

# **A PRACTICAL GUIDE: GET YOUR CONSTRUCTION DOCUMENTS UNDER CONTROL!**

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## **INTRODUCTION**

The construction industry has always involved enormous number of documents. For construction matters, most of the key facts or details are found in written records. For example: contract documents, correspondences, drawings, plans and specifications, construction site diary, progress reports, variation orders, invoices, payment records, etc.

This article provides a practical guide to documents management within the construction industry.

## **KEEPING RECORDS - WHY BOTHER?**

So, what are the most important documents when a dispute arises in a construction dispute?

The short answer to the question above would be: **“all of them!”**

However, it is pertinent to note that, the importance of a particular document would highly depend on the nature of the claim and/or dispute. By having proper records of the documents, this would greatly assist the lawyer(s) handling the matter to assess the case properly and also, to determine which documents are required to address the issues at hand, in the event of a dispute. Often, many contractors in the construction industry would neglect the importance of keeping proper records to later find themselves at a disadvantage.

## **THE BEST PROTECTION AGAINST CONFLICT OR DISPUTES**

### ***A well-drafted contract is your best defense***

Firstly, the written contract between the parties is very important.

It is important for the parties entering into any transaction to have the agreement recorded in a written contract. This is especially so for construction projects which are technical and complicated by nature. A construction contract would usually set out the legal rights and obligations of the parties and govern the processes or procedures by which those rights and obligations are carried out.

A well drafted contract would be a party's best defence. Hence, it is important to thoroughly review the terms of the contract to ensure that the parties involve understand, amongst others, the following:

- a) The parties' respective obligations and rights under the contract; and
- b) The consequences of breach of the terms and conditions of the contract.

After the parties have executed the contract, the contract should be kept safely and be retained in an electronic format.



## ***Notices and Communication Concerning a Project***

Secondly, it is important to note that the contract will most likely set out the notice requirements for communications. For example, contract variations, application for extension of time, requests for payment, variation orders, or the notice of default of the contractor or the employer.

Subject to the specific express term of the contract, in general, a party should ensure that any notice issued to the other party complies with the following:

- a) The notice is dated and signed;
- b) The notice is sent to the correct party and address;
- c) The notice contains sufficient detail and information concerning the purpose of the notice; and
- d) The proof of service of any notices is retained and kept properly (both physical and electronic copies).

It is imperative to note that the failure to provide notice as per the requirement of the contract can result in serious implications on a party's contractual rights and remedies. In this regard, compliance with the contractual notice requirements is a frequently argued/disputed issue in court and arbitration. The ability of a party to show by way of documentary evidence that the required notices were issued would then be crucial to the matter.

As such, the parties should always ensure that the copies of all the letters, correspondence, or other written notices sent to other parties are kept properly and stored electronically for record purposes. This would also prevent the loss of evidence when there is a turnover of personnel or after the completion of the construction work.

## ***Digital Communication***

Thirdly, in this digital era, communication concerning a construction project can be quickly exchanged via emails, WhatsApp and text messages. Emails and WhatsApp and text messages are extremely useful tools to coordinate the project team, informing every one of the site conditions timeously, relaying instructions and keep the project team updated and informed.

In this respect, it is undeniable that these exchanges of messages can be crucial evidence in an arbitration or litigation. The importance of such messages, especially via WhatsApp, have increased over the last 5 years as many instructions or reminders are seen to be issued via this mode of communication. Further, pictures are also often exchanged via WhatsApp especially for the purposes of defect rectification. These messages may seem trivial during the construction period but they have proven to be important when dispute arises. Hence, it is important for each construction team to keep an updated copy of all the relevant text messages of WhatsApp messages. If needed, these messages ought to be printed out after a period of time and kept separately for record purposes.



Another point to note is that, any communications done orally via telephone calls or meetings should also be recorded in writing as well, especially important tasks or instructions. By doing so, one would be able to ascertain what has transpired during a certain discussion or event and present this as solid evidence even after a considerable amount of time has passed.





Apart from the above, one should also exercise caution when drafting correspondence to another party on the construction project. Drafting letters without sufficient thoughts can be counterproductive. In this regard, drafting a correspondence without understanding the actual intent behind it may ultimately lead to the content of the letter(s) being challenged. Therefore, when drafting a correspondence, one should always consider carefully what is the primary purpose or intent of the correspondence and what the correspondence may disclose.

Further, it is also prudent for one to adopt a proper and efficient system for collecting and maintaining these communications stated above. This is to avoid losing the conversation trail or records over time. One of the methods is to store all documents relating to the projects on digital cloud platforms, with proper and detailed naming of the individual files.

### **CONCLUSION**

In short, construction document management is critical as it provides a comprehensive record of the construction project.

Therefore, it is important for construction companies to have a systematic and structured document management system in place. Not only would it help to save time and resources but proper documentation would protect the rights of the party(ies) involved.



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