

THE IMPORTANCE OF A

WORK FILE

Immeasurable benefits for all professionals

BY CLAUDIA GAGLIONE

As a defense attorney, I consistently deal with professionals. One day we might be dealing with a claim that has been made, while the next day we may be discussing steps that can be taken to avoid a claim. No matter what the topic of conversation might be, I invariably ask about the existence of a work file.

Certain professionals (such as real estate appraisers) are required to maintain a work file for every assignment. On the other hand, there are other professionals (such as right of way agents) who might not be required to maintain a work file. However, the benefits of doing so could be immeasurable.

Keep Each File in Anticipation of Litigation

If a claim is made, the professional will have to defend themselves and the services they provided. Even if no claim is made, many professionals will be called to act as a witness or a consultant in connection with an assignment they are working on or something they have completed. In either case, they will be far better prepared if there is a good file to fall back on.





File notes and documents help the professional to reconstruct and remember what they did and why. Disputes could arise years after services were provided. Without a well-documented file, it would be very difficult for any professional to be of assistance. A witness is not helpful if they cannot recall enough about a transaction to offer competent testimony.

Notes that were made at the time of the event, conversation or meeting help to add credibility to verbal statements. If the professional's version of events differs from what is said by other witnesses, file documents can help to resolve the "he said versus he said" issues.

Additionally, appearance is everything. While it might seem simplistic, a neat and organized file helps to make any professional look more credible and reliable.

What Should be Kept in the File?

1. THE ASSIGNMENT. Contents of any file will depend upon the assignment or the services to be provided. Documents that confirm the exact nature of the assignment help to avoid conflicts down the road. Whether there is an engagement letter, a contract or even a more informal email, file documents should serve to clarify questions such as:

- What specific services are to be provided?
- Is there a timeline or deadline by which certain tasks need to be completed? Is there any procedure in place whereby a request can be made for additional time to complete the assignment?
- Are any documents required from the client, or from third party sources, before work/ services can commence? Who

is responsible for providing that information?

- Has the fee for services been decided/agreed upon? How often should the professional be invoicing the client? Is a retainer involved? What procedures are in place that allow the professional to cease work if fees are not timely paid?
- When services have been completed, is any formal "end of assignment" documentation required?

2. WRITTEN CONFIRMATION OF VERBAL COMMUNICATIONS.

Any professional assignment involves some degree of verbal communications. It is important to consider what verbal communications should be confirmed in writing:

- Written confirmations should memorialize the details of the conversation and should always invite the participants to clarify anything that might be misstated. The file should have evidence to prove written confirmations were received by the recipient.
- Written confirmations can serve to refresh memories years after the verbal communications took place.
- Written confirmations can serve to bolster the credibility of the professional when disputes arise.

3. RESEARCH MATERIALS. Virtually every assignment requires some kind of research. It might be necessary to look at public records to gather necessary background information. Depending on the nature of the records that are searched, it might be appropriate to print records or to include copies in the file. If a dispute arises years

later, there is never a guarantee that records consulted in connection with the assignment will be retrievable. Examples might include:

- Zoning records, title documents/deeds, MLS listings, tax assessor records and FEMA flood zone maps.

4. INFORMATION PROVIDED BY THIRD PARTIES.

It is not uncommon for a professional to seek information, details or data from others which would serve to “assist” with the completion of the assignment at hand. The professional has to use his or her best judgment to determine how this information should be handled.

- A prior appraisal report might be provided by a property owner to offer “guidance.” Any information provided by a third party should be kept in the file. Information contained in the report should never be relied upon without independent verification (such as square footage and zoning). Just because something is reflected in a prior appraisal does not guarantee it is accurate.
- Other documents that could not be retrieved from public sources, including things like prior contracts of sale, leases and rent rolls, building plans, etc. The file should indicate who provided the documents and what efforts were taken to verify the contents.

Specific Work File Requirements and Suggestions

Real Estate Appraisers: Maintaining a work file is mandatory for real estate appraisers. The Uniform Standards of Professional Appraisal Practice (USPAP) sets forth a Record Keeping Rule which states:

- An appraiser **must** prepare a work file for each appraisal or appraisal review assignment. A work file must be in existence prior to the issuance of any report or other communication of assignment results. A written

summary of an oral report must be added to the work file within a reasonable time after the issuance of the oral report.

- At a minimum, the work file **must** include certain information, including but not limited to:
 - ▶ The name of the client and the identity, by name or type, of any other intended users.
 - ▶ True copies of all written reports.
 - ▶ Summaries of all oral reports or testimony.
 - ▶ All other data, information and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP.

Right of Way/Acquisition Agents:

While maintaining a work file might not be mandatory, it is certainly recommended. Thoroughness in record keeping is important to preserve the integrity of the acquisition process. Agents should have a complete file so that they can assist counsel when called upon as a witness. If a new agent is engaged, a well-documented file will assist with them getting up to speed. At a minimum the work file should include:

- Documents relative to the property including title reports, title policies and appraisals.
- Information specific to conversations and/or negotiations with the property owners:
 - ▶ Notes regarding all meetings and discussions, including written confirmations.
 - ▶ Impressions about the owners that might assist future agents working on the file.
 - ▶ Information that might be needed to explain the project to the owners in anticipation of their questions.

- ▶ Visual aids that might help the owners to understand the project such as photos, maps, drawings, building plans, etc.
- ▶ The file should not include any sensitive or private information that an agent might acquire including private or financial information about the property owner.

Conclusion

The importance of a professional work file cannot be overstated. Maintaining such a file might be mandatory or voluntary. The file contents can be helpful to the professional in numerous ways. Over time, memories fade. File documents can be instrumental in refreshing recollection as to critical points.

A well-documented file can be indispensable for any attorney working with, or on behalf of the professional. File contents can be used to resolve disputes and to bolster the credibility of witnesses. Documents help when a witness has to be prepared for giving testimony. Written collaboration makes all evidence, and testimony, appear more plausible.

A work file should be more than a random pile of disorganized papers and hard-to-read notes crammed into an extra folder or envelope. When a work file is thoughtfully compiled and maintained, it becomes an invaluable tool for any professional. 🌟

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colleagues have supervised over 8,000 claims and lawsuits filed against real estate appraisers, and other real estate professionals, across the country.