

STOP: Can your Professionals stamp those documents?

*(Abbreviated version of A/E Stamping, Sealing, & Signing:
Satisfying Statutes & Standards of Care)*

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The architectural or engineering stamp or seal has been described as the design professional's "distinctive mark." The professional stamp or seal is the unique province of architects, engineers, landscape architects, land surveyors, and geologists. It is a unique distinction established and bestowed by States as a recognition and empowerment of trust and authority. With that authority and trust comes responsibility and accountability. The use of the stamp or seal is and should be significant. As the Ontario Professional Engineers have characterized it: "It 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"

Most design is a collaborative process. The act of stamping and sealing design documents prepared by or contributed to by others or incorporating information by others actually exposes design professionals to three separate and distinct levels of risk exposure:

- Licensing.
- Negligence claims based on the alleged violation of the standard of care for stamping and signing such documents.
- Misrepresentation or fraud claims based on the client and public statement made by the act of stamping and sealing a design document.

Unfortunately, there are no uniform standards to guide or control the use of a design professional stamp. The National Council of Architectural Review Boards adopted a Model Act for recommendation to its members in 1977, and has consistently updated it since. It covers many issues, but it is particularly clear, emphatic, and rigorous with respect to the standards and criteria to be applied in evaluating the adequacy of the stamping and sealing of design documents prepared by others. Section 5.2 of the NCARB Model Act provides:

“Responsible control” shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the professional standard of care. Reviewing or reviewing and correcting technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submission throughout their preparation..

It then goes on to require that the architect:

. . . shall maintain and make available . . . for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect’s control over and detailed knowledge of such technical submissions throughout their preparation

Fortunately or unfortunately, few States have adopted the Model Act in its entirety, but portions have been adopted and even amplified by many States. The result is that the actual standards can and do vary widely, even for adjacent States. This creates a tremendous challenge for design professionals operating in multiple States under individual licenses.

To the extent there can be any “grouping” of the varying statutory approaches, they generally fall into four categories:

1. Simple imperative of personal and professional responsibility without definition.
2. Express or implicit validation of the practice of “proofing and stamping” after completion by others.
3. Requirement of active involvement, direction, and control during actual design process.
4. A “negative” definition only of what is not adequate or acceptable with no genuine guidance as to acceptable practices.

In the end, only one prevailing concept can be said to typify the varying statutes as to a design professional stamping, sealing, or signing final design documents. All essentially establish “personal” and “professional” responsibility and accountability for the person stamping/sealing.

Obviously, the greatest personal or individual threat from the stamping and sealing statutes is a disciplinary action leading to the suspension or loss of license. In fact, it is one of the most frequent bases for the professional suspension or loss of license of a design professional. However, this likely has a civil liability corollary for projects with actual, or even merely claimed, defects or damages. At its extreme, the “licensee” and the responsible firm may be found to be strictly liable for such claims without any reference to the standard of care or the quality of the design documents provided.

A Model Approach for Best Practices in Stamping, Sealing, & Signing.

Given the foregoing risks of licensing and discipline, strict liability, enhanced negligence, and potential misrepresentation, a design firm should establish and document an internal standard and procedure template for basic stamping and signing of documents. Such a procedure should focus on four core issues:

1. Preparer of Documents.
2. Timing and Depth of Review/Input.
3. Documentation.
4. Disclaimers.

1. Classes of Preparers

Most design documents are actually prepared within the office, or at least within the firm, of the professional ultimately applying the stamp and seal. In such a setting, “actual and direct involvement and supervision” is really the operative concept for satisfying most statutes and the standard of care. This is most readily accomplished when the work is done by a subordinate working within the same office. Where the preparer is not a subordinate (and may even be the supervisor), it is critical to establish genuine involvement with a clear and genuine right for professional input and judgment. Otherwise, the argument may easily be that the professional applying the stamp was simply doing as they were directed. Similarly, were the preparer is located in a different office, it is important to establish and document a procedure and reality of communication review, and potential inquiry.

Where the work is prepared by a third party outside the direct supervision or employment of the stamping professional, the situation becomes more tenuous. The more removed the preparer is from licensing in the subject jurisdiction, the more continuous and rigorous the involvement should be.

2. Timing & Quality of Review/Input

Both for the ultimate success and the validation of the review and input process, the two most critical elements for an appropriate stamping and sealing procedure are the timing and the quality of the review and input.

i. **Timing:** Although allowed under some statutes, stamping after only a “proofing” of a final work product is precarious. Consider establishing at least a few milestones for review. At a minimum, such milestones should include the major increments such as the end of design development, 50% construction documents, and 100% construction documents.

ii. **Quality:** The quality and depth of the review should be varied, dependent on status of the preparer as well as his or her physical and organizational proximity. The lesser the credentials and experience,

the more review should be invested. Similarly, the more remote the preparer is in terms of location and institutional hierarchy, the more intentional and frequent should be the contacts and the depth of communication and review. Ideally, the process should go beyond a mere QA/QC validation, and should include professional judgment, evaluation, direction and, ultimately, “professional control” over the end product.

3. Documentation/Recordkeeping

From an after-the-fact reference and validation perspective, an undocumented review process is of dubious value and subject to question. It also falls short of the Model Act and some statutory standards. It is best to establish an alternate record of milestone and final review through a consistent template. Such a standard template may and should include the following basic elements:

- Phase/Milestone: _____ or Final.
- Preparer(s) w/Licensing & Location.
- Documents Reviewed.
- Summary of Outcome of Review with Incorporation of Information Reflecting Professional Judgment and Evaluation.
- Dated and Initialed By Preparer **and** Reviewer.

4. Disclaimers

Where portions of the plans have been prepared by others, clearly identify and disclaim the application of the stamp to those portions of the plans or specifications. As a starting template for such a disclaimer or limitation, consider the following which is based on the provisions of Missouri Rev. Statutes 327.411:

Engineer’s Professional Stamp and Seal shall apply only to the portions of plans, specifications, surveys, reports, or other documents specifically identified or described below. Engineer shall not be responsible for any other associated documents.

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