

Communication: The Key to Avoiding Claims

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The quality of communication between you and your client is perhaps the single greatest determinant in whether your project will result in a claim.

Today, when projects are scarce, profit margins are thin, and client expectations are high, frequent communication is more important than ever. Fortunately, you can anticipate and avoid many potential project upsets by correcting the factors that lead to miscommunication between design professionals, their clients, and other members of the design and construction team. The need for effective communication starts before the beginning of the project.

Communicate Early

Never overestimate a client's knowledge of the design services you intend to provide on his or her proposed project. Indeed, don't assume even a sophisticated client understands the full scope of professional services provided by an architect, a civil engineer, a structural engineer, and so on. It is your responsibility during the earliest stages of bidding and negotiations to explain to your client exactly what services you will perform and – equally important – what services you will not perform on the project for the negotiated fee.

Likewise, make it clear during the earliest stages of negotiations that no design firm has ever executed a perfect set of plans or ever completed a project without error or omission. Similarly, there are no foolproof materials or systems, despite any guarantees or



warrantees given by equipment manufacturers. Clear communication can make sure your clients have the information and expectations they need to understand your responsibilities and liabilities regarding your scope of services.

Clients, especially those new to the design and construction process, often get upset when you add items to your specifications after the initial design and budget is accepted. They may perceive add-ons as a sign of incompetence or even an unscrupulous attempt to increase your fees and profits. Make it clear up front that your estimates and specifications are based on your opinion of probable cost and subject to modification once the project commences. Your client needs to be educated to expect reasonable changes and budget revisions as a normal part of the design and construction process.

Communicate Often

All important design and construction issues need to be communicated clearly before you accept and begin a new project. From the earliest conceptual stage, through the refinement of your work scope, through the negotiation of your contract, through the development of your final

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design, and into construction, make sure you communicate every step of the way.

Also make sure this communication is two-way. Have your client clearly explain his or her desires, needs and expectations. Discuss the client's ability to handle a few surprises in budget and schedule. Set up a formal communication channel between you and designated client representatives so that any errors, omissions, delays, changes, and other problems and surprises are conveyed quickly and dealt with swiftly and constructively with the intent to fix the problem rather than fix the blame.

Similarly, make sure communication channels are open with the contractor, subconsultants, and other parties important to the project. In fact, it's a good idea to invite all parties to a pre-construction meeting to review plans and procedures as well as clarify roles, expectations, communication channels, and methods of reaching problem resolution. It is really quite amazing how much a little open communication can do to get a project off to a smooth start or help get it back on track if a problem occurs.

Put It in the Contract

Every important decision made by you and your client during negotiations needs to be documented in a written professional services contract. Discussing your areas of responsibility and limits of your liabilities is not enough. Even a hearty handshake won't do. Formalize your agreement in a written and signed contract.

Work with your legal representation to draft a solid contract specifically written to reflect your practice and your role on the particular project. You can start with recommended contract language provided by your industry associations. As your professional liability specialist, we can provide additional resources and assistance in helping you draft a fair and equitable contract.

If you are asked to sign a client-written contract, ensure it is thoroughly reviewed by your attorney. Again, we can provide advice as well, particularly regarding the insurability of the client's contract language. Any liability you agree to take on contractually for which you would not otherwise be responsible can be uninsurable.

Communicate During the Project

Too often, once the professional service contracts are signed, communications diminish. Parties do not take the

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time to sit down and correspond on a regular basis over the life of the project.

To keep lines of communication open, encourage frequent feedback and schedule regular meetings (preferably face-to-face) with all key parties to the construction project. On large jobs, consider weekly project review sessions with representatives of the contractor, the client, and the other design consultants involved. Smaller projects may not require such frequent formal meetings involving all parties, but regular communication is crucial nonetheless. These sessions can pinpoint design and construction problems before they become serious. They also foster solutions satisfactory to all involved parties.

Also, plan weekly internal conferences among all key members of your staff that are working on the project. Have staff convey their progress since the previous meeting. List problems that need resolution and make requests for whatever information is necessary to solve them. Progress reports with action items serve as effective diaries of the project that can be reviewed after project completion – or when a project dispute arises.

COMMUNICATION BASICS

At a minimum you should:

- Document in writing anything that is important. If it is not documented, it didn't happen.
- Never say or write something about someone you would not want brought up in a court of law or that you wouldn't relate if that person were sitting next to you.
- Before you hit send, spell check, grammar check, and double check recipients.

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Clients will find progress reports to be valuable as well. Reporting regularly to your clients on the progress of their projects can avoid surprises and form a bond of trust that will keep you working together, even when adversity strikes. Nothing demonstrates a professional approach as effectively as well-planned and timely transmissions of clear and honest information.

Confirm It in Writing

Even when verbal communications are frequent, memory failure and misunderstandings can cost huge sums of money and precious time when disputes or litigation result. No one remembers all the details of telephone calls, group teleconferences, or face-to-face conversations. It is important to record in writing all important information and decisions that concern or influence a project.

Memorialize meetings and telephone conversations with clients, subconsultants, and contractors. Require that all discussions involving design decisions are documented by brief memoranda. Have clients formally approve such memoranda as accurate and complete. These memoranda and logs are particularly useful in the event of a dispute or claim. They are invaluable if there is a change in the project team and a new member needs to be brought up to speed with the current state of affairs.

It is a good idea to have all of your firm's written correspondence regarding projects or plans reviewed by a senior member of your firm – a project manager, department head, or principal – before it is sent out to the client, contractor, or other external parties. An internal review provides a crosscheck to discover misstatements and avoid misunderstandings. For sensitive correspondence, a legal review by your attorney should be required as well.

Email and Other Electronic Communications

It is amazing how email, text messaging, and other electronic communications have taken the place of a phone call, an express-mail package, or a face-to-face meeting. While such technology has certainly been a

boon for productivity, it can also be a bust when it comes to formalized communication. Emails and text messages are easily forgotten, deleted, misfiled, or ignored. We often assume someone has received an electronic message, but it may go unopened or otherwise be lost.

It's a good idea to formalize your company electronic communications policy. It should address not only email and text messages, but also extranets, e-conferences, teleconferencing, webinars, news groups, bulletin boards, and any other electronic media being used. Make sure all employees are aware of and adhere to the policy.

Keep electronic correspondence regarding each project filed in an orderly manner within your computer network. Back up all critical emails and documents in printed hard copy or on separate electronic media such as external drives, CDs, or remote servers. Use the "return receipt" email function to confirm your message has been received and opened. Follow up quickly when your electronic messages appear to be ignored, misdirected, or lost.

Communication is the Key

It seems so obvious: clear communication is a vital key to a successful project void of disputes and claims. Yet at the root of litigation between design professionals, their clients, and other parties to the design and construction process are misunderstandings based on the failure to communicate.

Effective communications should be a core competency of any design firm that strives to understand and meet the needs of its clients. A program of regular communication helps ensure the client understands the true scope and extent of your services. With expectations properly communicated, documented, and verified, project upsets can be addressed quickly, calmly, and effectively with minimal negative impact on time, costs, reputations, and relationships.✂

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.





Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Prostate Cancer: Early Detection Saves Lives

September is Prostate Cancer Awareness Month, and there's no better time to be aware of prostate cancer, the most commonly diagnosed cancer among men. One in six American men will be diagnosed with prostate cancer in their lifetime, according to the Prostate Cancer Foundation.

The PSA (Prostate Specific Antigen) blood test can help detect prostate cancer in its early stages. Though it does not show whether or not you have prostate cancer, it shows abnormalities that would prompt further testing, where cancer may be identified.

The survival rate when prostate cancer is detected early is nearly 100 percent, and the PSA test can help with early detection. The American Urological Association recommends that men receive a PSA test starting at 40.

Some men assume that only older men get prostate cancer, but this is false. It is extremely uncommon for men under 40 to get prostate cancer, but for ages 40-59, the risk jumps to 1 in 38 men.

Some also assume that no symptoms mean no cancer. However, prostate cancer is often symptom-free, which is why it is important to get tested.

Though all men have some risk of getting prostate cancer, the following things can increase your risk:

Age: Though men over 40 all have risk, the older you get, the greater your risk.

Race: African-Americans are most likely to develop this cancer, while Asian men have the lowest risk.

History: If your father or brother has prostate cancer, you are twice as likely to develop it.

In addition to getting tested, research suggests that exercising, maintaining a healthy weight, and eating a low-fat diet rich in fruits and vegetables can lower your risk. Talk to your doctor today about getting tested for prostate cancer, and other ways you can take charge of your health.✂



Bored With Your Workout?

It happens to everyone: the same workout routine every day gets boring, and then it becomes tougher than ever to motivate yourself to work out at all. Here are some tips to break out of that rut:

- Sign up for a fitness class or buy a new workout DVD – try something you've never done before.
- If you only do cardio now, add a couple days of weight training each week.
- Do an activity you wouldn't consider "exercise," like dancing, playing outside with your kids or gardening.
- Add intervals to your cardio. For instance, if you currently jog, alternate one minute of faster jogging with one minute of slow jogging or fast walking.✂

DID YOU KNOW

Though a fitness routine can yield quick results, progress often dwindles the longer you stick with it. That's because your body becomes used to your routine and doesn't have to work as hard to complete it. Variety can help you maximize results and overall health!



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