

AIA Contract Documents: Reloaded

By now, everyone in the construction industry has heard the American Institute of Architects (“AIA”) revised its industry leading contract documents for 2007. The upgraded family of documents were released on November 5, 2007. Before the documents were released to the public, several commentaries outlining the changes were published, most of which were directed to architects and attorneys. While most of the AIA contract documents were left largely intact, several key changes were made to some of the most popular forms. Ultimately, the users of these documents are left with one question: *How will the changes affect my business?* Regardless of your role in the construction industry, this article seeks to highlight a few of the key revisions, which could impact your business.

Balanced Interests

Some folks in the construction world possess a strong belief that the AIA documents are biased in favor of architects. After all, they are drafted by the American Institute of *Architects*. However, according to the 2007 drafting committee, the goal of the revisions was to provide “balanced contract documents” and “promote equitable distribution of risk.” Input was invited and received from an assortment of interest groups including the American College of Construction Lawyers, Associated Specialty Contractors, Associated General Contractors, Commercial Owners Association of America, Council of American Structural Engineers, and the American Subcontractors Association, to name a few. Considering the diversity of these influences, it appears a fair cross section of the construction industry was represented during drafting. While

the AIA claims its revised form documents do not tend to favor any specific party, some industry groups remain skeptical.

Initial Decision Maker

Since 1911, the A201 (General Conditions of the Contract for Construction) has assigned the architect the task of deciding disputes between the owner and contractor. However, conflicts arose because owners do not want their architects deciding against them in disputes. Further, there is a popular belief among contractors that architects cannot be impartial. Additionally, architects, to the surprise of many, do not like getting caught in the middle. As a result, the 2007 documents introduced the “Initial Decision Maker” (“IDM”). The IDM is a third party decision maker selected at the option of the parties. The IDM will decide disputes not related to aesthetic effect, presumably leaving those decisions with the architect. If an IDM is not identified in the contract documents, the architect will be the default IDM. It is important to note that the AIA currently does not plan to publish an IDM agreement, so parties must procure their own form of agreement.

Statute of Limitations

The 1997 versions of the A201 and B141 (Owner-Architect agreement) contained an internal limitations period for bringing claims. This provision caused confusion as to when the limitations periods began to run. Although it provided structured risk management for architects and contractors, owners claimed it was unfair. The internal limitations period for bringing claims was deleted in the 2007 form and the documents will default to applicable state statutes of limitations. Furthermore, the A201 now acknowledges the discovery rule for determining when limitations begin

to run. However, it is also important to recognize the new documents include a “statute of repose” to bar any claims 10 years after substantial completion.

Dispute Resolution

Another change, which could prove beneficial to users of the documents, is the removal of mandatory arbitration from the A201 (Owner-Contractor Agreement). Mandatory arbitration has been included in the AIA documents since 1888. In 1997, mediation was added as a condition precedent to arbitration. With the advent of increasingly complex projects and delivery methods, the number and frequency of disputes has soared. As a result, many parties have found some mandatory dispute resolution methods to be cost prohibitive. No longer mandating mediation or arbitration, the 2007 AIA documents now contain a checkbox, wherein contracting parties can choose a method of dispute resolution, custom tailored to their own circumstances.

The Bottom Line...

Although the AIA’s intent behind the 2007 revisions was to “provide balanced contract documents” and promote “equitable distribution of risk,” the possibility that certain circumstances could disadvantage some industry players still exists. The revised forms, like the previous versions, are subject to modification. As a result, any party considering entering these contracts should always consult with his or her attorney before signing on the dotted line.

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