
DPLE 181
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This webinar will provide insight into AIA's April release of 2017 contract documents. There are changes of critical importance to design professionals, and the updates in the owner-architect family of documents impact the role and responsibilities of the design professional directly.

Having an understanding of these impacts can help design professionals better manage their project contracts with clients.
Learning Objectives

Participants in this session will:

• Understand changes made to the B101 and other owner-architect agreements that impact how a design professional conducts business with a client
• Gain insight into how the E204 can help protect your interests when a client has sustainability objectives
• Understand the drivers behind the changes that were made to assist in negotiations with a client
• Obtain resources to further understand the impact of recent contract form changes
Basic Principles of AIA Documents

Contracts evolve to reflect industry changes

- Focus on scope and complexity of project rather than the size of the project

Fair risk allocation

Balance of competing interests

Involves various industry stakeholders
<table>
<thead>
<tr>
<th>AIA Families of Documents</th>
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<tbody>
<tr>
<td>Conventional</td>
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<tr>
<td>Construction Manager as Adviser</td>
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<tr>
<td>Construction Manager as Constructor</td>
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<tr>
<td>Design-Build</td>
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<td>Integrated Project Delivery</td>
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<td>Interiors</td>
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<td>International</td>
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<td>Program Management</td>
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<td>Small Projects</td>
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<tr>
<td>Digital Practices Documents</td>
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<tr>
<td>Contract Administration &amp; Project Management Forms</td>
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<tr>
<td>Document Code</td>
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<tr>
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<tr>
<td>B101-2017</td>
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<td>B102-2017</td>
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<td>B103-2017</td>
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<td>B104-2017</td>
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<td>B105-2017</td>
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<td>B106-2010</td>
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<td>B107-2010</td>
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<td>B108-2009</td>
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<tr>
<td>B109-2010</td>
</tr>
<tr>
<td>C401-2017</td>
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<tr>
<td>E204-2017</td>
</tr>
</tbody>
</table>
April Release

A101  B101
A102  B102
A103  B103
A104  B104
A105  B105
A201  C401
A401  E204

+23 more in Fall 2017
Agreement Between Owner and Architect
B101 – Key Provisions that Stayed the Same

- Standard of care
- Reliance on provided information
- Evaluations of “Work”
- Reassessment of payment at final completion
- Limited shop drawing/submittal review
B101 – Key Provisions that Stayed the Same

- Contractor RFI submittal requirements
- Waiver of consequential damages
- Certifications within scope of services
- No hazardous materials responsibility
- Right to include photographic representations of design
Article 1 – Initial Information

Adds:

- E204-2017 as a **supplemental** contract document rather than using the Sustainable Project parallel agreement (B101-2007 SP)
- E203-2013 for BIM and Digital Data Agreement which provides **protocol** for development, use, transmission, and exchange of digital data and subsequent liability
Article 2 – Architect’s Responsibilities

Adds:

- “Architect represents that it is **properly licensed in the jurisdiction where project is located** to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed professionals.”
- Specifically draws out the Owner as an Additional Insured on the **CGL, Auto, and Excess/Umbrella**
- Notes that certificates of insurance will be provided to the **Owner**
Article 3 – Scope of Services

5 Project Phases

- Schematic
- Design Development
- Construction Documents
- “Procurement”
- Construction

Reliance on Information – Keeps:

- Architect is entitled to rely on “the accuracy and completeness of services and information furnished by the Owner and Owner’s consultants”

Adds:

- “…shall not be responsible for the accuracy, completeness, and timeliness of, services and information furnished…”
Article 3 – Scope of Services

Owner Substitution – Keeps:

• Architect isn’t responsible for Owner’s directive or substitution or for Owner’s acceptance, made or given without architect approval

Adds:

• Approval must be written

Sustainable Alternatives – Adds:

• The need to consider sustainable design alternatives but the “more advanced sustainable design services” are a “Supplemental Service” or can be part of the E204-2017

Construction Docs – Keeps:

• Will consist of drawings and specs setting forth in detail the quality levels...

Adds:

• “...performance criteria” of materials and systems
## Article 3 – Scope of Services

### Bid Substitutions – Keeps:

- Architect will consider requests for substitutions if bidding documents permit.

### Adds:

- After Owner’s written authorization, as an “Additional Service,” Architect can consider the request and prepare and distribute new documents to bidders.

### Review of Submittals – Keeps:

- Architect’s scope of review for contractor’s submittals – limited purpose of “checking for conformance” with Contract Documents.

### Adds:

- A full disclaimer for “construction means, methods, techniques, sequences, or procedures.”
- Architect’s right to “rely upon and not be responsible for, the adequacy and accuracy of the services...” of the Contractor’s design professional.
### Article 4 – Supplemental & Additional Services

<table>
<thead>
<tr>
<th>2007</th>
<th>2017</th>
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</thead>
<tbody>
<tr>
<td>• Additional Services</td>
<td>• Supplemental (former Additional)</td>
</tr>
<tr>
<td></td>
<td>• What you agree to provide at the time of <strong>contract execution</strong> and not part of your basic scope of services</td>
</tr>
<tr>
<td></td>
<td>• <strong>Adds</strong> Sustainable Project Services to the “table”</td>
</tr>
<tr>
<td></td>
<td>• <strong>Removes</strong> the “description” box and adds a separate subsection to explain in detail any Supplemental Services the Owner provides</td>
</tr>
<tr>
<td></td>
<td>• <strong>Additional</strong></td>
</tr>
<tr>
<td></td>
<td>• Necessitated by <strong>project circumstances</strong></td>
</tr>
<tr>
<td></td>
<td>• <strong>Adds</strong> change in code official interpretations that require you to edit Instruments of Service</td>
</tr>
<tr>
<td></td>
<td>• Still includes the Construction Phase Services section where you can outline the number of shop drawing reviews, visits to the site, and inspections that constitute “Additional Services”</td>
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</tbody>
</table>
Article 5 – Owner’s Responsibilities

Communication Process Change:

• Loosens direct communication guidelines so Owner and Contractor can speak directly rather than only through the Architect
• Owner has to make the Architect aware of this communication
Article 6 – Cost of the Work

Definition – Keeps:

- “Total cost to the Owner” and includes “contractors’ general conditions costs, overhead and profit”

Adds:

- “reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by the Owner.”

Duty to Redesign – Keeps:

- No Additional Compensation

Adds:

- Owed additional compensation if due to market conditions you couldn’t anticipate
Article 7 – Copyrights and Ownership

Definition - Keeps:

• Permission to transmit
• Architect & consultants are authors of their *instruments of service*
• Nonexclusive license to Owner to use for this project only after full payment
• Re-use is at Owner’s risk and Owner has indemnification and defense obligations if they do re-use

Adds:

• “Except as otherwise stated...shall survive termination of this Agreement.”
Article 8 – Claims and Disputes

2007

- Check boxes for method if mediation unsuccessful

2017

- Makes it clear if no resolution method is chosen by contract execution or agreed to in writing at another point, **litigation is default method of binding resolution**
- Still has check boxes for preferred secondary method

2007 & 2017

- [ ] Arbitration pursuant to Section 8.3 of this Agreement
- [ ] Litigation in a court of competent jurisdiction
- [ ] Other: (Specify)
### Article 9 – Termination or Suspension

<table>
<thead>
<tr>
<th>Keeps:</th>
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<tbody>
<tr>
<td>• Termination and suspension rights</td>
</tr>
<tr>
<td>• Compensation for services, reimbursable expenses, attributable termination costs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Removes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Termination Expenses</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adds:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A <strong>negotiable</strong> termination fee and licensing fee if Owner will <strong>continue to use</strong> your Instruments of Service</td>
</tr>
<tr>
<td>• <strong>Automatic</strong> termination date - <strong>one year</strong> from substantial completion</td>
</tr>
</tbody>
</table>

Removes:

- Choice of law rules

Adds:

- Ruling law is determined by project location
- Assignment to lender **obligates lender** to pay Architect anything owed **prior** to assignment
- Clarification for “confidential” and “business proprietary” information.
  - If you need to release information, **you can**.
- Severability
  - Invalidity of any individual provision doesn’t invalidate the **entire** Agreement or remaining provisions
Article 11 – Compensation

2007

• Compensation options shows as “fill-in-the-blank”
• Didn’t address cost of work decreasing

2017

• Shows compensation options as Stipulated Sum, % Basis, or Other
• Previous payments can’t be adjusted after-the-fact based on the Owner’s changes to their budget

Insurance Reimbursement

• Moved from Article 2
Agreement Between Owner and Architect for Complex Project
Section 8.1.3
The Architect shall indemnify and hold the Owner and the Owner’s officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees, and its consultants in the performance of professional services under this Agreement. The Architect’s obligation to indemnify and hold the Owner and the Owner’s officers and employees harmless does not include a duty to defend. The Architect’s duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.
Sustainable Projects Exhibit
E204 – Sustainable Projects Exhibit

- Responsibility
- Sustainability
- Risk

RLI DESIGN PROFESSIONALS
Design Professionals Learning Event
Sections of the A101 Insurance Exhibit
Sections

- Owner’s Insurance
- Contractor’s Insurance and Bonds
- Special Terms and Conditions
Negotiation Steps

**Prepare**
- Gather Facts and Information
- Develop Strategy and Priorities

**Relate**
- Share Information Selectively

**Inquire**
- Obtain Your Counterpart’s Information through Effective Questioning

**Zigzag**
- Make the First Offer
- Persuade
- Trade

**End**
- Bring Ideas to a Mutually Agreed Conclusion
- Acknowledge or Formalize the Agreement
Resources

Find AIA Contract Documents

- [https://www.aiacontracts.org/find](https://www.aiacontracts.org/find)

B101-2007 Comparison to B101-2017


A201-2007 Comparison to A201-2017

Thank you for your time!

This concludes The American Institute of Architects Continuing Education Systems Program

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