

Sage Construction and Real Estate

Litigation Risk Management



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Table of Contents

Introduction 3

Need for Documentation in Litigation 3

Implementing Software for Document Control..... 4

Benefits of Document Control Software during Litigation 4

Conclusion 5



Introduction

Construction professionals have to be prepared for litigation, as the industry routinely deals with lawsuits relating to numerous issues from on the job injuries to miscommunication and budget overruns. The traditional and well-known approach to manage the risk associated with construction jobs is to hire good lawyers and purchase good insurance to cover all liabilities. While lawyers and insurance are essential, construction professionals can gain even more security by implementing controls using project management and document management software systems. Contractors who find themselves facing a litigation proceeding that are prepared with all of the necessary documentation, have a much greater chance of receiving a fair verdict than those who have lost track of key documents and project related communications.

Construction litigation is a costly process, but businesses can save time and money if they properly prepare for the proceedings. This preparedness includes elements such as insurance, but it also encompasses good document control and a system which makes the information easy to store, access and update.

Need for Documentation in Litigation

One of the main ways to reduce risk is proper project documentation. The key document that allocates risk is the contract. Construction projects often include numerous contracts between architects, designers, subcontractors and contractors. The contract determines how much risk each party will be held accountable for and what each party's responsibilities are¹. Additionally, a court will view a contract as the most accurate representation of each party's obligations because it was drafted before legal proceedings and officially recorded². Parties involved in a litigation need to have the original copies of their contracts on hand so they can eliminate any uncertainty.

Contracts are not the only documents necessary for a litigation proceeding. Contractors should maintain a daily job log that includes manpower, equipment (used and idle), major work activities, delays, accidents, oral communication records, weather summaries, job site visitors and areas of work not available. Key project personnel should also keep their own personal daily logs, which may be useful later². Electronic communications also need to be presented, now that many business matters are discussed over email, instant messages, text messages and Power Point presentations³. The number of documents relevant to litigation is extremely large, and every detail is important as a contractor proves why delays occurred or where funds were allocated.

When faced with litigation, all of the parties involved need to find the original copies of project-related documents, which can be a time-intensive task if there is no organized system in place for tracking them.

Products to assist you:

Sage Timberline Office:

- Document Management
- Project Management

1 www.katzandstone.com/pdf/riskanalysis.pdf

2 www.crowell.com/documents/DOCASSOCFKTYPE_ARTICLES_541.pdf

3 www.arcadis-us-pmcm.com/assets/files/PinnacleOne_Helpful_Tips_Electronic_Document_Management.pdf

Implementing Software for Document Control

Manual methods for locating documents that are essential for litigation takes time and money, and there's always a chance that some important documents will fall through the cracks. However, document preparation can be faster and more accurate if companies invest in project and document management software before litigation arises. Preparing documents for litigation will cost money; the choice is whether to plan ahead and invest now or pay more later. Information included in documents drafted during the project will hold more weight in court than documents prepared during litigation. When documents are organized in an easy-to-use system during the project, businesses can access them quickly if litigation occurs, saving legal and expert fees while increasing the accuracy and breadth of data².

Implementing document control systems such as Sage Timberline Office Project Management and Document Management enables businesses to create a central database for key project-related documentation. Businesses can automatically log and store important project information electronically or have the flexibility to manually scan handwritten and/or paper documents into the Sage Timberline Office systems. This brings electronic and paper documents into one system, which allows businesses to search and quickly retrieve the specific document they need. Both of these systems are integrated with Sage Timberline Office, enabling all project participants the ability to access, review and update important data resulting in improved collaboration across the board. While electronically organizing documents, construction professionals should carefully consider keywords that will improve search engine results. In addition to improved document storage and retrieval, the Sage Timberline Office Document Management system also includes a Rules-based Routing feature automating the document distribution and approval processes.

Benefits of Document Control Software during Litigation

In order to present a strong case during construction litigation, the parties involved need an organized approach to discovery so they are both able to find important documents and not be overwhelmed by meaningless reports. The foundation of a construction case is documentation, because it determines the parties involved and defines the scope of the project being discussed. Construction litigation often involves numerous participants, who each have several employees and large amounts of paperwork related to the project. Lawyers need to access essential documents so they can prepare an effective case⁴. Document control software systems can provide them with the information they need in a manageable format.

Construction projects include transmittal letters, correspondence, shop drawings, project reports, change order proposals, change orders, daily reports, requests for information and numerous other documents. Not only do lawyers and the parties involved need this information, but so do experts called in to make expert testimonies. Both sides of a construction litigation proceeding commonly call in experts to give their opinions on certain issues. Experts must be paid and in order to prepare

² www.crowell.com/documents/DOCASSOCFKTYPE_ARTICLES_541.pdf

⁴ www.thefreelibrary.com/Effective+discovery+in+construction+litigation.-a076845823

for the trial, they must be familiar with all of the documents involved. Providing experts with an easily accessible software system can reduce the amount of time that businesses have to pay them for, further reducing litigation costs¹.

Conclusion

Unfortunately, litigation is an inevitable part of the construction process, and all professionals involved in building projects can minimize their exposure to risk before litigation begins with proper document and project control. Implementing project and document management software can sometimes detour the entire litigation process but at the very least reduce associated expenses by saving time and money during the discovery process and minimizing the money spent on expert witnesses.

¹ www.katzandstone.com/pdf/riskanalysis.pdf

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