

# Electronic Data Transfer: Sample Disclaimer Notice

Contributed by AIA Knowledge Resources Staff

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## CONSULT YOUR ATTORNEY

The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to electronic data transfer.

## SUMMARY

A sample disclaimer notice can help firms minimize professional liability exposure that may arise when documents are transmitted electronically. This article is part of a series on electronic data transfer. See Resources/Best Practices for related Best Practices articles.

## AUTHENTICATING AUTHORSHIP

Documents transmitted electronically for which no reliable means exists to verify their authenticity, authorship, and integrity are frequently regarded as having questionable legal standing. As a result, persons who receive and use electronic documents transmitted to them by others do so at their own risk, and may not be able to hold the persons presumed to have transmitted such documents liable for their content.

On its face, this might seem to relieve the concerns most architects have with respect to liability for electronic documents they transfer to others. However, in any legal dispute over the authenticity and authorship of electronic documents, architects might have to shoulder a substantial burden to prove that electronic documents transmitted to others had been altered without their knowledge or consent, and they might in the end find it impossible to satisfy that burden. For this reason, it is useful for design firms to stipulate, whenever documents are transmitted electronically, that only signed and sealed hard copies of documents may be considered original documents of record. Although this may not eliminate the threat of litigation and liability, it should help to reduce that threat.

## MINIMIZING RISKS OF DATA TRANSFER

Any transfer of electronic data should be preceded by a written transfer agreement signed by both parties. Each transmission of electronic data should

also be accompanied by a disclaimer notice that alerts the recipients of the terms and conditions of the transfer. The purpose of a disclaimer notice is to help minimize exposure to professional liability that may arise from documents that have been inadvertently or deliberately altered or modified without the knowledge or consent of the architect.

Below is one example of a disclaimer notice for the electronic transmission of drawing files and other architect's instruments of service. It may be useful to display such a notice conspicuously on all documents that are transmitted electronically. It is advisable, at a minimum, for the notice to appear in the body of any email message to which electronic documents are attached, in any electronic transmittals, *and* within the electronic document itself.

To help ensure consistent use of such a notice throughout the firm, it is recommended that the text be included in all templates and default drawings (or their equivalent) used to create all electronic files.

## DISCLAIMER NOTICE: SAMPLE TEXT

### NOTICE:

*XYZ Architects Inc. is providing, by agreement with certain parties, materials stored electronically. The parties recognize that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media (including but not necessarily limited to "CAD documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, all such documents are provided to the parties for informational purposes only and not as an end product or as a record document. Any reliance thereon is deemed to be unreasonable and unenforceable. The signed and/or stamped hard copies of the Architect's Instruments of Service are the only true contract documents of record.*

## ELECTRONIC SEALS/STAMPS OR SIGNATURES

In addition to conspicuously displaying a disclaimer notice whenever documents are transmitted to others electronically, architects should remove any electronic signatures or professional seals/stamps from electronic documents before they are transmitted to others. Architects also may wish to reserve the right to remove from the documents the name and address of the design firm, particularly if the likelihood of inappropriate future use of the documents appears high. This risk must be weighed against the risk that removing all evidence of authorship could adversely affect the design firm's intellectual property rights (copyright) in the documents.

## RESOURCES

### More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 10.02.03 Electronic Data Transfer: Receiving Information from Others
- 10.02.04 Electronic Data Transfer: Project-Specific Web Sites
- 10.02.05 Electronic Data Transfer: Electronic Signatures

### For More Information on This Topic

See also "Information Management," by Elena Marcheso Moreno, in *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 13, page 380.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at [bookstore@aia.org](mailto:bookstore@aia.org).



### Feedback

The AIA welcomes member feedback on Best Practice articles. To provide feedback on this article, please contact [bestpractices@aia.org](mailto:bestpractices@aia.org).

### Key Terms

- Practice
- Information management
- Office information resources
- Office archives
- Records retention plan