



Managing Professional Fees

There are two things certain in life, death and taxes. However, for the design professional, there is an additional certainty: If the firm files a lawsuit for fees, it can often anticipate receiving a countersuit for professional malpractice.

Approximately 40 percent of all claims – two out of every five claims or circumstances reported – originate from fee disputes. If the client doesn't pay the fee for design services, there is most likely a cause for it and the grounds behind it may vary. A client may be dissatisfied with the service received, or a project's price tag may be higher than the client had expected. Maybe there are more change orders on a project than the client is prepared to pay for, or the client merely may have run out of funds and is looking to the design professional to recover some of the expense.

When a client fails or refuses to make a payment, there are several options design professionals can exercise to obtain payment. A statement of caution, though: How a design professional responds can set the manner for how the client responds.

Cease Work Option

A number of professionals make threats to abandon the project if they don't collect their fees. If you select this course of action, look ahead to the client to appoint a replacement designer to complete the project. In all probability, the design professional can also look forward to being served with a lawsuit or claim asserting professional negligence. The client may well seek reimbursement for the replacement design firm's fees, as well as expenses related to delays, change orders and other related damages. Issues and claims might also develop from the use of the original design professional's plans.



Ashley Hurd is Executive Vice President of Hall & Company. He has specialized in A/E professional liability since 1994 and worked in the insurance industry for more than 20 years. He has a bachelor's degree in business administration and has earned designations of Certified Risk Manager and Certified Insurance Counselor. Ashley has served as president, executive officer and board member for the Professional Insurance Agents of Washington/Alaska.

www.hallandcompany.com

File a Lien or Lawsuit Option

Several design professionals elect to file a lawsuit or place a lien on the client's property to recover fees. Design professionals who opt for this course of action can expect the client to file a lawsuit or claim for professional misconduct, alleging numerous errors or omissions on the project and seeking compensation that often surpass the fees that are due.

Allow the Client to Remedy the Alleged Breach of Contract Option

When design professionals have written contracts with their clients, they may contact the clients, make them aware that they are in breach of contract and request the clients to work with them to resolve the situation. In these instances, practical design professionals should discuss with their clients that they are dedicated to the project and will work with them to work out the options for fee payment, perhaps a payment plan. Pursuing this line of action will reveal that the design professional is willing to work with the client to put an end to the issue, which could give way to a better outcome and keep the problem out of court.

What to do Before You Sue

In advance of suing for fees, design professionals must consider the hidden costs in pursuing a fee claim, including litigation expenses and the time and energy it would take to defend a suit. And given the fact that a design professional's fee suit will generally result in a counterclaim for professional negligence, other expenditures may be involved.

If a professional negligence claim is alleged, it is essential that the design professional alert their professional liability carrier and place them on notice to defend the claim. The design professional will need to pay any deductible applicable to the policy to defend or settle the claim, and spend time and legal expenses to defend the claim. This in the future could affect insurance premiums, as well as take necessary and important time away from business, an indirect cost that only the design professional themselves can determine.

We hope this information has been helpful for you in understanding a little bit more about professional liability insurance. Feel free to consult our website at www.hallandcompany.com for more resources and information about our capabilities. As brokers specializing in serving A/E firms we are readily available to help you further. We can be reached at **1-800-597-2612**.



HALL & COMPANY