



IMPORTANCE OF RECORD KEEPING FOR DESIGN PROFESSIONALS

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As attorneys who represent design professionals on a daily basis, we are aware of the importance of good recording keeping in architect's and engineer's daily practice, as well as issues that can impact that practice when such records are not properly maintained. Design professionals are obligated to maintain their records for seven years following the completion of their services at a project. Keeping copious records during a project and clearly documenting the design professional's services, will assist the design professional in addressing issues regarding their services and assist in mitigating damages at a later date should a claim be asserted against the design professional.

When a design professional becomes embroiled in litigation, demands are often made during the discovery process for production of their complete project file. Design professionals may consider their contract, meeting minutes, and drawings and specifications to be their project file. However, other items including progress photographs, e-mails, notes, reports, invoices, contracts, etc., are also part of the project file and must be produced as well. We have been informed over the years by design professionals that their photos were on an old camera or phone, or their e-mails were on an old computer that has since been discarded.

With our assistance, and in some cases with the assistance of third party vendors, in many instances we have been successful in retrieving these records and producing them in response to discovery demands. In present day, we strongly urge design professionals to save their entire project file, including e-mails, photos, etc. to their server and also ensure that there is a back-up system in place to make certain all of these documents are safely protected, and saved. Each document saved may later

prove to be the one document, “smoking gun”, that exculpates a design professional from liability exposure in a lawsuit. Conversely, the absence of such documents may make it difficult or impossible to defend against such claims.

Another instance where good record keeping helps protect design professionals arises when an owner or contractor asks the design professional to perform services that are outside the scope of the design professional’s contract. A design professional should always proceed with caution when asked to do so as is often the case “no good deed goes unpunished”. Design professionals are often precluded from obtaining a voluntary discontinuance or dismissal by motion when a claim is made that the design professional performed services above and beyond the four corners of their contract, but there exists a lack of documentation from the architect’s or engineer’s project file to address and more importantly refute claims arising out of such purported additional services. Such records will often clarify what services were requested, what services were performed and in many instances what services were expressly excluded. This documentary evidence often proves invaluable in successfully defending against a claim involving additional claimed services as it can establish the limitations of the design professional’s additional services and disprove false allegations arising from such services.

Good record keeping will both assist the design professional in clearly mapping out the scope of their professional services at a project, including exclusions of specific services, and aide in limiting potential liability exposure when claims are asserted against the architect or engineer regarding the specific services they rendered at a project. In the event a claim, litigation, or disciplinary action is pursued against a design professional, we recommend the design professional immediately contact an attorney qualified in this area of law to assist them while at the same time safely maintain their entire project records which will undoubtedly be used to assist in successfully defending against such claims.

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