Email vs. Written Letters: Think Before You Hit Send

The project is underway and a thought pops into your head about the project. Without giving it a second thought, you fire off a text or e-mail to the owner, contractor, co-worker, whoever. No big deal, right? Think again.

In this day of electronic communications including e-mail and text messages as a key way to communicate, it is easy to forget the power of the written word and how it can negatively impact your firm. Design professionals would be wise to remember the written word lives on for eternity in cyberspace and while written communication can be helpful, it can also come back to haunt them. To avoid the trap of having your own words used against you if there is a claim, make sure people in your firm use some old-fashioned common sense. Be careful when documenting a project, and think before you hit send.

While e-mails can be a great tool in a design professional’s arsenal, enabling important information to be communicated immediately between parties on a project rather than waiting for someone to go back to the office to write a letter, what happens when using e-mail or texting is relied upon too often? One litmus test defense attorney’s use is if design professionals write something in an e-mail, text or letter, how would they feel if it was read to a jury? Attorneys warn that unless a legal privilege applies, a judge can order that e-mails be produced in discovery if a lawsuit is filed.

Another scenario attorneys warn of is when design professionals express their personal feelings, opinions or frustrations in an e-mail to one of their colleagues in an inter-office e-mail, perhaps even referring to others by unflattering names. In one such scenario, employees of a design professional firm used disparaging nicknames for people on the project in internal office e-mails. When the client sued the firm relative to the project, the client saw the firm’s e-mails, including the disparaging nicknames, when they were produced in discovery. Needless to say, the e-mails did not paint the design professional firm in a flattering light. Not only did the case settle for probably more than it would have if the e-mails had not been exchanged, but this type of communication could have an impact on a jury if the case went to trial.

Once you hit the send button on an e-mail you cannot take it back, attorneys warn. A design professional’s written word sent to other people, as well as spoken words, can be used as a basis for a claim for libel or slander.

Design professionals need to remain professional in their e-mail communication, just as they would if they were writing a letter on their professional letterhead. Avoid the temptation to be informal in e-mails and avoid writing anything that could be embarrassing later if everyone involved with the project sees it. Imagine that e-mail blown up on a large poster board for the jury to see in a courtroom and consider if you would be OK with that.

E-mails can still be used to document projects, but design professionals must understand the potential pitfalls and use e-mails responsibly. For important decisions and correspondence, such as meeting minutes, technical explanations, and key decisions on a project, attorneys recommend writing a letter or memo and sending it as a PDF attachment via e-mail to the parties involved. This way you will have a PDF version of the correspondence, like meeting minutes, that you can also locate on your computer if you need it.

And while there will always be someone who wants an answer yesterday to an e-mail or text, avoid the trap of typing a quick and informal response. If you are being pressured to respond immediately, remember to just slow down. Respond that you will review the request and provide a reply. This way you acknowledge receipt and can provide a thoughtful response.
When it comes to internal communication, do not overuse email. If there are internal office discussions about a project or design issues, take a walk down the hall or pick up the phone and speak with your colleague.

One internal email between a design professional and his colleague that was discovered during litigation prompted a quick settlement of a claim, even though the designs were not necessarily problematic. The email read, “Does the insurance underwriter for this facility know what is being installed? ... Don’t invite me to meet you at this plant. I’m staying away.”

When it comes to texting, design professionals need to be just as careful. Do not communicate important decisions via text message and remember, text messages can be recovered and produced in litigation. Implement a company-wide policy that important decisions must be documented via email or written correspondence, and not via text message.

Another important aspect of electronic communication is that design professionals need to be able to track emails from the project and be able to search those emails. One suggestion is to create a separate electronic folder for each project that can be accessed by everyone on the project, and ensure that all emails related to the project are filed electronically in that folder when they are sent or received. Keep important information such as contracts, requests for information (RFIs), RFI responses, change orders, change order responses, drawings, correspondence between the parties, etc., in that folder.

With cloud storage available, design professionals can save to a cloud but must ensure they devise a method to identify and locate documents for each project. Attorneys recommend that project records, including emails, correspondence, drawings, RFIs and responses, be retained for the period of time of the applicable statute of repose, which will vary from state to state and some states do not have a statute of repose. Design professionals should check with their local legal counsel to determine the statute of repose for the applicable jurisdiction.