

THE BOTTOM LINE



E X C E L L E N C E I N
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TEN SECRETS TO SUCCESS FOR 2008

HAPPY NEW YEARS!!!!!!

Investor's Business Daily (IBD) spent years analyzing leaders and successful people. IBD determined that most of them have ten traits that, when combined, can turn dreams into reality. They published these "10 Secrets to Success", and, as we kick off a new year, we thought that we would share them with you.

1. How you Think is Everything – Always be positive and avoid negative environments.
2. Decide Upon Your True Dreams and Goals and Develop a Plan to Reach Them
3. Take Action – Just do it.
4. Never Stop Learning – Read books, acquire skills, get training, etc.

5. Be Persistent and Work Hard – Success is a marathon. Never give up.
6. Learn to Analyze Details
7. Focus Your Time and Money
8. Don't Be Afraid to Be Different – Innovate. Following the crowd is a sure way to mediocrity.
9. Deal and Communicate with People Effectively – Learn to understand and motivate others.
10. Be Honest, Dependable and Take Responsibility for your Actions (Otherwise, the first nine secrets won't make a difference)

Best wishes for a healthy, happy and successful 2008.

Contributing Staff

Louis J. Spina
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Famous Quotes

Every great work, every big accomplishment, has been brought into manifestation through holding to the vision, and often just before the big achievement, comes apparent failure and discouragement.
- Florence Scovel Shinn

It's a bad plan that can't be changed.
-Pubillius Syrus

The only way to discover the limits of the possible is to go beyond them into the impossible.
- Arthur C. Clarke

The difference between stumbling blocks and stepping stones is how you use them.
- Unknown

Alert: Issues Concerning the AIA A312 Payment Bond Form

Recent court decisions regarding the AIA A312 Payment Bond have called into question its viability as a proper payment bond form. In one recent case, J.C Gibson Plastering Co., Inc vs. XL Specialty Insurance Co., the court strictly interpreted the "45 day" requirement in the bond. As a result, the Surety was unable to dispute any portion of the claim. The effect was to increase the principal's exposure by denying the surety proper defenses. Realizing that you do not often read these bond forms, please contact us if you would like to review a copy.

According to Edward Gallagher, General Council of The Surety and Fidelity Association of America, in J.C. Gibson Plastering Co., Inc. v. XL Specialty Insurance Co., 2007 WL 2916399 (M.D.Fla. October 8, 2007), the court went beyond the erroneous holdings of the

Maryland Court of Appeals decision in National Union v. Bramble on the effect of the 45 day provision in the AIA A312 payment bond. The Florida federal court held both that the surety forfeited any right to dispute the claim by not making an acceptable, timely response and that the 45 day period began on notice of the claim even though the notice did not include substantiation for the claim. The court stated, "That the notice did not contain enough information for XL to verify the claim is immaterial because paragraph 4 did not require notices to contain such information." The court also thought that a letter sent 48 days after the initial notice would be

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Alert: Issues Concerning the AIA A312 Payment Bond Form

Individual commitment to a group effort—that is what makes a team work, a company work, a society work, a civilization work.

-Vince Lombardi

The important thing to recognize is that it takes a team, and the team ought to get credit for the wins and the losses. Successes have many fathers; failures have none.

-Philip Caldwell

Surround yourself with the best people you can find, delegate authority and don't interfere.

-Ronald Reagan

No problem is insurmountable.

With a little courage, teamwork and determination, a person can overcome anything.

- B. Dodge

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disregarded because 45 days meant 45 days not 48 days. The court stated, "In this case, forty-eight days may as well have been a hundred days . . . XL could not comply with Paragraph 6 by answering within forty-eight days." The court thought that the purpose of paragraph 6 was to prevent extensive delays and that if the surety needed more than 45 days to evaluate a claim it should not have signed a bond that said otherwise.

This decision may be appealed, and the Florida Supreme Court may eventually decide the issue differently, but in the meantime this case and the Maryland Court of Appeals case may potentially be used by every claimant who does not get a response that tracks the language of the bond within 45 days of sending in a letter demanding money.

Representatives of the surety industry have been in contact with The

American Institute of Architects in an attempt to modify the bond form.

In an effort to avoid this increased exposure to their clients, most sureties are requiring that the AIA A311 Payment Bond be substituted for the AIA A312 Payment Bond. There is no significant issue regarding the use of the AIA A312 Performance Bond with the AIA A311 Payment Bond.

In the event that the obligee will not accept an AIA A311 Payment Bond, most sureties are indicating that a rider will need to be attached, that addresses the issues raised in the recent court cases.

On the contractor side, you need to provide adequate documentation to substantiate your position for non-payment in a timely manner. Given the broad indemnification a surety generally has against its principal, it is incumbent upon the contractor to understand this case and its ramifications.

Changes in the Pension Protection Act

On August 17, 2006, the Pension Protection Act of 2006 was signed into law. Section 622 of the Act changes the bonding requirement for Employee Benefit Plans holding employer securities by increasing the limit of liability from \$500,000 to \$1,000,000.

Specifically, Section 622 (of HR-4) – Increase in Maximum Bond Amount, states:

- a. *In General – Section 412(a) of the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1112) as amended by Section 611(b), is amended by adding at the end of the following: “In the case of a plan that holds employer securities (within the meaning of section 401(d)(1)), this subsection shall be applied by substituting ‘\$1,000,000’ for ‘\$500,000’ each place it appears.”*
- b. *Effective Date – The amendment made by this section shall apply to plan years beginning after December 31, 2007.*

Several sureties have responded to this legislation by amending the policy by way of an endorsement to all existing policies and any new policy issued effective 1/1/08. This endorsement replaces the \$500,000 limit of liability with a maximum limit of \$1,000,000 for plans holding employer securities.

There is no additional charge for the endorsement and is meant to help customers holding employer securities within their plan assets, remain in compliance with the new legislation. For sponsors that do not have employer securities as part of their plan assets, the maximum limit required by ERISA will remain \$500,000.

Please be sure to review your plan with your Plan Administrator to make sure your company is in compliance. Please contact Denese Thompson at 516-745-7504 if you find you need an ERISA Compliance Policy. Also, be certain to ask about Fiduciary Liability Insurance Coverage.

The Importance of Paying Bond Premiums on Time

Paying your bond premiums on time is not only expected, but is taken into consideration when the underwriter does its annual review of your account. It had become common practice to pay the bond premium once the project for which the bond was written starts and the first requisition is paid. Underwriters had come to expect this and accepted this as a matter of course. However, in today's marketplace, this is no longer being accepted as common practice.

Why would the surety underwriter expect you to pay the premium even if the job has not started? A common analogy often used is "you pay for your groceries when you leave the store, not when you eat them." The same is true when bonding a project. The surety requires payment for the bond when they issue it, not when the project starts.

The surety's liability starts as soon as the bond is issued and filed with the obligee. If between the times you file the bond and the job actually starts you default on the contract and cannot start or complete the work, the surety is fully liable to the owner to go in and complete the project. This is no different from any other insurance product. Your auto liability coverage begins the day it is bound by the underwriter. If you're in an accident the same day your coverage is bound, you are covered. Hence, most auto underwriters require a deposit premium up front for a new policy and payment of premium by, if not before the renewal effective date. Unlike other insurance products, however, most surety bonds cannot be cancelled for non-payment of premium. Therefore, the entire premium is due at the time the bond is written.

Most underwriters will allow a 30-day grace period, but this is extended to the surety bond agent. An agent for the insurance company enters into an Agency Agreement in order to do business with that company. One of the key provisions of that Agreement is that all premiums, whether collected or not, are payable to the company within 30 to 45 days (depending on the company) of the date the bond is written. This in essence is an extension of credit granted to the surety agent. The agent in turns will usually pass some of this on to their clients. Many companies have gone so far as to impose a late fee if the premium is not paid on time. Any late fees or interest is then passed onto the bond prin-

cipal. Other companies have taken the position that if a bond principal cannot pay their premiums on time, they are not deserving of surety credit and their lines are suspended and no further bonds can be issued until the premium payments are resolved. This action leaves a bad taste in the underwriter's mouth and you can bet it will not be forgotten when the next bond is required or when they do their annual review of the account. Your credit worthiness is now questionable.

As in all things there are some acceptable exceptions. We have seen instances where a project is bid, awarded and all the paperwork, including the bond, is filed, and the owner does not have the construction financing in place. This delays the job, sometimes for many months. With a letter from the project owner explaining the delay, the underwriter may be willing to defer the premium payment. If, however, the delay extends for an inordinate length of time, the underwriter may ask for the return of the bond. They can then cancel the premium and when the project financing is in place and the owner is ready to start they can reissue the bond.

As you are with your business, everyone is concerned about cash flow. Your surety agent as well as the surety company, is looking very hard at collection of accounts receivable. Because your surety relationship is very important to the success of your business and one you want to preserve, it is important that your underwriter sees you as a creditworthy client who pays his bills on time. This doesn't just mean that you pay your vendors in a timely manner, but your service providers as well.

Do not be offended if your surety agent requires payment upfront for the bond you are requested or if their bookkeeper is calling you more often than usual to clean up your account. As the agent, they are sometimes put into an awkward position of explaining to the underwriter why the account that they just convinced them was so creditworthy and deserving of that bond, cannot pay their bond premium.

It is important that every effort is given to paying your premiums in a timely fashion and in accordance to whatever the payment arrangements established by your surety agent and surety company.

Famous Quotes

One isn't necessarily born with courage, but one is born with potential. Without courage, we cannot practice any other virtue with consistency. We can't be kind, true, merciful, generous, or honest.

-Maya Angelou

History, despite its wrenching pain, cannot be unlived, however, if faced with courage, need not be lived again.

-Maya Angelou

If you don't have integrity, you have nothing. You can't buy it. You can have all the money in the world, but if you are not a moral and ethical person, you really have nothing.

-Henry Kravis

Procrastination is one of the most common and deadliest of diseases and its toll on success and happiness is heavy.

-Wayne Dyer

UPDATE YOUR UNDERWRITING FILE

It's time to work on your year-end financial statements!!!!

Give your bonding agent a heads up and let them know how things are looking. Personal financial statements should be updated concurrently with the corporate statements. Please be sure that either your CPA includes the aged schedule of accounts receivable as part of the financial report or as a separate schedule. The financial report should also include a work in progress schedule as of the statement date. Since it will probably be late March or early April before this information is finalized by your CPA, you should also include a current work in progress schedule.

Financial statements are due 90 days for a review and an audit 120 days after the close of the year-end. This means that if you have a year-end of 12/31 your financial statements should be to your bonding company by the end of March. The sureties will start asking for drafts or preliminary numbers as early as February. Please work with your CPA to plan accordingly. CPA's are going into their busy season, but with proper planning, you should have your statements completed before they get into their crunch time. Remember, your bonding depends on timely receipt of this and any other outdated underwriting information. Anything that has renewed recently, i.e. insurance policies or bank lines, should also be updated with the bond company.

Company News

Contractors for Kids held their 3rd Annual Dinner Dance with a "Re-Live the Roaring Twenties" theme on January 18, 2008 at the Atlantis Marine Aquarium in Riverhead. The night was another success. Their next event will be held jointly with CFMA on April 16, 2008 at Crest Hollow Country Club, Woodbury, NY where they will recognize a CFMA Construction Financial Executive of the Year. The proceeds from this inaugural event will go to benefit CFK.

Women's Insurance Network of Long Island—Denese Thompson, President—will be holding it's 12th Annual Bachelor Charity Auction at Crest Hollow Country Club, Woodbury, NY on Wednesday, March 26, 2008. The proceeds from this event is donated to Special Olympics of Long Island and Cold Spring Harbor Labs for Breast Cancer Research.

Come out join us it these very worthy Community Service events.

Letter from the Editorial Staff

This newsletter is designed with our readers in mind. All inquires and ideas regarding this or future newsletters are appreciated. Please send all inquires to me at denese@esuretybond.com. If you know anyone who you feel would like a copy of our newsletter, please let us know so that we can include them in our mailing list. Please let us know if you would like to receive this newsletter via e-mail. Check our website at www.atlynx.com for past editions of our newsletter.

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