



## **A lawyer discusses following the electronic trail in the event there is a dispute**

April 23, 2012 - Spotlights

Documenting what is discussed on a construction project is almost as important as actually doing the work. In fact, on very large projects there are outside companies that specialize in keeping track of all of the electronic communications. As an attorney, having my clients keep such records is crucial in the event there is a dispute. Not so long ago, lawyers used to advise their clients about keeping a "paper trail" in the event of litigation. Now the emphasis is more on keeping track of the "electronic trail."

Being able to quickly communicate electronically with a number of parties on a project is great, as long as people realize when they send out these communications the world is reading and saving them. We are living in a world of scanners, iphones and other electronic devices that make saving information and communicating with people incredibly fast and easy. Huge quantities of documents can easily be scanned and saved electronically forever. It is no longer likely that someone will say that the documents were "thrown out" because the storage room needed to be cleaned or there was a flood. The contents of many boxes of documents may be retained in one small USB flash drive. So even documents that you may wish would just "disappear" are there to stay electronically, making them available for review in requests for documents in connection with litigation.

When people used to sit down and write letters, there were usually several drafts going back and forth to a secretary. Sometimes the secretary might even suggest certain edits. Nowadays, many executives do their own typing on portable laptops or iphones. They are not "thought out". They are quick, off -the -cuff unedited remarks. What I am seeing as an attorney who reviews these documents in litigation matters, are sometimes very blunt communications with very salty language. While the sender may feel embarrassed by the frankness of the e-mail and not chose to save it, the five other people that the recipient forwarded it to may all have saved the letter in their files. Sometimes employees are sending out important communications on personal electronic devices which are not part of the company network.

Having said all of the things that can be problematic about electronic communications, let me say that there are also many good things about it. E-mail allows people to send out quick communications to confirm important understandings, which may not be possible without office staff.

I always counsel my clients to think before they write in connection with their projects and ask them, in turn, to discuss these recommendations with their employees.

C. Jaye Berger, Esq, is an attorney and the principal of Law Offices C. Jaye Berger, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540