



# Briefings

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## TN TOP 5

### *Dodd-Frank Changes for Mortgages in Residential Real Estate*

The Dodd-Frank Wall Street Reform and Consumer Protection Act includes several provisions intended to protect consumers from unfair or illegal lending practices. The real estate market is expected to be impacted by the following top five requirements in mortgage lending practices:

1. Lenders will be required to ensure a borrower's ability to pay before approving a loan, which may impact timely pre-qualifications and approvals, as well as closings.
2. Financial incentives will be eliminated from the lending process that led to steering borrowers into more costly loans by lenders and mortgage brokers, including "yield spread premiums" and "pre-payment penalties."
3. Mortgage brokers and lenders will be held responsible for violating any of the new standards with penalties of up to three years of a borrower's mortgage interest payments plus damages and

attorneys' fees (if any). Borrowers may also be protected from foreclosure if standards are violated.

4. Additional disclosures will be required on mortgage lending documents to demonstrate the maximum amount a consumer may pay on a variable rate mortgage, with a warning that payments may vary with interest rate changes. So-called high-cost loans will also be monitored carefully to prevent unreasonably high fees, interest rates or points.
5. Borrowers will have access to an Office of Housing Counseling through HUD to receive additional information on home ownership and the mortgage process.

The Dodd-Frank Act is extensive and reaches a litany of businesses. If you have any questions about how the Dodd-Frank Act impacts your real estate business, contact Thomson Nybeck.

## *Document Retention Policies*

Remember all the drama with Arthur Andersen, Enron and Merrill Lynch? Documents being shredded, CEOs and top executives going to jail, and lie after lie exposed on the nightly news? Stemming and evolving from those historic events, courts and regulators have decided it is imperative that companies retain documents, including electronic documents, particularly when faced with litigation. One way to do this is to have a strong document retention policy.

In this fast-paced digital world, many companies have legitimate concerns and questions as to what documents need to be saved and what documents can be shredded or deleted. Take, for example, the banking industry. Nearly all bank records in today's world are digital. Banks, because of the sensitive nature of their documents, are continually under pressure from consumer groups to destroy information, and conversely, are under pressure from regulators to keep information. Add in the problem that banks are under constant attack by thieves and hackers, and it gets complicated to say the least. On top of all of this, consider the fact that various state and federal regulations require certain kinds of financial documents to be stored for a specific amount of time.

For example, under federal regulations mortgage loan application registers generally must be retained for 3 years, records related to adverse actions on accounts for 25 months, and other data such as transfers or wiring of money to foreign accounts, 5 years. And, these are just banking industry guidelines. I haven't even touched on employment or real estate document retention guidelines, let alone Minnesota law. It is no wonder that many businesses are at a loss when it comes to document retention policies.

#### **If you Don't Have a Policy By Now, Get One**

Having a good document retention policy can lessen your liability if you are ever implicated in a lawsuit. It is important to know that courts have little sympathy for a company that mismanages and destroys documents on an inconsistent basis. In addition to looking good for the court, having a policy in place will enable you to easily access data that may be beneficial to any defense you may have, and also signals to opposing parties a litigation keenness which may result in faster settlements or at least leave you in a better stance to try your case.

#### **A Document Retention Policy Is Like A Gym Membership – It's Only Good If You Use It**

Once a policy is in place, it is imperative that it is adhered to and enforced from top management down. To do this, it is important to have methods and best practices in place, such as employee education, archiving procedures and third party reviews.

#### **Don't Be A Hoarder**

Although the temptation is to keep every single email and document that your company has just to be safe, this is not necessarily the best approach for your company. Rather, it is important that you have a retention policy that not only addresses the applicable legal rules and regulations, but also meets your specific organizational and industry needs. For example, documents relating to an employee's termination should be kept for the applicable statute of limitations period, and companies subject to Sarbanes Oxley will have to retain nearly every document for specific periods, including emails, instant messages, other documents generally destroyed to make space. If you think information will be relevant to future (or current) litigation, you likely have the obligation to hoard, which should be done with the counsel and involvement of your attorney.

#### **Consider the Worst Case Scenario**

It's best to think like a litigation attorney and imagine "what if." If you find yourself in the inevitable lawsuit, it's important that any document retention policy be flexible enough to be suspended if a litigation hold becomes necessary. Thus, it is important to have in place procedures so that a litigation hold can be easily put into place. The procedures should include methods as to how the litigation hold will be implemented and also address other issues such as back-up tapes for archived emails.

The attorneys at Thomson Nybeck can answer questions about updating, creating and enforcing your document retention policy.

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Christian Clapp wrote this article. Christian concentrates her practice in the area of civil litigation and has extensive experience with all stages of litigation such as discovery, motion practice, mediation and arbitrations. [cclapp@tn-law.com](mailto:cclapp@tn-law.com)

# Common Copyright Law Misconceptions

In the age of information, it may be tempting to borrow the words of another person to make a point. Just make sure that you give credit where credit is due and don't assume the following misconceptions about copyrights.

## 1. If it's on the internet, I can copy it.

Actually, no. Material on the Internet may be protected by copyright and you can be sued for copying the material or otherwise using it without the author's permission. The Internet is just a form of media, like TV, radio, and other print media. The validity of a copyright is not dependent on the type of media in which the work appears.

## 2. If it doesn't have a copyright notice, I can copy it.

Again, the answer is no. Copyright notices are no longer required. A copyright notice includes the word copyright and/or the symbol ©, the year of the work, and the name of the author. For example, Copyright 2010 by Mark Ohnstad. However, there is no longer a legal requirement that a work bear a copyright notice in order to assert a copyright in the work.

## 3. There's no reason to put a copyright notice on a work.

There are reasons. Such a notice informs the public that the work is protected by a copyright, identifies the owner, and states the year of first publication. A copyright notice also generally prevents an infringer from claiming that the damages awarded against him in any legal action should be reduced because he is an innocent infringer.

## 4. A copyright is not valid until it is registered with the U.S. Copyright office.

A copyright exists from the moment the work is created.

## 5. There is no reason to register a work with the U.S. Copyright office.

Prompt registration of a copyright with the U.S. Copyright Office gives the author some advantages. It creates a public record of the copyright claim. Registration, or an application for registration, is required before suing to enforce a copyright. If a work is registered before or within five years following publication, registration creates a rebuttable presumption that the registrant is the owner of the work. If registration occurs within three months after first publication or prior to infringement, statutory damages and attorney's fees may be awarded against the infringer.

Due to these misconceptions and the many ways that information is shared today, creators of intellectual property should be especially diligent to protect copyright in all forms of media. If you have any questions about the proper legal avenues to ensure copyright protection, contact Thomsen Nybeck.

NOTE: The foregoing is not intended as legal advice for your particular situation and is only a general statement of some of the principles of copyright law. You should consult an attorney for advice regarding your particular situation.

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Mark Ohnstad wrote this article. Mark practices in the area of General Civil Litigation. (952) 835-7000.



## Christian Clapp Attorney Profile

### Why are you passionate about your career choice?

I love being a lawyer because everyday is different. I am constantly learning something new. It's never boring. I am also surrounded by talented lawyers, which makes working fun and has helped me to grow and learn in many different areas.

### Describe a success story related to your practice.

At the Minnesota Attorney General's Office I worked in the Complex Litigation Division, and my practice was primarily focused on prosecuting companies that were engaged in highly unethical, illegal and deceptive business practices. Through these lawsuits, not only did entire industries change their deceptive practices, but I also helped Minnesotans who were victimized and did not know where to get help. I frequently got thank you letters from people around Minnesota for my work. It's a great success to know that your efforts have had a positive impact on the lives of someone's grandparents, mother, father, son or daughter.

### What are you known for among clients?

The dichotomy that I am serious about law, but I am also creative and fun to work with.

### Favorite vacation?

Croatia. It has beautiful rocky beaches, perfect weather, charming towns and friendly locals.

### Deserted island wish list?

What would I bring? I generally overpack...sunscreen, large sunglasses, large straw hat (I hate being sunburned), swimsuit, lots of Fiji Water, MAC plumper lip gloss, my boyfriend Drew (who can fix and build anything), a laptop with WiFi, my dog Gertie (she loves fishing, swimming and hunting), and, since it's a wish list, a Four Seasons Hotel and a Bell 429 helicopter to get home.

### Most prized possession or memory?

My English Springer Spaniel named Gertie. She's a honey.

## NEWS & NOTES



**Bill Sjolholm (1)** was re-appointed to serve on the Governing Council for the Civil Litigation Section of the Minnesota State Bar Association. He was also re-elected to serve as Vice President of the Board of Directors for Central Minnesota Legal Services.



**Christian Clapp (2)** has joined Thomsen Nybeck as an associate attorney in the litigation group. Christian received her law degree from the University of Minnesota Law School with honors in 2005. Prior to joining Thomsen Nybeck, she practiced in the complex litigation division of the Minnesota Attorney General's Office. For more on Christian, read her profile in this newsletter.



Attorney **Dennis Patrick (3)** has written the chapter on Trusts for the Minnesota Continuing Legal Education publication titled "Estate Planning for Non-Traditional Families Deskbook." He will be presenting at a continuing legal education seminar on that topic in December.



Attorney **Deb Newel (4)**, in her serving as a board member for Missions, Inc., is now serving on the building and planning committee. Deb also serves on the legislative committee for the State Board of Physical Therapy.



Attorney **Gretchen Schellhas (5)** was a featured presenter at the homeowner association trade group CIC Midwest's October 27, 2010 Lunch and Learn entitled: "Stay Out of Legal Hot Water During the Cold Season."



Attorney **Matt Drewes (6)** was quoted in a Star Tribune article regarding statutes relating to homeowners associations' obligations to make corporate records available for review by members.



Attorney **Brad Boyd (7)** has started a Twitter feed with real estate brokerage legal updates at BrokerageAtty.com or on Twitter @BrokerageAtty.

In August, the firm's **Wind Energy practice group** sponsored the State Fair Wind Energy Center at the Minnesota State Fair, which provided fairgoers with education and activities related to alternative energy.

## ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen Nybeck:

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**Fall Leaves by  
Brad Boyd**

## PRACTICE AREAS

Thomsen Nybeck has in-depth experience and knowledge in the following practice areas. For a complete list, visit [www.tn-law.com](http://www.tn-law.com). Call us at (952) 835-7000 to discuss your concerns or to determine if you have a case.

Business Law  
Civil Litigation  
Construction Defect Litigation  
Corporations & Partnerships  
Criminal Law  
Employment Law  
Estates, Wills and Trusts

Family Law  
Financing  
Personal Injury  
Real Estate  
Taxation  
Townhome & Condominium Law  
Wind Energy