



Ask Vic!

clients sometimes result from attempts to collect fees. Firms should execute written agreements with their clients which contain payment terms, a schedule when payments are to be made, and clear invoicing and collection procedures. Enforcing the contractual right to payment should be considered a key practice management procedure. Below are some aspects of that procedure you may want to revisit.

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 understands the availability of funds for the services to be performed. Looking at the client's history with other firms, internal systems, and payment authorization procedures can give an indication of how long a client takes to pay bills and whether there is likelihood that fees might not be collected when due.

Establish payment terms in a written agreement

Oral agreements create problems. Collecting the appropriate payment for services can be nearly impossible unless a written agreement exists. The agreement should carefully tie the fee to measurements that can be understood by the client and documented by the firm. Unclear or unspecified payment terms and untimely billing and collection often generate disputes. A contract should clearly state who is authorized to approve payments on behalf of the client and increase the scope of services. While the basis for payment can vary from hourly to value added, the fee system to be applied should be documented.

Retain control over services and deliverables

Surveyors should retain the right to the project documents at least until all fees are paid. The right to suspend the firm's services if payment is not received as stipulated by the client-signed contractual obligations is essential. Avoid financing the client by demanding a significant retainer. This is a basic element of good business practice. Firms which accept termination of the client's convenience provision should be careful to negotiate the specifics of such an option, 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, surveying firms are faced with clients who want to be able to withhold fees on an arbitrary basis, with

Q: Some of our clients have cited the current economic conditions in delaying payment. A few of our clients have not paid their outstanding invoices for over four months and I am considering writing off these invoices. Do you have any suggestions on what we can do to make sure that our clients pay us on time?

Receiving payment for services in a timely manner is essential to the financial health of a business; the ability to collect fees is one of the most valuable proactive risk management tools a surveyor has. Establishing and enforcing contractual payment provisions can help a firm avoid professional liability claims, but it is important to remember that surveying firms are cash-flow operations. They are not in a position to finance their services to clients. No firm would stay in business for long if it allowed clients to dictate payment terms or write off a significant amount of professional time on projects.

Firms can preserve their right to payment, reduce the need to surrender part of their fee, and avoid the impact retaliatory claims can have on time, deductible costs, and the insurance. Retaliatory professional liability claims from

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no independent finding of fault. Fee negotiations will be rendered meaningless if a client can withhold professional fees to a firm at the client's own discretion.

Remember that any client-written 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.

Develop a collection strategy

The professional services agreement should contain appropriate payment terms, a payment schedule, and invoices that follow that schedule. If a firm does not have a system of pursuing unpaid balances or of resolving payment problems, it is increasing its financial and professional exposures. A collection strategy should incorporate contractually provided steps, 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 so that there are no surprises to either party;
- Timely and accurate billing; and
- Invoicing procedures that meet the client's information needs and accounting requirements.

Some surveying 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 can result in coercion that ends up causing greater loss than the write-off of the fee. Such contractual obligations are not within the scope of professional liability insurance coverage.

Conducting research into a client's history, developing contractual language which details fees and procedures, and practicing management systems which carry out the fee collection process are basic requirements to ensuring firm viability and professional liability risk management.



Do you have a question regarding an insurance or practice management issue? Email

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