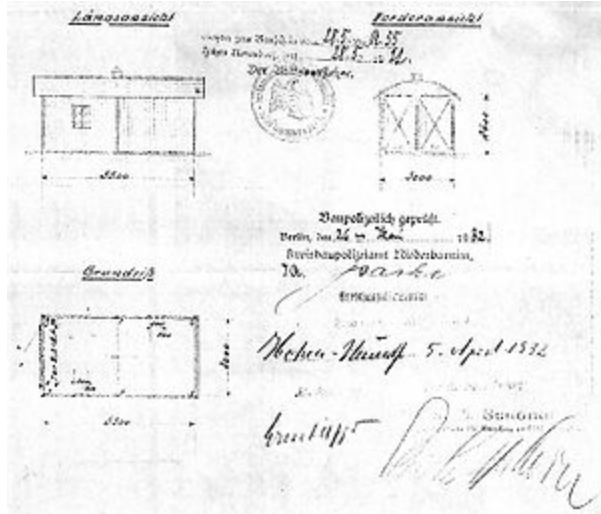




## The Occasional Gap Between "Truth" and "Proof"



You hear about burden of proof a lot in criminal cases. We hear it on TV and in the news on a regular basis. We hear it so often that it can be easy to forget that proof is a part of every dispute and/or trial, including those in my area of practice, construction law. Even in this area of the law, sometimes the truth of what happened and what you can prove happened (so that you can recover or defend) fail to coincide.

On numerous occasions, I spend time with clients and potential clients

discussing this fact. As much as I try and emphasize talking to me, or another [construction lawyer](#), [early on and on a regular basis](#), much of my practice involves putting the pieces back together after the fact. Often I only get called once a dispute is to the breaking point. This fact of life leaves me, or any other attorney, with only those tools that his or her client gives me.

Documents, memory, e-mails, and specifically, the [construction contract](#) and [change orders themselves](#), are key. These documents, much more than what all know to have occurred, will make all of the difference between a successful resolution of the dispute (whether through litigation or [mediation](#)) and potentially walking out of my office or conference room having left money on the table. Memories fade, viewpoints differ and conversations are taken out of context. What cannot be changed (short of fraud) are the written documents and correspondence that show what happened. A well organized project file will make your attorney smile and start a great relationship. As an aside, we attorneys do not like surprises, so *please* give us everything you have (good and, in your mind, bad) so we can deal with things up front.

Furthermore, [following your contract documents to the letter](#) will go a long way toward making sure that you, as a construction professional in Virginia (or any other state for that matter), have the best chance of recovery. Almost every construction contract has a written change order provision that will be enforced in the Virginia courts. Remember, [Murphy was an optimist](#), that unwritten demand by the Owner to add something to the original scope of work will be in dispute later so you must have documentation. You

construction attorney will have nothing to work with after the fact if you don't document throughout the project.

I have found over the years that having a strong, verifiable and provable position leads to settlement in more cases than not. Having a well documented project and a paper trail that supports your position will put you in a position of strength that will assist in mediation, arbitration or, especially, litigation.

In short, without the documents, your construction lawyer will have a difficult time bridging the gap between the "truth" and the "proof."

Image via [Wikipedia](#)

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*