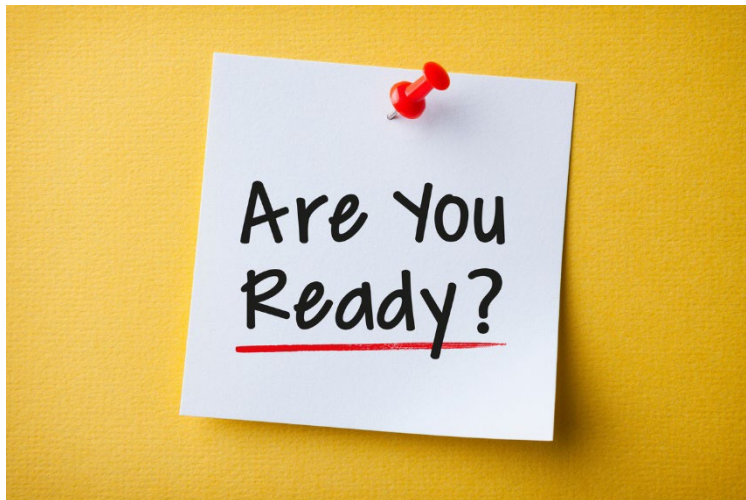


## How to Reduce the Likelihood of a Surety Claim

By Lisa Frasier of [Old Republic Surety](#)



Despite careful underwriting and diligent review of a contractor's work in progress, surety claims can happen. A principal may encounter financial difficulty, experience a significant delay, or have a dispute with the project owner. Unfavorable events such as these can lead to a default, but sometimes the worst outcomes can be avoided if issues are identified and resolved *before* they result in a major loss.

Contractors can reduce the likelihood of a claim and mitigate their losses if they follow simple, yet important, commonsense practices. These aren't rocket science, but you'd be surprised how many principals fail to adopt them:

- **Know the terms of the contract.** Principals should be familiar with the conditions in their contract. Most contracts have notice provisions and timelines that must be followed. If a contractor isn't aware of these requirements, they may not be able to comply with the terms. And that could affect their ability to receive payment for additional work or trigger costly damages if the project falls behind schedule.
- **Keep records and communicate.** Smart devices like cellphones and tablets make it easy to snap a photo of the job and send it to the appropriate person with a comment. The key is to document job progress contemporaneously so the principal has a detailed record of its work. Documentation is especially important when a principal feels it has been asked to perform outside the scope of the contract. Even if the contractor has a good relationship with the project owner or general contractor, communication and documentation are a must.
- **Hire a knowledgeable construction attorney.** A construction attorney can review a contract and advise the principal of its legal obligations. An attorney will be aware of potential

issues that the principal should try to negotiate out of the contract, such as onerous damage clauses.

- **Be honest with the surety.** Contractors don't like to admit they're in trouble or that they've made a mistake. But if the surety knows about an issue up front, the surety may be able to work with the contractor to resolve it—hopefully before it turns into a claim. If it gets to the point of a claim, the contractor should cooperate with the surety's investigation and provide all requested information and documentation.

### Know the signs of an impending default

A default doesn't just come out of the blue. Usually there are signs that a contractor is in trouble. Beware of these red flags:

- The contractor is behind on the job. There may be delays with critical-path subcontractors or building materials may be late in arriving.
- There is a shortage of qualified labor.
- The contractor's financial condition has deteriorated. The contractor may no longer have the credit it needs to purchase materials for the project.
- The contractor and the owner have had a falling out.
- The contractor has experienced a personal crisis such as severe illness or divorce.
- A key person has left the company or died.

Because agents generally know their contract surety clients quite well, they're in a position to notice any changes that seem out of the ordinary. If you see something that gives you pause, take the time to discuss it with your client.

You may be able to help straighten out a situation before it gets to the point of a claim. No one wants to see a default on a project. It's in the best interest of all parties to avoid expensive losses and to reduce the probability of a claim occurring.



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