


Understanding the Changes in the 2017 AIA Contract Documents The Owner-Architect Agreements



Business of Design:
Understanding the Changes in the 2017 AIA Contract Documents
The Owner-Architect Agreements

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May 10, 2017

Business of Design:
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Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.



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AIA CES Details

For AIA/CES purposes the provider of this program is:
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The Owner-Architect Agreements
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AIA/CES Learning Objectives

At the end of this course, participants will be able to:

- Recognize the changes made to the B101 and other owner-architect agreements and the C401, architect-consultant agreement that affect the ability of the architect to serve client needs while protecting public health, safety, and welfare.
- Learn how the new Sustainable Project Exhibit, E204, assists in creating a better understanding of the architect's ability to meet owner's state desires related to sustainability.
- Appreciate the provisions that were retained from earlier editions of the owner-architect agreements and why they were first introduced and newly republished to clarify responsibilities and risks of the contractual parties.
- Find where additional information on the legal and practice aspects of the new editions so that architects are able to discuss the impact of the new provisions on their clients and the public.

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Owner-Architect Family of Documents

- Based on the scope and complexity of the project
 - Project type
 - Client type
 - Project team
- Based on the delivery method
 - 2017 series addresses design-bid-build
 - Other families address other project delivery systems

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Owner-Architect Family of Documents

- B101 – the "standard" agreement
- B102 – where there is no pre-defined scope of services
- B103 – for "complex" project
- B104 – the abbreviated form with 3 phases of service
- B105 – the short form with 2 phases of service
- B016 – for pro bono project
- B107 – a developer/builder agreement for a prototype single family residential project
- B108 – for federally funded or federally insured projects
- B109 – for multi-family residential or mixed-use projects

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Article 1 – Initial Information

- Incorporates information into agreement rather than as Optional Exhibit A
- Sustainable Objective to be identified through E204-2017(Sustainable Project Exhibit) which is included as a Contract Document in the Owner-Contractor agreement.
- Requires use of E203-2013 (Building Information Modeling and Digital Data Agreement) to establish the protocols for the development, use, transmission, and exchange of digital data or disclaims any reliability and responsibility for the information exchange.

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Article 2 – Architect’s Responsibilities

- Added language indicating that the architect is properly licensed in the jurisdiction or will “cause such services to be performed by appropriately licensed design professionals.” (Does not state that the architect is otherwise authorized to provide the services.)
- Included an “Additional Insured Obligations” provision that applies only to CGL and Automobile Liability coverages.
- States that the architect will provide certificates of insurance to the owner

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Article 3 - Scope of Services

Traditional 5 phases of services remain with only minor edits/additions

- Clarifies that architect is entitled to rely on “and shall not be responsible for” the accuracy, completeness and timeliness of services and information furnished by owner and owner’s consultants.
- States that architect is not responsible for owner’s acceptance of non-conforming work unless architect gives written approval.
- Updates approach to sustainability services (“more advanced sustainable design services” now a Supplemental Service through E204-2017) but still consideration of “sustainable design alternatives.”
- Adds in Construction Documents Phase that the drawings and specifications now set forth in detail the quality levels “and performance criteria” of materials and systems.

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The Owner-Architect Agreements

Article 3 - Scope of Services

Traditional 5 phases of services remain with only minor edits/additions

- Renames the Bidding or Negotiation Phase Services as Procurement Phase Services.
- Considers as an Additional Service any consideration of substitutions allowed by Bidding Documents during procurement.
- Clarifies architect's scope of review of contractor's design submittals:
 - Absolute disclaimer of construction means, methods, techniques, sequences and procedures.
 - Limited purpose of consistency with design concept.
 - Architect reliance on, and disclaimer of responsibility for, adequacy of the submittals

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Article 4 - Supplemental and Additional Services

B101-2007 included two types of Additional Services

Supplemental Services not included in Basic Services that the Architect agrees to provide at the time the contract is executed.

Table in Section 4.1

- Removes "Description of Service" column
- Adds Sustainable Project Services
- Removes references to AIA Scope documents
- Adds a space to describe those Supplemental Services the owner is required to provide

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Article 4 - Supplemental and Additional Services

B101-2007 included two types of Additional Services

Additional Services necessitated by circumstances as the project progresses.

Adds Additional Service for changes in code official interpretations that require editing Instruments of Service if:

- The interpretation is contrary to an early code official interpretation, or
- The Instruments of Service are otherwise consistent with the standard of care.

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Article 5 – Owner’s Responsibilities

- Updates for consistency with Sustainable Project and Supplemental Services changes
- Revises direct communications language for consistency with updates to A201.
 - Allows more permissive direct communications between the owner and contractor.
 - Requires owner to make architect aware of direct communications between owner and contractor.

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Article 6 – Cost of the Work

- Modifies definition to include “reasonable value” of labor, materials and equipment donated to, or furnished by, the owner.
- Revises architect’s duty to redesign without compensation for bids over budget:
 - Architect can obtain additional compensation if re-design due to market conditions the architect could not reasonably anticipate.
 - Approach is consistent with FAR Design Within Funding Obligation (Design Within Funding Limitations 48 CFR 52.236-22).

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Article 7 – Copyrights and Licenses

- Adds that the arrangement of copyright ownership and the license for the owner to use the documents survives the termination of the agreement.

Article 8 – Claims and Disputes

- Clarifies that litigation is the default if no method of binding dispute resolution is selected at the time of the contract or subsequently agreed in writing.

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The Owner-Architect Agreements

Article 9 – Termination or Suspension

- Continues fee for services, reimbursable expenses and costs attributable to termination (including those for terminating consultant agreements in termination for convenience.)
- Deletes Termination Expenses
 - Replaced with negotiable Termination Fee.
 - Paired with Licensing Fee for continued use of Instruments of Service
- Adds automatic termination date
 - One year from the date of Substantial Completion

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Article 10 – Miscellaneous Provisions

- Excludes “choice of law rules” in law of the place where the project is located.
- Allows assignment to lender only if lender assumes “any payments due to the architect by the owner prior to the assignment.”
- Clarifies “confidential” and “business proprietary” information release both to provide services through consultants and “reasonably necessary” in defense.
- Includes a “savings provision” (severability of contract obligations) to keep contract from being invalidated.

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Article 11 – Compensation

- Adds provision clarifying progress payment calculations where overall compensation is on a percentage basis by using current budget for the Cost of the Work.
 - Previous payments will not be subsequently adjusted based on changes to the Owner’s budget.
 - 2007 version was silent on the issue.
- Requires payment for insurance “in addition to the types and limits the architect normally maintains.”

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B101-2017 and B103-2017

Fewer differences between B101 and B103, but some remain:

- Basic Services include:
 - Accelerated or fast-track design and construction
 - Multiple bid packages
 - Phased construction
- Owner's Cost and Schedule Consultants
- Coordination with Cost Consultant at end of each phase
- Architect indemnifies owner from the architect's negligent acts or omissions
 - Specifically no duty to defend
 - Indemnification limited to "available proceeds of the insurance coverage required by" the agreement

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Protective Provisions Retained from B101-2007

- Standard of care definition (2.3)
- Reliance on owner information and consultants (3.1.2)
- Evaluations of the work disclaimer (3.6.2.1)
- Quasi-judicial immunity in endeavoring to secure faithful performance (3.6.2.4)
- Reassessment of payments upon Substantial Completion (3.6.3.1)
- Limited shop drawing/submittal review (3.6.4.2)
- Requirements of contractor submitting RFIs (3.6.4.4)
- Limitation of liability in redesign situations (6.7)
- Waiver of consequential damages (8.1.3)
- Certifications only within scope of the agreement (10.4)

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19

B503 – Guide for Amendments to AIA Owner-Architect Agreements

- Free
- Provides guidance and model language
- New or revised topics include:
 - Materials Transparency
 - Owner directed changes
 - Owner-provided cost control
 - Standard of care
 - Cyber insurance

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Online Resources

www.Schinnerer.com/AEriskmanagement


You can view or download claim studies, risk management information, contract language and commentaries.

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This concludes a course approved by:
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