

# Rules of Engagement

## The when, where, with whom, and how of a contract

How many times have you started your day with the phone ringing and a hurried client on the other end asking the question “How much do you charge for an appraisal?”

With the goal of providing useful, relevant, and practical advice to AIC members, there are many aspects of our profession that can be brought up as topics for discussion. The purpose of this article is not to get into all the details of contract law. It is geared to help you improve your business process by reviewing a few important aspects that relate to Letters of Engagement or contracts.

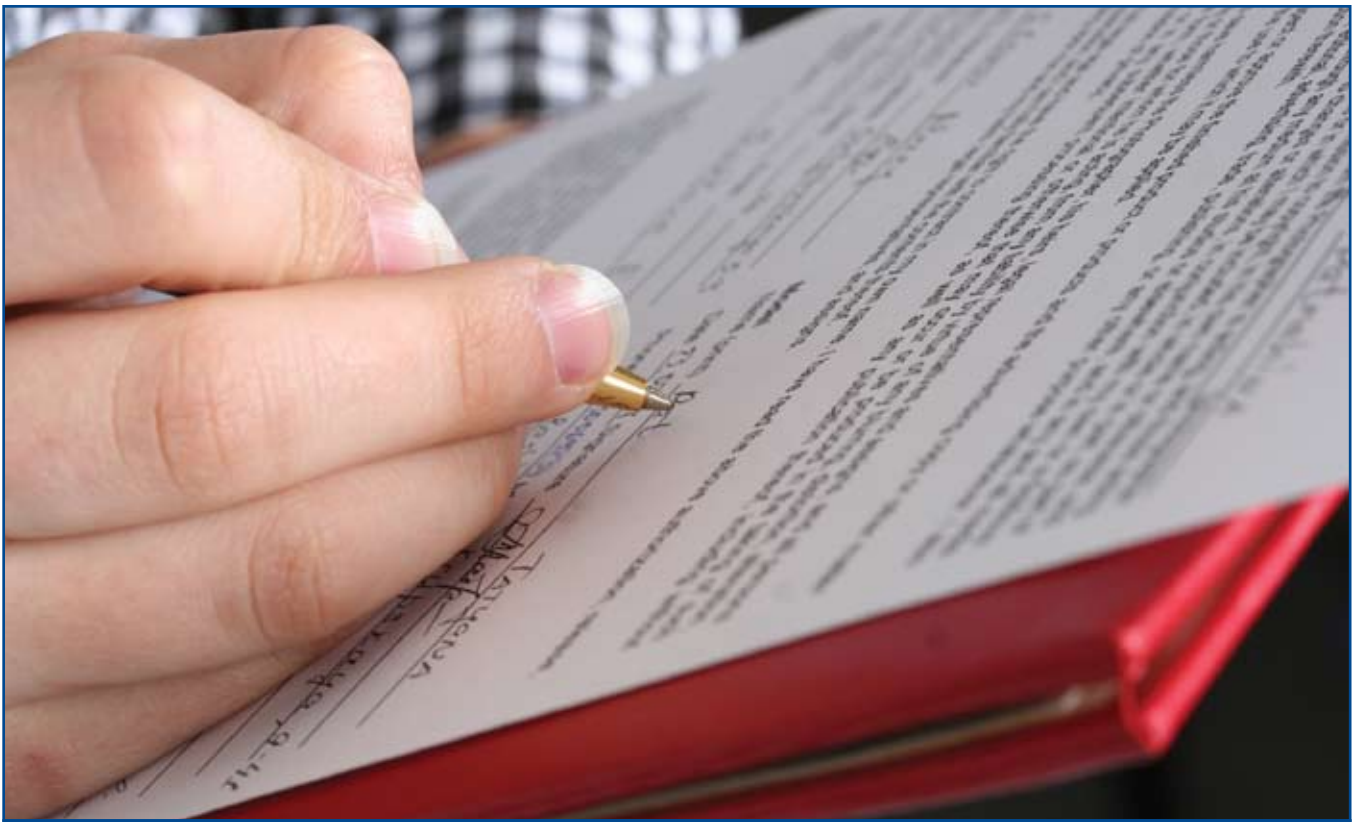
Getting back to your morning telephone call with your prospective client, you have now

patiently asked all the necessary questions to determine the property location, scope and purpose of assignment, anticipated delivery time, and fee structure. The two contracting parties (you and your client) have reached a common understanding of the terms of a contract. An offer by one party and an acceptance by another represents a contract. Now is the time to let your client know that a Letter of Engagement will be arriving via email or fax to confirm the details of your discussion. This can be a positive reinforcement for your client of the crystal-clear understanding you each have as to what is expected from the other.

The quality of the letter will emphasize your professionalism and credibility for your client

who, in turn, will be counting on your expert valuation advice. As appraisers, we rely on our working knowledge of the *Canadian Uniform Standards of Professional Appraisal Practice*. The Letter of Engagement is the bridge we build between the appraisal problems we are asked to solve (the assignment we undertake) and the AIC professional practices we employ to solve them. The Letter of Engagement is also evidence that you and your client do, in fact, have the common intention of creating a legal relation to support a common understanding of the terms of a contract.

The well thought out Letter of Engagement is used to ensure that the terms of the contract are explicit for three important reasons.



First, a readily available template for your tailoring to the specifics of the assignment requested by your client is your greatest time saving tool. It will serve to steer you around clouds of conflict when, for example, a client calls you upon receipt of the report and proceeds to tell you that he or she wanted a different effective date or that an adjacent parcel of land was to be included in the report.

Second, this clarity will assist you in the event that you are faced with an accusation of breach of contract. The measure of the damages ordered by the Court will be sufficient to restore the plaintiff to the position he or she would have been in had the particular damage not occurred. Having said this, typically, a retainer would be in order if this risk presented itself at the time of engagement.

Third, the Letter of Engagement is a contract and contracts cannot usually be amended unilaterally. This requires you to be even-handed with both the appraisal report and the Letter of Engagement to ensure that the Assumptions and Limiting Conditions contained in your report are within the context of your Letter of Engagement.

A recent situation in our office offers an example of this. A learned colleague quite correctly referenced *Claim Prevention Bulletin CP-12* relating to 'as if complete' appraisals when a client requested such an estimate value. With these types of assignments, a client should receive a Letter of Engagement that explains that the assignment entails a prospective market value of the subject upon completion and assumes it is achieving a stabilized occupancy at a point in time in the future. This future date is identified as the Effective Date. Using the recommended Assumptions and Limiting Conditions contained in *CP-12* will allow the appraiser to properly prepare the letter of transmittal, the body of the appraisal report, as well as the Assumptions and Limiting Conditions in order to fulfill the terms of this Letter of Engagement.

***“A Letter of Engagement can be a positive reinforcement for your client of the crystal-clear understanding you each have as to what is expected from the other.”***

Creating your own Letter of Engagement style is a personal preference and will consist of items that can be included and excluded with each draft. Timing for acceptance and specific information items can be incorporated. Payment terms can be expressly outlined in your own way to advise of a retainer requirement, costs and disbursement inclusions, progress billing procedures, and expectations that accounts are due when rendered. Addressing overdue accounts can be done up front in the Letter of Engagement, including, as one of the terms, a detail such as, “As of the date of this agreement, a rate of 2.0% per month for overdue accounts in accordance with the *Income Tax Act* will be applied.”

The Letter of Engagement serves the purpose of outlining direct expectations. With sizable assignments, an attached schedule can address issues that may require more explanation depth than is contained in a one- or two-page Letter of Engagement. Issues may include such items as timely performance, client responsibilities, privacy, Internet communications, termination, fee adjustments, and indemnifications. Further, issues related to report delivery deadlines, professional fees, access, information to be provided (financial statements, rent rolls, a list of proposed renovations, etc.) are examples of he said/she said

complaints received, where a letter of engagement may have solved these issues prior to a complaint coming to the Professional Practice Counsellor and a file needing to be opened by the Investigating Committee.

Reputable lawyers specializing in contract law will tell you that, while a written contract carries weight, matters can still be disputed as ‘the devils in the details.’ There are times when an amendment must be made during the course of the assignment and it is well advised to follow up with a letter of clarification.

*Claim Prevention Bulletin CP-11* provides AIC members with valuable insight into the general layout of a Letter of Engagement as well as an important checklist of responsibilities and terms to be covered.

Drafting a Letter of Engagement with a high level of care, an awareness of the individual needs of your client, and a focus on the *Standards* will better your position before you begin and once you complete your responsibility as a professional appraiser with the Appraisal Institute of Canada. 🇨🇦

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