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Design professionals' work generates voluminous documents. For the unwary, document management can create legal pitfalls.

First, failure to properly retain documents may give rise to a lawsuit years after project completion.

Second, a firm that has a document retention policy, but fails to consistently implement same may lead to a claim that it has selectively retained only favorable documents.

Third, a firm that fails to establish a routine system for destruction of records after a specified timeframe may face sanctions for spoliation of evidence.

A firm may face a lawsuit years after substantial completion of a project. After claims are brought just within ten years, the maximum timeframe in most states for bringing a lawsuit based on design defects. By implementing a written document retention policy and communicating it to employees, a firm can protect itself. Although no one policy fits all, most firms should retain formal documents for the full duration of the applicable stated timeframe within which a lawsuit can be brought. For informal documents, many firms prefer to have a routine destruction policy that eliminates these documents soon after project completion and well before the time for bringing a lawsuit has passed. In general, informal documents have a greater likelihood of containing embarrassing or damaging information, while formal documents reflect a firm's final, carefully considered actions.

Often a firm has a document retention policy, yet its employees fail to implement the same in an organized fashion. Haphazard project files can expose a firm to intense scrutiny during a lawsuit by inviting closer examination from an attorney who suspects damaging information is missing where irregularities or gaps exist.

Finally, if a firm destroys documents, it must take care to establish a policy for routine elimination based on clearly-defined categories of documents and timeframes. Many states have safe harbor laws that protect firms from sanctions if such policies are carried out in good faith.

To that end, a firm's policy must be consistent across all projects in the firm to show good faith in the destruction of documents and guard against a claim for spoliation of evidence – and the sanctions that might attach. Also upon learning of a potential claim, a firm is under a legal duty to implement a litigation “hold” by halting destruction of relevant evidence, including documents scheduled to be destroyed according to the firm's retention policy. Failure to implement a litigation hold exposes a firm to possible monetary sanctions due to spoliation of evidence. A firm should therefore have systems in place to halt automated destruction of documents and train employees in effectuating the litigation hold.

Lastly, when destroying documents, a firm should take care to do so thoroughly, by shredding physical documents in secure bins, or by deleting electronic documents and preventing their recovery by overwriting the data with commercial software and physically destroying hard drives.

A solid document retention policy is critical to a firm's overall risk management system. By creating clear guidelines, ensuring they are consistently carried out, and establishing a good-faith system for destruction of documents, a firm can mitigate the risk inherent in future litigation.