

How Not to Get Sued

by Timothy R. Hughes, Esq., LEED® AP
AIA Northern Virginia Legal Columnist

Sometimes lawsuits are inevitable on construction projects, but often following some simple interpersonal tips can produce dramatic results. These tips apply across a spectrum of businesses and are certainly not limited to just construction, real estate and land use.

- 1. Be likable.** It is a lot harder to sue a friend. If you maintain a friendly, warm relationship and the other side genuinely likes you, it is very difficult to cross the threshold of considering suit, let alone filing one.
- 2. Failing that, at least be palatable and not obnoxious.** On some level, likability and personality are somewhat pre-wired and we may not all be blessed with the so-called “winning personality.” It is clearly within most of our ability to avoid being confrontational, impolite or nasty. Those traits make it real easy to turn a dispute personal and into trench litigation warfare.
- 3. Be honest and maintain credibility.** Understand that if you get caught even in somewhat meaningless falsehoods, they come at the price of your credibility throughout the deal. Many lawsuits flow from the plaintiff losing trust in the honesty of their opponent.
- 4. Play nice.** Taking extreme advantage during a deal may feel like a good move at the time, but it can create an atmosphere that calls for payback. Building a relationship of shared mutual success and teamwork can help smooth over differences of viewpoint during performance of contracts.
- 5. Be organized.** Expensive, protracted and risky litigation looks a lot less attractive if your opponent looks like they have their act together and can or may win. Sending the message that you are well organized throughout a contract can help create that impression.
- 6. Document, document, document.** This may be the most important substantive point, as opposed to personality driven point, of all. My career is littered with cases fraught with peril due to the failure of clients or opponents to document decisions, conversations, agreements, or notices. In the era of instantaneous e-mail transmission, there is no excuse for why you failed to drop a quick line confirming what turns out to be the pivotal facts once you get into litigation. Sending a timely written confirmation is a great investment in avoiding litigation.

Conclusion

Avoiding litigation often comes down to the most common sense advice of All I Really Need To Know I Learned in Kindergarten. Obviously, these tips are not a complete panacea, but they can help avoid risk and help you put the best foot forward when litigation is unavoidable as well.

Timothy R. Hughes is Of Counsel to the Arlington, Virginia law firm of Bean, Kinney & Korman, P.C. and a LEED Accredited Professional. He is Lead Editor of the firm's blog which is located at <http://www.valanduseconstructionlaw.com> and may be reached at thughes@beankinney.com or by phone at (703) 525-4000.

Traveling Happy Hours: Reston

March 25, 5:30p

Mon Ami Gabi, 11950 Democracy Drive, Reston, VA 20190

The Chapter is hosting happy hours throughout the region with the first event in Reston, at the French Bistro, Mon Ami Gabi on March 25.

The Chapter is planning quarterly Traveling Happy Hours across our area in order to connect with those who are located a little farther away from the Chapter House. Members of the Chapter Board, Committee Chairs, and NOVA representatives to Virginia Society will attend to listen to you, to find out what's going on and see how you're doing, and to share things that are happening in the Chapter.

This is a great opportunity to give feedback about the programs you want to see, to find out about upcoming programs and to engage and network.

It is also a great opportunity for the Board to hear about the things that are important to you, to help us represent the Chapter more accurately and advocate for you on a state and national level.

Come join us!



O'DONNELL & NACCARATO
Nick Dinelli, PE, SECB / President & CEO / Sean Kennedy, PE / Regional Director

- Structural Engineers
- Parking Consultants
- Façade Restoration Consultants

● 703.451.5222 | www.o-n.com
9900 Main Street, Suite 502 | Fairfax, Virginia 22031

● Colonels Ridge
● Chantilly, VA
● Ward/Hall Associates AIA