



Digital Stamping

A Strategic Plan for Design Professionals

By David A. Ericksen, Esq.

Among all the professions, design professionals are unique in that only they hold professional stamps to seal their work product. That seal carries genuine significance. As the Ontario Board of Engineers has stated,

[The engineer's stamp] assures the document's recipient that the work meets the standards of professionalism expected of competent, experienced individuals who take personal responsibility for their judgments and decisions.

Accordingly, application of the design professional's stamp should be treated with respect and restraint. However, as electronic design, demands, and opportunities expand, traditional respect and restraint for the design professional stamp can be tested.

While there can be, and are, many variations as to the interplay of design professional stamps and the corresponding signature, the three principal categories at this time are:

- 1) traditional use of the "wet" stamp with a "wet" signature over it;
- 2) an electronic seal with a wet signature; and
- 3) an electronic seal with a digital signature.

In the progressive variations above, each step creates greater potential for the unauthorized use or replication of the design documents with the corresponding seal and signature. Even though it would be "unauthorized," such use can and does implicate losses of intellectual capital from wrongly converted work product and risks liability from those unintended uses. To counter this, design professionals may consider the five-step plan below.

Internal Written Policy of Intent and Practice

Every component of the design should be intentional. That is particularly true with respect to the application of a professional seal and signature. In firms with multiple architects or engineers, that practice should be consistent across the company. When there is a question as to the validity (or misuse) of a professional seal or signature, reference to an internal policy may often be the key to the response and defense, if necessary. Such a policy need not be long or cumbersome, but it should be written, shared internally, and

reinforced. Such a policy may be built from the following four elements.

Limited Application

Not every sketch, report, or letter by a professional architect or engineer should be stamped. In fact, it should be just the opposite. Ideally, the professional stamp and signature should only be applied to a final work product (plans and specifications mostly, but also reports and certifications as necessary or required). Iterative drafts and correspondence should never be "stamped" unless extraordinary circumstances and demands exist with corresponding justification and limitations. The significance of the professional stamp and the potential messaging to those who receive, review, and rely on professionally sealed documents demands such restraint and intentional application.

Limited to Wet Stamp Whenever Possible

The simple reality is that original wet stamping and original wet signatures cannot be replicated or misused nearly as easily as electronic or digital seals or signatures. Accordingly, the stated policy preference should always be to use the original or wet stamp and signature.

Log of Electronic/Digital Applications

Where project demands or modern practices warrant or justify the use of electronic or digital seals and signatures, the publication of such documents should be tracked in a formal log. The log identifies the subject documents and associated information such as date, version number, number of pages, the applicable project or site, the intended recipients or users, and the transmittal date. When consistently followed, such a log provides at least two key benefits. First, it reaffirms the intentional and limited use of the professional stamp. Second, where there is a question as to subsequent modifications, corruption, or misuse of documents bearing the stamp or signature, it provides a reference point to disprove and defend against claims that the use was properly permitted.



Statement of Limitation

Finally, any design professional seal or signature should apply only to those documents actually published by the design professional. Where the seal or signature is digital, it risks both that the underlying documents may become corrupted or manipulated, or that it could be replicated for unauthorized use. Accordingly, design professionals should make clear that their seal and signature validly applies only to the documents as they published them at the time the seal or signature was applied, and not to anything thereafter. A directive or disclaimer on the documents themselves, and in close proximity to the seal or signature, could provide:

Design Professional's electronic or digital seal or signature is effective only as to that version of this document as originally published by Design Professional. Design Professional is not responsible for any subsequent modification, corruption, or unauthorized use of such document. To verify the validity or applicability of the seal or signature, contact Design Professional.

Such a directive or disclaimer, with the corresponding invitation for follow-up contact, has the tandem benefits of controlling and securing the value and integrity of the design professional's work product, as well as potentially opening the door to further or new engagements for professional services on that or other projects.■

David A. Ericksen is a principal shareholder in and immediate past President of the law firm of Severson & Werson in San Francisco, California, and leads the firm's Construction and Environmental Practices. David can be reached at dae@severson.com.