

AIA/ConsensusDOCS and Updating Contracts

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- AIA Standard Agreement Between Architect and Consultant
 - 1997
 - 2007

VS.

- Consensus/DOCS
 - “all interests” represented ???
 - lacks significant design professional input
 - National Society of Professional Engineers
 - AIA
 - American Society of Civil Engineers
 - American Society of Engineering Companies



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Which Form?

- No ConsensusDOC for Engineer retained by Architect
- Best Guess: ConsensusDOCS 240 (CD 240)
 - Standard form of Agreement between Owner and Architect/Engineer
 - Assumes Engineer will contract directly with Owner????



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CD 240

- May see if contract form is Owner-driven
- Architect will present to Engineer
- Compare CD 240 with AIA C401-2007 (Agreement between Architect and Consultant)



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Standard of Care

Design Role in
Construction Phase

CD 240

- Not clear

- D.P. communicates with G.C. and subs only through the Owner, unless otherwise directed by owner.

AIA C401-2007

- “Professional shall use care ordinarily provided by professionals practicing in same or similar location”
- 1997/2007 versions vary



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Time of
Performance

Statute of
Limits

CD 240

- “Promptly”
- Start time not defined

AIA C401

- Not specified
- 2007 – open issue suggest: no later than when services are substantially complete



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Dispute
Resolution

Work Product
Ownership

CD 240

- Costs of binding dispute shall be borne by non prevailing party
- Include attorneys fees?
- Owner “shall receive ownership of the property rights, except for copyrights, of all documents, drawings, etc.”

AIA C401

- No such cost shift
- Grants license to use documents (consultant retains ownership)



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Comparing AIA Docs

- 1997 – C141 “Standard Form of Agreement Between Architect and Consultant” vs. 2007-C401
 - Advantage Architect in 2007
 - Only starting point



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Length

Designated Rep and Key Personnel

1997 C141

- More detail (15 pages)
- Requires Engineer to designate rep authorized on behalf of Engineer

2007 C401

- Less detail (8 pages)
- Refers to Architect's Agreement with Owner as "Prime Agreement"
- Adds: Engineer must identify key personnel and requires Architect's approval for changes



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Engineering
Responsibilities

1997

- No such Requirements

2007

- Engineer to “provide prompt written notice to the Architect if the Engineer becomes aware of any errors, omissions or inconsistencies in the services or information provided by the Architect or other consultants”



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Statute of
Limits for
claims
between
Architect and
Engineer

1997

- Not later than either: the date of substantial completion for acts or failures occurring prior to substantial completion or the date of issuance of the final certificate for payment for acts or failures to act occurring after substantial completion. In no event shall such statute of limits commence to run later than the date when services are substantially complete

2007

- No such wording



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Extra Work

1997

- 13 specific circumstances where Engineer shall be entitled to appropriate adjustment in the schedule and compensation

2007

- Eliminated 13 circumstances
- Engineer must notify Architect of need for extra work
- Architect must authorize extra work in writing



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Dispute
Resolution

1997

- Mandates mediation followed by arbitration

2007

- Incorporates resolution mechanism from Prime Agreement unless:



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Updating your Forms

- Index current forms
- Review available newer options
- Select best new version as base agreement
- Review new for content
- Review old for content
- Edit old into new form



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Example:

2007 B101 (Owner and Architect) vs.
AIA 1997 B141: Part 1- Standard Form
Architect's Services and Part 2- Design
and Contract Administration



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Issues to Consider

- Define responsibilities
 - Limiting your other employment opportunities without consent
 - Standard of care
 - Insurance requirements
- Define Services
 - Ensure not under, or overly, inclusive to your job
 - Duty to provide notice of errors, omissions, or inconsistency in services (What is “notice”?) (What is duty to inspect?)



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Issues to Consider

- Define services
 - Changes in the work (material changes)
 - If duty isn't specified, exclude it
- Additional Services
 - Detail, detail, detail
 - Onus on “other” party to say no to additional services
 - Quantify number of reviews, visits, evaluations for completion
 - Auto default to services as additional services, (i.e. get paid) if delay is not yours



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Issues to Consider

- Liability
 - Be named as additional insured
- Deal with property rights clearly and understand electronic document issues
- Communications
 - Negotiate clean and efficient channels
- Don't "warrant", agree
- Don't let termination limit your ownership rights



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Issues to Consider

- Consequential damages – mutual waiver
- Mediation – should be optional
- Governing Law – PA
- Assignment of Agreement
- “Unless otherwise agreed/required in this agreement....”
- Be indemnified and defended



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Issues to Consider

- Limit contractual damages to amount received, or multiples of amount, or available insurance
- Mutual drafting clause
- Define duties created
- Notice – should be in writing
- Always review/address: attachments, other contracts, general terms and conditions



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Final Thoughts

- Ask – What is new, What is lost
- Create newer, more complete version
- \$ now vs. \$\$\$ later



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