

Send A Letter

by

Knud E. Hermansen, P.L.S., P.E., Esq.

A contract is frequently described as a "meeting of the minds." It is an agreement which both parties seek to enter for their own benefit. The fact that a contract is reduced to writing or left to memory is inconsequential until the terms, conditions, or fee are questioned. At this point, the difference between a written record of a contract and one left to memory become obvious. Terms that were not discussed become crucial while other terms thought fixed and certain are misunderstood or forgotten. In spite of these and other problems caused by hearing shortfalls and memory aberrations, many surveyors continue to provide professional services without benefit of a written record or other recording of their contract. In defense of this situation, surveyors are quick to point out that a formal written contract is not worth the time, effort, or aggravation -- especially when an unsophisticated client seeks simple and seemingly uncomplicated services. Nevertheless, given the sheer volume of this category of service, the simple and uncomplicated survey for the unsophisticated client will more than likely be the source of most surveyor-client problems.

Fortunately for the surveyor, the expansion of the court's equity jurisdiction and increased volume of commercial transactions has caused many courts to liberalize the written form and contents necessary to evidence a contract. In fact, the widespread influence of the Uniform Commercial Code (U.C.C.) has given rise to the use and acceptance of correspondence to evidence the terms of a contract.¹ As a result, surveyors that are unwilling or reluctant to use a formal contract for small jobs, should at least prepare and send a letter. A letter in the form of correspondence to the client may be a satisfactory compromise between the formal written document, on the one hand, and no written record, on the other hand.² Sending a letter is good business practice, relatively easy to prepare, and reinforces the communications between the surveyor and client.

As shown in the example, a properly drafted letter meant to provide a record of the contract should cover: 1) the purpose or type of survey, 2) standards and specifications the surveyor will adhere to, 3) the fee or cost of the survey, and 4) time constraints. If there are no time constraints, this fact should be mentioned.

Carroll Mitrox Surveys, Inc.
1892 Willow Professional Building
Grove City, ZN 09231
290-561-2343

19 November 2001

Mr. William Heyd
1991 Seymor Street
Grove City, ZN 09231

Dear Mr. Heyd:

Thank you for calling our firm today and requesting our surveying services. According to the notes made by our office manager, Chris Melrose, you have requested a boundary retracement survey in order to install a fence around a two acre lot located at 1991 Seymor Street in Grove City. Our survey will comply with Class B survey standards as established by the ZN State Surveying Society (a copy is enclosed for your review). Please note that according to these standards we will monument all corners not already marked and provide you with a plan and report at the completion of our survey.

After we complete a review of your property records at the courthouse, we will send a survey crew to your property, weather permitting, sometime between 8:00 a.m. and 4:00 p.m. during the first week of December. Regardless of the starting date, the survey will be completed by 15 January 1993. As a courtesy to you and your neighbors we will write, call, or visit your neighbors prior to surveying your property.

The estimated price for our services will be \$1,200. Should unforeseen circumstances arise, we will not exceed this amount without first explaining the situation and obtaining your consent to continue.

If we have misstated or omitted any terms agreed upon or you have any comments, questions, or suggestions do not hesitate to write, call our office (collect), or stop in. As a service, we have enclosed a brochure prepared by the ZN Society of Land Surveyors.

We hope you have a nice day. We are looking forward to meeting you.

Sincerely,
Carroll Mitrox Surveys, Inc.

Marty Anderson, P.L.S.
Chief of Surveys

Enclosures:
Class B Survey Standards
Public Service Informational Brochure

Example

To make sure the letter will be enforceable, certain precautions and procedures should be followed. Most important, the information in the letter should be a complete, honest, and an understandable rendition of the terms

agreed upon during the meeting or phone conversation. To help insure the terms in the letter will be binding on the client, a sufficient period of time should be allowed between mailing the correspondence and starting the survey. A reasonable time period is necessary to provide the client with sufficient time to contest any information before a fait accompli (the irreversible deed is done). The credibility of the letter can be improved significantly by making sure it is not one sided. For example, the surveyor should include terms that bind the surveyor and not just the client. A copy of the letter with a photo copy of the stamped, properly addressed envelope kept in the client's file at the survey office goes a long way in thwarting any claim the letter was not received.³ In some cases, it may prove valuable to send the letter with a return receipt request.

While using correspondence as a record of the contract has been stressed so far, correspondence to the client should be more than a cold rendition of the contract terms. The best way to avoid confrontation with the client is to maintain communications and a friendly relationship. Therefore, the properly drafted letter should show some feeling, personality, and appreciation for the client's business. The letter can also be used as a means to educate or convey educational information to the client. Education information not only includes the broad and general aspects of surveying but should also include the surveyor's mode of operation.

While a letter is no substitute for a formal record of the contract (i.e. a written contract), it is better than no record at all. A letter takes little time and effort given the fact that a letter form can be stored on the word processor and quickly personalized and edited to encompass most situations the surveyor will encounter. In fact, given the widespread availability of word processors and the short time a letter takes to prepare, it seems almost negligent not to send the client some form of correspondence -- at the very least an acknowledgement that there is an agreement. As a result, if you are not going to prepare a formal written contract, at least **send a letter**.

1. See e.g. U.C.C. § 2-202 and § 2-207

2. A formal written contract should be used whenever possible. Surveying contract forms can be purchased from the American Congress on Surveying and Mapping (ACSM), 5410 Grosvenor Lane, Bethesda, MD 20814 or Professional Education Systems, Inc. (PESI), P.O. Box 1208, Eau Claire, WI 54702.

3. The common law assumption is that a letter properly post-paid, addressed, and mailed is a letter received.

† Knud Hermansen is an Assistant Professor at the University of Maine and a private consultant. He is a licensed surveyor, engineer, and attorney in several states.