

Update on 2017 AIA Contract Forms

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Revised Documents

- Included in the materials are some of the new versions with revisions shown.
- Included in the materials is the new sustainability exhibit.
- Forms can be found at:
www.aiacontracts.org



B101 – Owner/Architect Agreement Changes in Compensation Provisions

- Allows the parties to indicate whether the Architect will be compensated based on a stipulated sum, a percentage of the Owner's budget for the cost of the work, or on some "other" basis.



Percentage Basis Compensation

- The parties assign a percentage figure to each phase of basic services.
- Progress payments for each phase of basic services are calculated by multiplying the percentages by the Owner's most recent budget for the cost of the work.
- Compensation paid in previous progress payments is not adjusted to take into account subsequent updates to the Owner's budget.
- When compensation is on a percentage basis and any portions of the project are deleted or otherwise not constructed, the Architect is entitled to compensation for those portions to the extent services are performed.



Termination Expenses

- When Owner decides to terminate the agreement for the Owner's convenience, the form includes a fill point for an appropriate termination fee to compensate the Architect for costs associated with the termination, such as lost overhead or profit on unperformed services.



Compensation for Modifications

- If the Owner requires the Architect to modify the construction documents—and the bids or proposals exceed the budget due to market conditions the Architect could not reasonably have anticipated—the Architect is to be compensated for those modifications as an additional service.



Supplemental Services

- Additional Services identified at the time of agreement are now categorized as Supplemental Services to avoid confusing them with Additional Services that arise during the course of the project.



E204–2017

Sustainable Projects Exhibit

- The new Sustainable Projects Exhibit is expressly drafted for use with third party certification on LEED, Green Globes and Energy Star projects, but it can also be easily adapted for use in other green building rating systems from the ICC 700 to ASHRAE 189.1, the IgCC and more.



E204

- Format includes defining a Sustainable Objective, Sustainable Measure, Sustainability Plan, Sustainability Certification, Sustainability Documentation and Certifying Authority.
- Key is the Sustainability Plan that describes and delineates the responsibilities of each party associated with sustainable design and construction of the project.



E204

- Use of materials or equipment with limited testing or verification of performance.
- Architect shall discuss with Owner potential effects on Sustainable Objective if there is failure to perform in accordance with manufacturer/supplier representations.
- If Owner elects to proceed, Architect not responsible for failures to perform as represented.



E204

- Art. 2.7 contemplates the Architect registering Project with Certifying Authority as Owner's agent.
- Architect provides responses to questions or submission of additional documentation requested by Certifying Authority.
- Architect prepares and files any appeal.
- Any certification, declaration or affirmation to Certifying Authority shall not constitute a warranty or guarantee by Architect to Owner.



E204

- Owner, Contractor and Architect waive consequential damages resulting from failure of the Project to achieve the Sustainable Objective or one or more Sustainable Measures.



E204

- Owner, Contractor and Architect acknowledge that achieving Sustainable Objective is dependent on factors beyond Contractor's or Architect's control (e.g. Owner use/operation or interpretations of requirements by Certifying Authority).
- Thus, neither Architect nor Contractor warrant or guarantee that Project will achieve Sustainable Objective.



C401-2017, Standard Form of Agreement Between Architect and Consultant

- Contemplates agreement on protocols for transmission and use of digital data (e.g. E203-2013 BIM and Digital Data Exhibit).
- Any use or reliance on BIM without such agreement shall be at using or relying party's sole risk and without liability to other authors/contributors.



C401

- Consultant shall indemnify and hold harmless Architect, including reasonable attorneys' fees and expenses recoverable under applicable law, to extent caused by negligence of Consultant.
- No duty to defend.
- Mutual provision for Architect to indemnify Consultant to extent of Architect's negligence.



A201 – General Conditions

- The previous A201 only required the Contractor to provide a construction schedule that did not exceed the time limits contained within the contract documents under Section 3.10.1.
- The revision now requires the Contractor's schedule to include: "(1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work."



Contractor's Reliance on Performance and Design Criteria.

- Under the revised Section 3.12.10.1, the Contractor is now entitled "to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents."
- AIA struck language from Section 3.12.10.1 that previously held that "the Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents."



Minor Changes in Work

- Previously, the Architect had authority to bind the Owner and the Contractor, without their consent, to minor changes in the work that did not contradict the Contract Documents or affect Contract Price or Time.
- Under the revised Section 7.4, the Contractor can reject the changes if it believes it will affect the Contract Price or Time. A Contractor who fails to object and nonetheless proceeds, however, waives any claim for adjustment.



Insurance and Bonds Exhibit

- Most of the terms and provisions from Article 11 were relocated to a new Insurance and Bond Exhibit.
- The Exhibit allows the parties to negotiate insurance minimums and limits.
- Uses check-the-box method for selecting insurance coverage requirements.



Owner's Financial Arrangements

- More comprehensive requirements regarding the Owner's duty to provide the Contractor with information concerning its ability to pay, and have provisions allowing a Contractor to refuse to proceed with the work or to suspend work if such information is not provided (A201 § 2.2.2).



Direct Communications Between Owner and Contractor

- Direct communications between the Owner and Contractor, as opposed to communicating through the Architect, are now authorized, although the Architect needs to be kept informed of matters affecting the Architect's performance of services (A201 § 4.2.4).



The Design Professional's Guide



to the 2017 Amendments
to Minn. Stat. Chap. 515B
(MCIOA)

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Introduction to MCIOA

- The Minnesota Common Interest Ownership Act (Minn. Stat. Chap 515B)
- Governs (almost all) common interest communities formed in Minnesota
- Two primary concepts involved:
 - Statutory warranties (express and implied); and
 - Reserve fund claims



Why change MCIOA?

- Construction defects
 - 515B.4-112 (express warranties)
 - 515B.4-113 (implied warranties)
- Underfunding reserve funds
 - Developer sets original budget
 - HOA later realizes it lacks reserve funds



Impact of Litigation Exposure

- Lack of CIC development
- Legislature finds CICs generate affordable housing options
- Entry-level housing



Highlights of changes



- New defined terms
- New Litigation approval mechanisms
- Maintenance Plan requirements
- Disclosure Statement requirement (and right of cancellation)
- Mediation required before suit



What are the changes?

- Definitions (515B.1-103)
- Powers of HOA –Approval (515B.3-102)
- Maintenance Plan (515B.3-107)
- Disclosure Statement/Funding (515B.1021)
 - Purchaser's right to cancel
- Implied Warranties (515B.4-113)
- Mediation requirement (515B.4-116)



What may not change

- Failure to maintain defense
- Budget considerations
- Common law claims
- New construction warranties (327A)
- Attorneys' fees and punitive damages



Risk Management

- What kind of development is it?
- Homeowner Hurdles
- Observation of strategies
- Enhanced defenses?
- Mediation