

XL Insurance @-Clips

It's a Matter of Record

AVOIDING RISK THROUGH RECORDS RETENTION

A sound and legally supported records retention policy should already be part of your firm's risk management program. But if you're just developing a policy, or revising an existing policy, your first step should be to consult with your attorney. Although not everyone agrees on the length of time firms need to keep project records, a number of factors must be considered, especially the statutes of limitation or repose in the states where your projects are located.

Many firms base their records retention policies on the longest applicable statute of limitation or repose, plus an additional year or two as a safety margin—this is particularly important if the retention period is relatively short. Typically, design firms retain records for a minimum of five to eight years. Your policy should be reviewed regularly, as state legislatures change statutes of limitation from time to time.

A FEW EXCEPTIONS

Consider making an exception for documents on projects that are, or are likely to become, the subject of litigation. Examples include projects in which you've experienced significant problems and projects in which your client has been sued or has filed suit. In such cases, you should retain the project documents indefinitely, even if your firm has not been named in the suit. You should

also retain beyond the standard retention period documents related to projects for difficult clients or clients declaring bankruptcy, and to high-risk projects, such as condominiums.

What else should you keep? Again, ask your attorney. Assuming your policy already addresses the following documents:

- notes of telephone conversations
- meeting minutes
- contracts
- approvals
- final drawings and specifications
- calculations
- reports
- design criteria and standards
- advisory letters
- product research
- submittal logs
- site visit reports
- correspondence
- change orders and
- close-out documentation

Your attorney may recommend that your firm's policy also specifically address computer records, e-mail, voice mail and CADD files.



Some attorneys advise that you keep only final documents and not working documents, notes and drafts, which might contain misleading information. Others believe that working documents are invaluable to show the design process and can be the main focus of an alleged copyright infringement case.

ELECTRONIC RECORDS

If you use a project website, you, your client, key project team members and the website service provider should agree on a data retention policy that answers such questions as “How long should the data be kept and by whom?” and “What will happen to the data if the service provider goes out of business?” Consider, too, how long electronically stored data can be accessed because of changing software and hardware and the potential degradation of the electronic medium.

PUT IT IN WRITING

Put your data retention policy in writing and walk your staff and clients through it. Your policy should be periodically revisited and updated to reflect changing technology and the laws that apply to it. Some firms also address their data retention policy in their contracts to make sure their clients are aware of it.

ESTABLISH A SCHEDULE – AND STICK TO IT.

All documents covered by the policy should be destroyed according to the schedule you’ve set. As a courtesy, some firms make a practice of contacting clients or former clients before destroying records. These firms give clients an opportunity to retrieve selected non-confidential documents, have them sign an itemized list of the documents retrieved and maintain a list of the documents destroyed.

Accurate records are often crucial in defusing disputes and the potential for claims. While some firms devote little time to recordkeeping or may fear the potential liability involved in the practice, a well-crafted and implemented records retention plan should be an essential part of your firm’s overall risk management program.

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