

AIA ROLLS OUT SUBSTANTIAL REVISIONS TO ITS CONSTRUCTION FORM CONTRACT DOCUMENTS

By Alan G. B. Kim, Jr.

On November 5, 2007, The American Institute of Architects unveiled revisions and updates to many of its standard form construction documents. The updated documents include substantial revisions to one of the AIA's most widely used and well known form documents, the A201 General Conditions for the Contract of Construction. The last major revisions were done in 1997. The industry is hard at work identifying and studying all of the changes. But in the meantime, some of the major changes highlighted by the AIA include:

a. **Changes to A201.** They include the removal of mandatory arbitration as a dispute resolution procedure, a provision allowing designation of a third-party to make initial claim determinations, clarification of the applicable statute of limitations and a 10-year statute of repose, expansion of additional insured provisions, more controls on what financial information the Owner must share with the Builder after project commencement, and new joint check provisions.

b. **New Owner--Architect Agreements.** The prior and well established Owner - Architect agreements (B141 (Pts. 1 and 2) and B151) have been eliminated! In their place, AIA has created a single one-part document intended to work well for traditional Owner-Designer-Builder projects. Notably, alerting and consulting with the Owner on green sustainable design and potential materials is included amongst the Designer's contractual duties.

c. **New Numbering System.** AIA advises of a new numbering system intended to create more consistent and meaningful numbering of the documents. As before, the documents will use letters and numbers. But specific letters and numbers will be used so that the type of each agreement and the family to which it belongs can be easily identified.

d. **Procedures to Control and Regulate Sharing of Electronic Information.** AIA advises that there are revised form documents which allow parties to create and customize procedures and controls by which project information can be electronically shared on a project-by-project basis. The intent of these documents is to allow parties to better manage and control ever increasing amounts of electronic project information.

Many of the form revisions appear to be practical and for the better. Certainly, and as it has historically done, the AIA first obtained input and feedback from many leading construction industry groups in developing the revisions.

But at least one of the more prominent group members withheld endorsement of all of the revisions. Specifically, the AGC has chosen to specifically withhold its endorsement of A201. Suggesting more than a mere fraternal squabbling between industry brethren, some have attributed AGC's refusal to endorse the new A201 to the new document's failure to fairly balance the interests of all parties, including the Builder. It is interesting to note that this Fall, the AGC rolled out and began marketing its own set of construction form contracts titled "ConsensusDOCS," which supposedly take a very collaborative and balanced approach.

The AIA continues to refine its well known form contracts. Indeed, the AIA did well to include and provide for project and risk management techniques which were born and have blossomed since the AIA's last round of major revisions to its documents a decade ago. However, AIA's leadership position in the forms market seems a little less certain as other industry groups work to develop, refine, and market their own set of forms. Indeed, the AGC's recent rejection of the revisions to A201 and push for its own set of form documents suggests that the current battle-of-the-forms will continue and may actually escalate.

While many see competition as a good thing, there are those which question whether too many groups and too many forms will just exacerbate an already complicated area and add yet another layer of project costs. There are benefits to using well-established and well-known forms. While new forms may be "better," what may be lost in abandoning the old is predictability and efficiency as parties must start from scratch and possibly suffer through a lengthy and expensive learning curve.



Anderson & Kent, S.C.
Attorneys and Counselors at Law

Attorney Alan G. B. Kim, Jr.
1 N. Pinckney St., Ste. 200,
Madison, WI 53705
608-246-8500; 608-246-8511 (fax)
akim@andersonkent.com