

ELECTRONIC DOCUMENTS: HANDLE WITH CARE

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Today's society communicates digitally. Email, word processing, project management software, CAD software, digital cameras, and handheld devices all make communication easier, quicker, and more prolific. We leave electronic forms of communication everywhere and in extraordinary quantities.

When construction disputes arise, resolution oftentimes requires arbitration or a full-blown lawsuit. Each process requires a significant amount of "discovery" to take place, during which the parties are obligated to exchange essentially any piece of information related to the dispute. As noted above, each project generates a vast amount of information, often located in several different places and forms. Collecting this information accurately and completely can be very time consuming and labor intensive, but nonetheless must be done. Parties who ignore this duty, or take the duty half-heartedly, can be hit with severe sanctions—in some cases millions of dollars.

Pre-dispute organization, retention, and destruction of electronically stored information has become more important than ever. Depending on how a company routinely manages and organizes its electronically stored information can cost, *or save*, tens of thousands of dollars in



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litigation. Proper organization of information, regardless of any dispute, enhances the company's daily operations and effectiveness.

As soon as a company has reason to suspect that a dispute is lurking, it must suspend all destruction policies and procedures to ensure the preservation of potentially relevant information. Failure to do so can lead to disastrous results. A "Litigation Hold Notice" should be sent out to all persons who may have any information, *electronic or paper*, related to the construction project. The "litigation hold" duty falls to everyone in the organization, but especially to top level management. It also must be regularly monitored to ensure compliance. Both in-house and outside counsel have an even greater burden to ensure that all relevant information is preserved and collected.

Since email usually accounts for the largest portion of electronically stored information, careful consideration should be given to how a company uses, organizes and stores email. Email attachments must be preserved with the parent email. Email users should be instructed, and periodically reminded, that anything they write in an email may potentially be displayed, **in big bold letters**, to a jury.

Management should review how electronic information is created, organized, and stored within the company's computer system. A central, network storage location or document management system is preferable to individual storage locations. Standard file-saving methods, naming conventions, policies, and practices should be discussed with the entire organization. Discourage individual electronic storage of information and explain that at some time, the company may be tasked with the collection of ALL electronically stored information in any way relating to a project or projects.

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