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Reducing Your Legal Liability

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By Jessica Krznanic

“How can RIA members reduce their legal liability?”



Eric S. Anderson

First, I would recommend checking with your insurance agent to verify you are properly insured with pollution liability, mold, etc. — even if you don't do mold and IAQ clean-up. Second, avoid speaking in certainties and absolutes when talking with customers. You are the expert, so make your “opinion” clear. Third, constantly improve your knowledge through education and training. There is always more to learn. I would also suggest carefully reading and re-reading any contracts or license agreements you sign, as well as having a trusted attorney review and advise you before doing so. Remember, be cautious — not everyone out there is honest.

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Edward H. Cross, Esq.

Of course, good quality work is always the best way to prevent problems.

Although lawsuits sometimes follow well-done work, they have

no legs. Good quality work includes good customer service and proper management of the relationship. Show compassion for the hardship caused by the loss. Being responsive and attentive to the needs and concerns of the customers will help keep them happy. Happy people rarely file lawsuits. Handle every project as if you're doing it at your grandmother's house (unless of course you don't like your grandmother).

Many claims brought against restorers are the result of misunderstandings about the scope of work, the science of restoration or the events of the project. Thorough documentation reduces liability because it resolves misunderstandings and forms good evidence of what really happened. Of particular importance is photographic evidence of pre-existing conditions, including pre-existing damage to personal property.

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Chad Gohm

insured, the adjusters and the agents. Every emergency claim is put into IMACC so

I believe the way to reduce liability is to make sure the job is DOCUMENTED, DOCUMENTED, DOCUMENTED! WE have an OPEN book here at our company with the

everyone is aware what is going on. You also need a systematic way of doing your jobs. If you don't have a universal way, they will get done different every time and you won't know where to go with them.

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Alan Goeltz

One of the most important things you can do is make sure you have all your paperwork signed by the insured. An authorization form should be signed allowing the work to be performed for the insured. Payment authorizations should be signed prior to performing the work and a certificate of satisfaction should be signed after the work is completed.

There should also be a specification sheet showing how the work is to be performed, and for a larger job, a payment schedule should be shown. Most importantly, don't promise something you can't perform.

Lastly, insurance coverage is very important. Make sure you do not perform services you are not covered for, and make sure you understand or have your agent explain to you in depth what you are covered for.

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David M. Governo, Esq.

The key to reducing your liability is to adopt a philosophy and institute a practice of protecting yourself at all

times. Buy insurance, but consider these three points. One, know your job. Do your job and document your work. Know your industry's current practices and train your workers to perform to these levels. If you deviate from these standards, have a good reason, get the customer's approval, and document it all. Your workers' poor choices will be the genesis of most claims.

Two, stay within your field of expertise. This is a common problem when rule number one is forgotten. For example, do not offer medical advice by promising that your work will make the building "healthier." Avoid venturing into a field you do not know and inadvertently breaching an arcane law or regulation.

Three, manage customers' expectations. Consider what your workers tell customers, what your contract and other documents say, in addition to what work you actually perform. Avoid promising results you don't deliver. Respond quickly to complaints.

Caveat: Walk away from customers who are likely to be problems. Some people are never happy.

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Randi Klein Hyatt, Esq.

I would first suggest reviewing sensitive personnel decisions (e.g., terminations, demotions) for consistency.

Determine if they pass the smell test for fairness that will be applied by "outsiders" to the company. Make certain the decisions are documented by clear, simple, but reasonably comprehensive writings.

Also, be sure to have a comprehensive anti-harassment and discrimination policy, and corresponding complaint procedure in place. Managers must be properly trained to know how to respond to and investigate properly any complaints that are raised, whether made formally (in writing) or informally (by word of mouth). Equally, all employees must be trained to know how to use the complaint process if they feel there is a problem.

Lastly, make sure your employee handbook is up-to-date and conforms to all applicable (federal, state and local) laws. Be sure that it is available to all employees who are expected to

comply with the policies set forth in the handbook. Have each employee sign a document confirming their receipt and reading of the handbook. Lastly, and above all else, make sure that managers understand the handbook and are trained to apply the policies consistently and uniformly.

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Philip J. McLaughlin, CR

In my view it is of paramount importance to every restoration contractor that they take the time to write a detailed employment agreement

between themselves and a prospective employee. This agreement should also be reviewed by legal counsel and spell out in detail the employee's job description, hours, wages, bonuses, benefits and performance evaluations.

Secondly, for a subcontractor to remain a subcontractor and not an employee there is a very thin line. If you tell a sub when to show up and when to depart, he can be construed as under your "direction and control" and therefore an employee. How to prevent this from happening is largely contingent on what is included in your written, signed and notarized subcontract agreement. You must have the following on file: Confidentiality Clause, Hold Harmless Clause, Safety Affidavit, W-9 IRS Form, Waiver of Lien Form, Certificate of Insurance (liability & workman's comp.), Change Order Policy, licensing if required, and payment schedule.

Want to be a part of RIA's expert panel for "The Leader's Circle?"

Each month a different question will be asked to a different panel of experts, and this is your opportunity to share your expertise on a variety of topics. If you would like to participate on our expert panel or have a question you would like to ask, email Casey Geisler @ cgeisler@restorationindustry.org.

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Lastly, we're living in a new day and age. People sue everybody including water restoration contractors. Check with your broker to be sure you are covered for mold remediation and that you do not have a pollution exclusion.

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Dale A. Sailer

In today's litigious world, it seems that regardless of what you do there is always a way for an unscrupulous plaintiff to find a pocket with

money in it; however, there are ways to improve your fighting chances and reduce legal liability.

Spend a bit of money and have an attorney initially develop and periodically review your contracts. Have all your technicians fully trained via certified courses in those skills they are expected to perform. Do a careful assessment of your own company's capabilities and only do those jobs that you are fully capable of handling. Better to pass on a lucrative job that you might be able to do well than to try to do it and open yourself up to additional liability exposure should you do it poorly.

But no matter what you do, at least set up separate corporations for each of your divisions to isolate liability exposure.

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Jessica Krznanic is RIA's former Communications Specialist.