

# More on Engagement Letters: They are an Essential Risk Management Tool

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As the accounting profession takes on more roles in order to remain competitive, accounting malpractice lawsuits now delve into a wider range of issues. Although malpractice actions were once largely generated by tax and audit work, such actions also derive from compilation and review, write-up, and management advisory services.

Many lawsuits involving CPAs are the result of a communication breakdown (or “expectation gap”) between the CPA and the client. In many situations, the client understands of the scope of services to be performed and how the work product will be utilized may be quite different from the CPA’s understanding of these issues.

Although engagement letters are not legally required, they are strongly encouraged. A properly drafted engagement letter can serve as a helpful risk-management tool by establishing a legal framework for a working relationship with a client. While the engagement letter itself may vary with the level of service or type of engagement to be provided, common provisions in most engagement letters include the following:

- Identification of client;
- Description of the engagement and its limitations;
- Timing of the work and staffing of the engagement;
- Client information and responsibilities;
- Designation of the party to work with the CPA;
- Identification of intended users of the CPA’s work product;
- Fees and payments;
- Withdrawing from and/or terminating the engagement;
- Responding to discovery requests, subpoenas, and outside inquiries;
- Alternative dispute resolution as a means of resolving disputes;
- Where applicable, disclosures recommended or required by the AICPA; and
- Client signature.

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## **Identification of Client**

A properly drafted engagement letter should identify who will receive the CPA's services. The CPA may be working for an individual, a group, an entity, or a portion of an entity. For example, if the CPA's client is a corporation that has subsidiaries or other corporate affiliations, it may be necessary to identify the entities to be included in the engagement.

## **Description and Limitations of Work to Be Performed**

The engagement letter should indicate the services to be rendered. In general, the CPA should outline the procedures to be performed and any reports to be issued. In so doing, the engagement letter can help guard against the client developing unreasonable expectations about the nature and the scope of the services to be provided.

## **Timing of Work and Staffing of Engagement**

This section of the engagement letter varies by the type of engagement and indicates when the engagement will begin and end. For example, an audit engagement may contain a provision indicating the date fieldwork will begin and end and possibly an expected date of delivery for the audit report. A tax engagement may contain a provision indicating any known filing deadlines and the parties' understanding concerning the use of extensions should the information not be received by the CPA to timely prepare the return. Some CPA firms may indicate who will be staffing the engagement. This provision may prove helpful, for example, where a client expects to work with certain employees of the CPA firm.

## **Client Information and Responsibilities**

In most engagements, the client is required to collect certain information and provide certain records to the CPA. If this information is necessary for the CPA to complete the engagement, these client responsibilities, and any applicable deadlines for the completion of work by the client, should be described. For example, a tax engagement would normally contain a provision indicating it is the client's responsibility to sign and file tax returns prepared by the CPA, along with an explanation of the consequences of the client's failure to sign and file such returns.

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## **Designation of the Party to Work with the CPA**

Some engagement letters request the client to designate the party to work with the CPA. This provision can help the CPA avoid situations in which conflicting requests or instructions are received from more than one of the client's employees.

## **Identification of Intended Users of the CPA's Work Product**

In some jurisdictions, a CPA can limit or avoid liability to third parties by identifying in the engagement letter the intended users of the work product. In addition to identifying these users, this provision often contains language prohibiting the client from distributing the CPA's work product to any party other than these specified users. In deciding whether the engagement letter should contain this provision, competent legal counsel should be consulted. This is especially true for jurisdictions which have privity standards for establishing auditor negligence.

## **Fees and Payment**

An engagement letter can help avoid fee disputes before the work begins. This section of the letter details how and when the client will be billed. It may describe the amount of retainer (if any); how the fee will be computed; when payment will become due; the client's obligation to pay promptly; and the CPA's rights should the client fail to give prompt payment. In some cases, the CPA may charge interest for late payments. In more extreme cases, it may be necessary for the CPA to suspend work or cancel the engagement for fees not paid.

## **Withdrawing From or Terminating the Engagement**

At times, it may be necessary for the CPA to withdraw from the engagement. The engagement letter should outline the conditions that might lead to the CPA's withdrawal and the procedures the CPA will follow in case of withdrawal. Examples of situations in which the CPA's withdrawal from the engagement may be required include issues of conflict of

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interest; management ethics or integrity; or the CPA's real or apparent lack of independence. This section should also discuss policies and procedures related to the termination of the engagement including return of client files; preparation of the final bill; work paper retention; and date of termination of services.

## **Responding to Discovery Requests, Subpoenas, and Outside Inquiries**

Occasionally, a CPA may receive a discovery request, subpoena, or outside inquiry. While several states have established a CPA/client privilege with respect to communications, most states do not have such a privilege. Moreover, there is no federal CPA/client privilege with the specific exception relating to tax planning. This section of the engagement letter can help avoid future misunderstandings between the client and the CPA regarding whether, and to what extent, the CPA may be required to respond to such requests.

## **Alternative Dispute Resolution**

Alternative dispute resolution (ADR) refers to methods of resolving disputes outside of the courtroom. One of these methods is known as arbitration. In arbitration, the opposing parties select one or more arbitrators who decide the outcome of the dispute. In most cases, the decision of the arbitrator cannot be appealed. Typically, the pre-arbitration discovery process is limited, and third parties are not bound by the arbitrator's decision. Another method of resolving disputes outside of a court of law is mediation. During mediation, a mediator attempts to find the "common ground" that exists between the opposing parties that may lead to a mutually agreed-upon settlement. In the event the mediation is not successful, the parties, if they so desire, may litigate their dispute. Before inserting a provision in the engagement letter regarding ADR, a CPA should consult with legal counsel regarding the provision's enforceability. In addition, inserting a provision concerning alternative dispute resolution in an engagement letter may have insurance coverage implications. For example, while some insurers encourage the use of mediation, under some policies the use of an arbitration clause may limit or void the CPA's professional liability insurance coverage for any claims that are arbitrated.

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## Disclosures Recommended or Required by the AICPA

The AICPA recommends the inclusion in an engagement letter of certain disclosures for certain types of engagements. These disclosures may be incorporated into, or have an effect upon, other provisions of the engagement letter.

## Client Signature

This section should request the client sign and return an executed copy of the engagement letter to the CPA. It should provide that if the client does not agree that the engagement letter accurately reflects the agreement of the parties to the engagement, the client will promptly notify the CPA. If the client does not return a signed engagement letter, the CPA may send a certified letter indicating that, unless otherwise notified, the CPA will assume the client agrees to the terms of the engagement letter or the CPA may recuse himself or herself from the engagement. In any event, the most effective engagement letter is one signed by the client before the CPA begins the engagement.

\*This article appeared in a recent Nevada State Board of Accountancy newsletter with the assistance of the North Carolina State Board of CPA Examiners.

These sample engagement letters, checklists, and practice and consent forms are for illustrative purposes only. We recommend you use these letters and forms only after you have consulted with your attorney. Since your practice may be different than those described in the sample letters and forms, we recommend that you modify them to suit your individual practice needs. Use of these sample letters and forms is not intended to constitute a binding contract, does not constitute legal advice, and does not satisfy your obligation to do thorough research. © Gilsbar Specialty Insurance Services, L.L.C. and Date.