

Wet or Electronic Stamp: Ethical Considerations

As technological advances race onward to achieve previously unimaginable computerized applications, design professional practice laws remain conservative in order to insure the highest level of professionalism and protection to the public.

Before the age of computers, traditional practice and law required crimping or signing over a design professional seal, usually with colored ink to identify an original. But paper is a tool of the past, and today's project owners develop construction documents on computers for ease of correction and transmittal.

Ohio law accommodates electronic seals, provided that an Architect follows several different sets of rules promulgated for different purposes. This article will review those provisions of law.

Illegal Activity

Inherent in any discussion of Ohio's Seal Law, the ultimate responsibility to protect the use of a design professional's seal is upon the individual Architect. No law can prevent a truly dishonest person from abusing the rules. While electronic seals are an option, the law authorizes the traditional wet signature still, which may be more appropriate given certain circumstances of which only the Architect might choose.

Both the Ohio Architects Board and the Ohio Landscape Architects Board prosecute individuals for "plan stamping," the sealing of design documents not prepared under the direct supervision and control of the licensed design professional.

Plan stamping may arise when a contractor in a design-build relationship takes control of blueprint drafting, whether for value-engineering or for convenience. Plan stamping also occurs in apparently innocuous situations, such as when a chain-store owner transmits its standard drawing from out-of-state to an Ohio licensed professional, who simply seals the drawing for submission to authorities.

With computer-generated seals, the risk of plan stamping increases, because a non-licensed person simply may copy the seal from a "pdf" onto other documents. Thus, even when a third party will accept electronic plans in form, it remains the

Architect's duty to take precautions through encryption protocols. This may mean using an original wet seal and signature even when electronic means are available, or simply not facilitating certain activity when evidencing an improper or lax process.

Ohio Legal Requirements

In 1995, the Ohio General Assembly enacted the Seal Law, Revised Code 3791.04(A), requiring a design professional's seal on all plans, drawings, specifications, and data submitted for approval and permit to a building department. If the plans do not contain a seal, the building department cannot issue a building permit, unless pursuant an exception. The test to requiring a seal is whether the document preparation requires expert skill and knowledge acquired by professional or technical training. Thus, logically excluded are coordination or as-built drawings, and data such as from manufacturer's cut sheets.

We must read this Seal Law provision in concert with the professional licensure laws, which require that, "All working drawings and specifications prepared by or under the supervision of the holder shall be imprinted with this seal." Revised Code 4703.12 for Architects; and for Landscape Architects, "All plans, specifications, drawings, and other documents prepared by, or under the direct supervision of, the landscape architect shall be imprinted with the seal in accordance with the requirements of the board." Revised Code 4703.36.

The result of an Architect sealing professional work product is a certification:

Ohio Administrative Code 4703-3-01 (C): The architect shall imprint documents only if the architect was the author of such drawings, specifications and other contract documents or was in responsible charge of their preparation.

Ohio Administrative Code 4703:1-3-01(A): Each landscape architect shall be authorized to use a seal as hereinafter directed in paragraphs (B) and (C) of this rule on all documents prepared by the landscape architect or under the landscape architect's direct supervision for use in the state of Ohio,

This law implies liability for the design professional. If that seal is re-used improperly, innocent parties may rely on the seal, with liability exposure for the design professional.

Importantly, the licensure laws also define the violation. To some extent, an Architect may rely on sub-consultants such as engineers, Ohio Administrative Code 4703-3-07 (A) Competence (2):

In designing a project a registered architect shall take into account all applicable state and municipal building laws and regulations. While a registered architect may rely on the advice of other professions (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, a registered architect shall not knowingly design a project in violation of such laws and regulations.

Landscape Architects are bound by similar language, Ohio Administrative Code 4703:1-3-04(A) Competence (2):

In designing a project, a landscape architect shall take into account all applicable state and municipal construction laws, zoning codes and other applicable regulations. While a landscape architect may rely on the advice of other professionals (e.g., attorneys, architects, professional engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, a landscape architect shall not knowingly design a project in violation of such laws and regulations.

Electronic Signatures

How does a design professional affix an “electronic signature” to comply with these laws?

The Architects’ Board promulgated a rule for electronic seals, which requires two significant distinctions from a live seal, Ohio Administrative Code 4703-3-01:

(4) It is linked to the document in such a manner that changes are readily determined and visually displayed if any data contained in the document file was changed subsequent to the electronic seal and signature having been affixed to the document, and

(5) In addition, once the electronic seal and signature is applied to the document, the document shall be available in a view only format if the document is to be electronically transmitted;

The Landscape Architect rule adds a provision, Ohio Administrative Code 4703:1-3-01:

(4) It is linked to a document in such a manner that changes are readily determined and visually displayed if any data contained in the document file was changed subsequent to the electronic seal and signature having been affixed to the document, and

(5) Changes to the document after affixing the electronic seal and signature shall cause the electronic seal and signature to be removed or altered in such a way as to invalidate the electronic seal and signature.

(6) In addition, once the electronic seal and signature is applied to the document, the document shall be available in a view only format if the document is to be electronically transmitted;

Note that none of these requirements are met by merely scanning in a document to create a pdf. Even if an owner or public authority might accept a scan, the licensure Boards prohibit it, preventing a third-party from changing a document and applying a pdf “seal”. An Architect ultimately is responsible for such improper use.

Public Agencies

Ohio’s Office of Information Technology promulgated a comprehensive rule for all state agencies, as an electronic signature protocol. That rule requires “documented policies and procedures that provide reasonable assurance of the authenticity of electronic signatures,” Ohio Administrative Code 123:3-1-01(H). See also R.C. 1306.21.

The key for an Architect is to prevent plan alteration, or unauthorized use of the signature block or seal on other, unauthorized plans or specifications. As design professionals submit to a multitude of public building departments, the Architect must review each electronic submission protocol at each locality, to determine the type of security and signature encryption if submitting electronically.

By way of example, the City of Columbus is working on, but does not yet accept, electronic design professional seals for permit drawings (commercial.)

The Ohio Facilities Construction Commission solicits construction bids electronically for state agency construction projects through the State's Enterprise Electronic Bidding Module for Construction. Ohio Administrative Code 153:1-8-01. OFCC routinely uses electronic documents, requiring wet signatures only for contracts and change orders. But OFCC does not require sealed plans as part of their process, as a local building permit may not be needed.

As part of the electronic signature protocol, the state "shall establish a process for interested bidders to electronically certify their identity and the validity of their submitted bid." Id., section (K). OFCC has used encrypted bid documents for over two years.

Conclusion

Electronic seal and signature protocols are the future of design plans and specifications. As required in the licensure laws, it is the primary responsibility of each Architect to insure that any seal and signature are encrypted, to prevent the unauthorized use by others.

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