

## Opinion: Good contracts make for good clients.

by Michael Pallamary

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*The written contract serves as the foundation for all business relationships.*



It identifies the contracting parties, describes the tasks to be performed and establishes a framework for legal guidance.

The contract is a basic element of business, and its principal function is to provide clarity in the event of a dispute. Unfortunately, many surveyors are either unfamiliar with the purpose of a contract or they simply operate without one. Working without a contract can eventually lead to problems, many of which could have been avoided.

Business-based conflicts are the source of most practice-based complaints involving surveyors' licenses. Most disputes fall under the umbrella of fee disputes, contract interpretation, filing fees, cost overruns and other monetary-based conflicts. These disputes have nothing to do with the quality of the work; they have everything to do with the management of the work account. A contract can help you maintain a good client relationship while running a profitable business.



One state that has taken legislative steps to help establish guidelines regarding contracts is California. Under California law, land surveyors are required to enter into written contracts when providing professional services. When the state licensing board originally advanced this legislation, it noted, "The use of a written contract helps to eliminate miscommunications, which oftentimes arise when using a verbal contract." In California, the surveyor's contract must include a description of the services to be

provided as well as a description of the basis of compensation and the method of payment agreed upon by the parties. It must also define the procedure to be used by any party to terminate the contract, also known as dispute resolution. When

the California Legislature adopted the written contract law, it was intended to serve and protect both consultant and client.

The protection of a contract is extended in a variety of ways. For example, if the contract calls for work on a construction site where hazards are present, the property owner or contractor is responsible for ensuring the site conditions are safe. A good contract will place the burden of insurance coverage on the owner or contractor. Another area where a contract is valuable is dealing with conflict resolution. A good contract may provide for binding arbitration as a means of resolving a dispute.

But perhaps one of the most beneficial aspects of a contract is in the realm of finances. Some clients make it a practice to delay payment for as long as they can in an effort to renegotiate the payment of fees. After the payment is well past due and the surveyor has sent a cartload of dunning letters, the client will offer to pay the bill for a significant reduction on the outstanding balance. Surveyors who operate without a good contract are more inclined to accept such an offer as they become rather desperate for payment. This scenario can be averted by including a provision that the client has 10 days to contest the billing. If the client does not protest the bill in writing within 10 business days, the client agrees to pay the entire amount.

Additionally, if a surveyor needs to hire an attorney, a good contract will include a provision for attorney fee recovery for the prevailing party. It is also fair and reasonable to include a provision that requires payment of interest rates for past due accounts. In California, the courts have upheld a reasonable interest rate of 18 percent per annum or 1.5 percent per month. Both elements of a contract –attorney fees and interest rate charges –also serve as motivation for the client to pay in a timely fashion.

Though most surveyors are technically competent, the absence of basic business practices can result in a negative view of the profession. Surveyors know how to operate the latest GPS device, but many do not know how to run an accounting program, read a business ledger or meet payroll obligations. Many are not



motivated to study business practices because they apply the majority of their training out in the field. Yet, in order to become proficient as a land surveyor and competent as a businessperson, office work and business acumen are vital areas to be mastered.

There is nothing more frustrating than providing a service and not getting paid for it. Often, however, we have only ourselves to blame. If we are to operate as business people, we must be trained in the rules of business, including the use of contracts. Land surveyors who do not evolve as business people in the dynamic world of global positioning and automation will become tomorrow's unemployed individuals.

### **Sidebar: Request a Retainer**

Another mistake made by surveyors involves the failure to request a retainer. If the surveyor is using a consultant or has payroll obligations, it is reasonable to require a retainer to nominally cover out-of-pocket expenses. For example, the surveyor may engage a photogrammetric firm as a subcontractor. At minimum, the surveyor should require a retainer sufficient to cover all subcontractor costs. After all, the prime contractor (the surveyor) is responsible for payment to the subcontractor, and this payment should not depend on the surveyor being paid by the client. Adding a retainer can also provide the client's banking information. In the event of a dispute and judgment in favor of the surveyor, by simply knowing where the client banks, the surveyor can file the judgment and attach the funds in the client's bank account.

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