

# Ask Vic!

—by Nahom A. Gebre, Esq.

**Q:** *Increasingly, our clients are asking us to sign certifications which specifically require that the certification be issued to our client and the client's "successors and assigns." I want to know the implications of adding the words "successors and assigns," and if it affects the scope of coverage of the professional liability policy.*

**A:** As a general rule, surveyors can appropriately sign only those certification statements that are accurate, contain appropriate qualifying language, and relate to conditions within the surveyor's knowledge or control. It is ill-advised to sign any certificate that would extend the surveyor's exposure beyond intended parties or certify conditions beyond the surveyor's control.

When a surveyor undertakes to certify that something has or has not been completed in the appropriate manner, the client has the right to rely on the professional knowledge and skill of the surveyor in making that certification. A surveyor should be certain that what is being certified is consistent with the services rendered. The surveyor must also avoid providing a certification that goes beyond the scope of services for which the surveyor was retained and must avoid making the certification an unqualified statement of fact.

Contract negotiations between the surveyor and client, therefore, represent the prime opportunity to communicate with the client. It is important that the intention to expand the universe of entities that can rely on the certification to successors and assigns be addressed in the professional service agreement; this simple step helps you to analyze the implications of issuing a certification that includes "successors and assigns" as entities that can rely on the certification.

The two most important criteria in limiting certification liability are the specification in writing of the purposes for which the survey is being made and the standards by which the services will be performed. Any statement of the accuracy of the survey should be based on the standard used for the specific professional service provided. Certifications should not be thought of as isolated, after-the-fact recordings. The contract a surveyor negotiates with its client and the survey and certification of that survey must be in accord. The surveyor's contract should include:

- A description of the service to be provided;
- The purpose for which the survey is being made (including a statement of understanding by the intended user of the instrument of service to be used);
- Designation of the professional standards to be met;
- Recognition in the fee that if parties other than the client are allowed to rely on the certification, the surveyor is compensated for the additional exposure; and
- A statement declaring that the resultant certification is not a guarantee or express warranty, and that the survey is based on observations made by the surveyor. The certification relates the professional opinion of the surveyor based on the data presented.

A certification statement that includes "successors and assigns" expands the universe of entities that can rely on the certification. This means that the number of parties who can bring a claim against the surveyor is greater and that the potential claimant is not known at the time a certification is issued. Furthermore, surveyors often rely on information provided by their client to complete their services. When a claim relating

to the services is brought by a successor or an assignee, it may be difficult to present a robust defense since the original client is now a third party to the litigation and therefore may not be readily accessible. Surveyors should therefore consider these implications and, to the extent possible, charge fees that reflect the potential additional liability exposure that comes with adding the terms "successors and assigns" to the certification statement.

It is important to note that using the terms "successors and assigns" does not affect the scope of coverage of the professional liability policy. The professional liability policy provides coverage for negligence in the performance of professional services. If the services underlying the certification statement did not meet the standard of care, and the party alleging negligence can show that as a result of the negligence they suffered damages, then the professional liability policy will respond. Prudent risk management requires that surveyors carefully examine the implications of adding the words "successors and assigns" to a certification statement.



Do you have a question regarding an insurance or practice management issue? Email your question to [AskVic@Schinnerer.com](mailto:AskVic@Schinnerer.com) and look for your answer in a future issue of ACSM's 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. ■