

# ProNetwork News

## Risk Management Tools for the Design Professional

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### Document Retention and Disposition: A Key Element of a Design Professional Quality Control Manual

*Excerpted from "Guidelines for Developing Your Firm's Quality Control Manual" by Jacqueline Pons-Bunney and Peter Stacy of Weil & Drage, APC of CA, NV and AZ*

Document control is a cornerstone of a design firm's overall quality control program. This essential preventive measure aims to ensure that:

- Only approved, current documents, specifications and standards are used throughout the organization.
- Proper documentation of project events, conversations, decisions and conditions is maintained.
- The disposal of non-essential, out-dated documents is systematic and orderly.

Establishing a sound document control policy will assist your firm in consistently maintaining high quality performance, and, as an integral part of a quality control program, it can serve as a shield against attacks of negligence and breach of contract.

### Elements of a Document Control Manual

A written document control policy should contain the following elements:

- Effective date
- Last change date and changes made
- Person or department responsible for the policy
- Scope and purpose
- Policy statement on the business and legal reasons for records retention
- Definitions
- Responsibilities
- Procedures
- Other retention policy guidelines
- Duplicate and convenience copies



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## Risk Management Tools for the Design Professional

### Peter Stacy



Peter Stacy is a partner at Weil & Drage, APC, whose practice encompasses a wide variety of business litigation and transactions. He has drafted and negotiated complex contracts for extensive public works and private construction such as mixed-use developments, residential subdivisions and hospitality industry projects, and his clients include architects and engineers, contractors and fabrication companies. An industry expert in design professional liability, Mr. Stacy is also recognized for his knowledge of construction specifications and ADA regulations. He is a sought-after industry conference speaker, and is known for his contributions to community and non-profit organizations.

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### Document Retention and Disposition - *Continued*

A written document control policy should contain the following elements: (continued)

- Consequences if the policy is not followed
- Litigation hold/stop destruction policy including a backup procedure

### Principles of Document Retention and Disposition

An officer, director or key employee should be designated as “document retention administrator” and may be the same person as the Quality Control Manager, who would oversee the firm’s overall quality control practices. The administrator’s responsibilities include:

- Recommending document retention policies and procedures.
- Ensuring their uniform application.
- Resolving issues not addressed by the policies and procedures.

Consider the following matters when you establish practices for the retention and disposition of documents:

- Storage space and costs.
- Destruction/disposition of documents.
  - Use the statute of limitation/repose as a guide to the length of time documents should generally be retained.
  - Subject to specific exceptions, create a policy statement about the destruction of project files a specified number of years after the substantial completion of professional services on a project. (Due to certain, specific regulatory, legal or administrative requirements, certain classes of documents may be retained for longer or shorter periods.)
  - Regardless of these time periods, generally you should permanently keep copies of executed contracts and permitted sets of plans and specifications.
  - When there are contractual requirements regarding document retention for a project or client, they will override general policies and procedures.
- Legal Proceedings. Documents known to be under subpoena, or otherwise the subject of an actual, pending or anticipated dispute, should not be destroyed. The administrator should endeavor to identify such cases.
- Pre-Destruction File Review. At least once each calendar year, the administrator should present a list of project files to be destroyed to a designated officer of the firm.
- Scheduled Destruction. Document destruction should take place at least once each calendar year, at a time to be specified by the administrator. S/he should keep a permanent record of all files destroyed, including the date of the file’s destruction and the person(s) who performed it.

## Risk Management Tools for the Design Professional

### Document Retention and Disposition - *Continued*

- **Disclaimer.** As in the firm's general quality control manual, some type of disclaimer should be added. For example:
  - Documents previously destroyed that would have been subject to retention under a document retention policy, are of necessity excepted from the requirements hereof.
  - The purpose of the policies and procedures is to control document retention costs and preserve space. Nowhere shall it be construed to establish or create a duty, or to provide any obligations beyond those imposed by law, to any third party.
  - While good faith efforts are made to abide by these procedures, any failure to do so should be presumed to be inadvertent.

### Electronic Documents

As we increasingly function in virtual or paperless environments, the retention of electronic information has become a hot topic. Courts have imposed damage awards and penalties on companies that have stalled in discovery or failed to maintain and/or purge such information in anticipation of litigation. Further, there are regulatory and contractual requirements that make an electronic document policy a must.

With the passage of document tampering and destruction provisions of the Sarbanes-Oxley Act and recent amendments to the Federal Rules of Civil Procedure, every company is required to have someone with knowledge of the storage and retrievability of electronic records.

Emails in particular are extremely important in litigation discovery, but please note that they are not the only electronic files in your firm. You will have to apply your e-document policy to Internet downloads, instant messaging, text messages, Websites, e-faxes and on-line bulletin board postings. They all need to be retained in some format/location for generally the same length of time as hard copy documents, and you will need to address retention, destruction, system requirements and storage capabilities, monitoring and enforcement.

Here are some basic steps towards formulating an e-document policy:

- Consult with your IT staff or outside firm about current system capacities and procedures.
- Consider volume, usage, existing archiving (locally and system-wide) and time expended on existing and potential procedures.
- Review both legal/regulatory and contractual requirements.
- Establish procedures for purging emails from local hard drives, the company's system and separate servers.
- Address implementation (automatic v. manual) and enforcement.

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## Risk Management Tools for the Design Professional

### Document Retention and Disposition - *Continued*

*Remember that the policy with respect to the destruction of e-documents, just like hard copies, must be suspended once there has been a notification of litigation or if it is reasonably anticipated.*

It is important to consult with legal counsel, and in the case of e-documents, with an IT expert, to determine the scope and content of document retention and disposal policies and procedures. Then, tailor them to your employees, your clients and your fields of practice. The risks and costs of failing to address the retention of both hard copy and electronic information are too great to be ignored

### Broker's Notes

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