omissions committed in the performance of professional services on behalf of the dissolved firm.

SEPARATING A PARTNERSHIP INTO ONGOING PRACTICES

Often in partnership dissolutions, the individuals constituting the partnership intend to continue practicing separately. Dis-

solutions in this scenario can be amicable or quite antagonistic. If amicable, the question of coverage for prior acts can be easily managed by one of the following options:

- One of the individuals continuing in practice can name the dissolved partnership on its new policy. Any deductible obligation for claims arising out of services performed by the dissolved partnership will thus become the obligation of the former partner's firm continuing coverage in its own name.
- The individual principals of the dissolved partnership can each purchase policies for their respective practices. These new policies can cover their individual exposures from the previous firm. To maintain coverage for claims arising out of the services performed by the partnership, the principals can agree on a specific list of projects for which each is willing to respond. In order to operate efficiently, any such list must be clear and all inclusive. In an antagonistic dissolution of a partnership, special care must be taken to recognize and accommodate the continuing professional liability risks for past services.

RETIRING PRINCIPALS

Mergers or acquisitions often happen as a result of principals wishing to retire and using their ownership in a firm as a means to fund that retirement. Recognizing the personal exposure surveyors have for their surveying services, the merger or acquisition agreement may require the ongoing entity to maintain coverage for the retiring principals for five years. This five-year renewable policy is not a problem if all predecessor firms are named. It may also be that the agreement requires notice to the retiring principals in the event of cancellation, non-renewal, or reduction of limits by endorsement.

Another option is to purchase a separate policy to cover the continuing exposures of the retiring principal. In the merger agreement, a five-year policy may be purchased to cover the services provided by the retiring principal while at the merged firm. These policies for past services are renewable. ■



Do you have a question regarding an insurance or practice management issue? Email your question to AskVic@

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