

Accountants Professional Liability Risk Control

TOP 10 FREQUENTLY ASKED QUESTIONS

As the nation's #1 provider of professional liability insurance for Certified Public Accountants, CNA's risk control team has the knowledge and experience that can be relied upon to assist you both in managing a CPA firm's professional liability risk exposures and protecting its reputation. This knowledge and experience permits CNA to create insurance solutions tailored to CPA firms. In addition, CNA's professional liability insurance coverage is endorsed by the American Institute of Certified Public Accountants (AICPA).

CNA's risk control team has more than 60 years of experience working with CPA firms. Our professional background as CPAs in public practice and knowledge of CNA's insurance products and claim experience permits the team to provide practical solutions to mitigate professional liability exposures for CPA firms.

As a knowledgeable and experienced insurer who understands the needs of CPAs, CNA created a *Top 10 Frequently Asked Questions* based upon policyholder inquiries. To learn more about the AICPA Professional Liability Program, visit www.cpai.com or call **800.221.3023**.

1. A tax client has asked the firm to write a "comfort letter" to his/her loan broker or lender that includes confirmation of self-employment, verification of income, and profitability of business. Should the firm prepare such a letter?

Providing written assurance to third parties is a violation of the AICPA Statements on Standards for Attestation Engagements unless the CPA performs services and provides reports in accordance with these standards. CPAs should avoid confirming client information to third parties. To assist CPAs in responding to such inquiries, CNA provides guidance in its article *Third Party Verification Letters* found in the Education Center of www.cpai.com or directly at <http://www.cpai.com/business-insurance/professional-liability/Pages/ThirdPartyVerificationLetters.aspx>.

2. Are engagement letters truly necessary?

CNA views engagement letters as one of the most important risk control tools a CPA firm can employ to mitigate professional liability risk in ALL engagements. The podcast, *An Introduction to Engagement Letters*, found at <http://www.cpai.com/business-insurance/professional-liability/Pages/AnIntroductiontoEngagement.aspx>, summarizes some of the benefits of using engagement letters. In addition, the article *Tax Practice and Engagement Letters*, found at <http://www.cpai.com/business-insurance/professional-liability/Pages/TaxPracticeandEngagementLetters.aspx> discusses the use of engagement letters specifically related to a tax practice.

Policyholders have access to sample engagement letters for a variety of services, which are updated annually. In addition, policyholders have access to *Preparing and Using Engagement Letters*, a CNA practice guide, which answers most questions CPAs have about drafting engagement letters and is a useful reference tool. Both resources are available to policyholders in the Policyholder Resource Center at www.cpai.com.

3. The firm seeks to terminate its professional relationship with a client. Is there a sample termination letter available?

Claims sometimes arise after an engagement is terminated because the client asserts its lack of awareness regarding continuing accounting and tax obligations. As such, CNA recommends that CPA firms terminate client relationships in writing, setting forth the client's continuing accounting and tax obligations.

CNA's article *Client Termination Letters* provides sample language to consider, including a suggested letter to terminate a professional relationship with a client, guidance to organizing the letter and other considerations. The article is located in the Education Center of www.cpai.com, or directly at <http://www.cpai.com/business-insurance/professional-liability/Pages/ClientTerminationLetters.aspx>.

4. What considerations should be examined to determine if the firm has a conflict of interest with a client?

The determination of whether or not a conflict of interest exists requires both a legal and ethical analysis, based upon specific facts and circumstances. Common conflicts include marital divorce, business dissolutions, and providing services in connection with the purchase or sale of business interests. The AICPA Code of Professional Conduct addresses conflicts of interest and provides examples of such in Ethics Interpretation 102-2. In addition, Treasury Department *Circular 230*, Section 10.29, *Conflicting Interests*, defines a tax practitioner's responsibilities related to conflicts. CNA's article, *Avoiding Conflicts of Interest*, also provides related guidance, and is available at <http://www.cpai.com/business-insurance/professional-liability/Pages/AvoidingConflictsOfInterest.aspx>.

5. A client owes the firm significant unpaid fees. The firm has attempted to collect the unpaid fees but was stonewalled. Should the firm sue the client in small claims court to collect the unpaid fees?

Fee suits against clients frequently result in counterclaims of malpractice against the CPA firm. There are many questions CPAs should consider before instituting a fee suit against a client. The article, *Is Suing a Client for Fees Worthwhile?*, located at <http://www.cpai.com/business-insurance/professional-liability/Pages/IsSuingaClient.aspx> summarizes the most important considerations.

6. If the firm discovers evidence of fraud while providing services to a client, what are its responsibilities?

Auditors must comply with the auditing standards if evidence of potential fraud is discovered during an audit. In addition, CPAs who discover evidence of potential fraud in other types of engagements also have professional responsibilities that are addressed by the AICPA Professional Standards and other professional literature. CNA's articles *This Might Be Fraud ... What Do We Do Now?* and *Don't Be a Victim: Accountant's Failure to Detect Theft and Fraud (a risk alert)* provide guidance. The first article may be accessed at <http://www.cpai.com/business-insurance/professional-liability/Pages/ThisMightbeFraud.aspx>. The risk alert is available to policyholders and can be found in the Policyholder Resource Center at www.cpai.com.

For any type of service provided, if the fraud occurred during a period when the CPA firm provided services, the firm should promptly report the matter in writing to their professional liability insurance carrier as a potential claim.

7. My firm's laptop computer was lost or stolen. It contained confidential client information. What should be done?

This matter should be promptly reported in writing to the firm's professional liability carrier as a potential claim. Unauthorized individuals could gain access to this information, and it may interfere with the firm's ability to timely complete ongoing engagements. There are also disclosure and related obligations under federal and state privacy and data security laws. CNA's articles, *A Possible Privacy Breach: What Next?*, *Privacy, Confidentiality, and Electronic Communications*, and *Protect Your Firm Against Data Security Breaches*, located at <http://www.cpai.com/business-insurance/professional-liability/Pages/APossiblePrivacyBreach.aspx>, <http://www.cpai.com/business-insurance/professional-liability/Pages/PrivacyConfidentiality.aspx>, and <http://www.cpai.com/business-insurance/professional-liability/Pages/ProtectYourFirm.aspx>, respectively, provide an overview of post-breach response requirements and preventive strategies firms can implement to reduce the risk of a breach.

8. The CPA of a former client is requesting copies of the firm's records. Should the records be provided?

CPA firms either maintain or have access to numerous types of client records and related working papers, which may constitute confidential business and tax records and/or trade secrets. Requests for access to copies of such records can arise from multiple sources, including successor CPAs, current and former clients, lawyers, civil and criminal investigators, regulators, lenders, adverse parties in litigation, dissident shareholders, and others.

The duty to respond to these requests is governed by professional standards, state board of accountancy regulations, state and federal law, and regulatory bodies. Before responding to these requests, CPA firms should consider all applicable professional standards, laws, rules, and regulations.

Responding to requests can be challenging, regardless of whether the client consents to the production. CPA firms should consider the scope of any authorization provided by the client, the types of records requested, the time frames sought to produce the records, the format of the documents being requested, and the resources necessary to identify, retrieve, reproduce and submit copies of records.

CNA policyholders have access to the CNA practice guide, *Requests for Records – A Guide for CPA Firms*, which is available in the Policyholder Resource Center at www.cpai.com. This guide is a useful resource that addresses replies to record requests.

9. An error was discovered on a client's prior year tax return the firm prepared. What should be done?

This matter should be promptly reported in writing to the firm's professional liability carrier as a potential claim. While the error on the current return may be below the firm's deductible, a CNA claim representative can assist the firm in responding to the matter with the client and mitigating the risk of future claims related to preparation of this and other related tax returns for that year.

The CNA claim representative also can offer advice related to compliance with *Circular 230*, Section 10.21, *Knowledge of a Client's Omission*, and the AICPA Statements on Standards for Tax Practices No. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*. In accordance with these rulings, practitioners should:

- Inform the taxpayer of the error;
- Advise the taxpayer of the potential consequences of the error, and
- Recommend corrective measures to be taken.

10. The firm does not conduct audits and has been in practice for over 20 years without experiencing a claim. Why is professional liability insurance coverage needed?

It is likely most CPAs will face a professional liability exposure in their career. A CPA need not have made a mistake for a client to file a malpractice claim. Additionally, tax practice generates approximately 65% of all claims in the AICPA Program. When a claim is filed, CPA firms must respond, and these legal actions can be quite costly. Professional liability insurance typically covers various types of professional services in your firm's practice. Accountants should carefully review the coverages and exclusions in their policies and also engage in discussions regarding these matters with their insurance professional. No type of professional service is immune to a professional liability claim. CNA claim cards describe causes of loss by area of practice and provide real-life claim examples and suggested risk control points. Claim cards are available in the Policyholder Resource Center at www.cpai.com.

More information on these topics, as well as other resources, is available to CNA policyholders in the Education Center of www.cpai.com which may be accessed from the Policyholder Resource Center webpage.

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