

2007 Revisions to the AIA A201

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AIA Document A201 General Conditions of the Contract for Construction (“A201”) is the linchpin of a family of agreements between owner and contractor, owner and architect, architect and consultants, and contractor and subcontractor. The A201 was first published in 1911 and has traditionally enjoyed the endorsement of both the AIA and the Associated General Contractors. The A201 is revised every ten years and the most recent version was released in November 2007. For the first time in 50 years, however, the AGC withheld its endorsement. Instead, the AGC, together with many other professional organizations, has endorsed a family of forms called “ConsensusDOCS.” This article will highlight the changes in the 2007 AIA A201 and some of the significant differences between that agreement and the ConsensusDOCS’ general conditions.

2007 AIA A201

- A. **Initial Decision Maker.** Earlier editions of the A201 required the Owner and Contractor to refer claims to the Architect for an initial decision, including those alleging an error or omission by the Architect. The 2007 A201 now provides a “check-the-box” option that allows the parties to select an “Initial Decision Maker” **other than the Architect** to make the first call on disputed matters.
- B. **The parties, not the Architect (or Initial Decision Maker) control when parties can demand mediation.** Under the 1997 A201, the Architect could state that the Architect’s decision would be final and binding if neither party demanded mediation within 30 days of the decision. Under the 2007 A201, within 30 days after the Architect’s decision, either the Owner or Contractor can attempt to make the Architect’s decision final and binding by serving the other with a notice that the Architect’s decision will be final and binding if the other party does not file a demand for mediation within 60 days after the initial decision.
- C. **Arbitration is not mandatory.** Parties may now choose arbitration, litigation or “other” for dispute resolution. Arbitration is not mandatory.
- D. **Consolidation and Joinder are permitted if the parties elect Arbitration.** For the first time, the 2007 A201 provides for consolidation of any arbitration proceedings that “substantially involve common questions of law or fact” and joinder of “persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in

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arbitration, provided that the party sought to be joined consents in writing to such joinder.” Before 2007, the AIA forms **prohibited** consolidation and joinder of claims.

- E. **Time to bring claims discovered after Substantial Completion extended; “discovery rule” applied.** The 2007 A201 provides that the Owner and Contractor must begin actions arising under the agreement no later than the earlier of the limitations period under applicable law or ten (10) years after the date of substantial completion. This allows the parties (usually the Owner) up to ten (10) years to discover and assert a claim for damages arising from the project (usually a defect).
- F. **Insurance Provisions.** The 2007 A201 requires the Contractor to name the Owner, Architect, and the Architect’s consultants as additional insureds under the Contractor’s general liability policy. The 1997 A201 required the Contractor to provide, at the Owner’s request and expense, a Project Management Protective Liability Insurance, which would provide equivalent coverage. The 2007 change is consistent with industry practice.
- G. **Limited Financial Information about Owner.** Under the 2007 A201, the Contractor has the right to information about the Owner’s sources of funds for the project after work commences **only if** the Owner fails to make payments when due, the Contract Sum changes materially, or the Contractor states in writing reasonable concern about the Owner’s ability to pay. In earlier editions of the A201, the Contractor was entitled to evidence of financial arrangements for construction at any time.
- H. **Protection of Subcontractors—and Owner.** The 2007 A201 requires the Contractor to pay its subcontractors within seven (7) days after payment by and allows the Owner to issue joint checks to Contractor and Subcontractor if the Architect recommends withholding payment due to Contractor failure to pay subcontractors. The 1997 A201 required the Contractor to pay within a reasonable time after payment from the Owner and was silent about joint checks.

ConsensusDOCS

In September, 2007, a group lead by the Associated General Contractors (AGC) and the Construction Owners Association of America introduced ConsensusDOCS as an alternative to the AIA documents. ConsensusDOCS is both the name of the family of Documents and the organization that produces and sells those documents. The ConsensusDOCS are largely based on and replace the AGC family of contracts. EJCDC also joined in the process, but has not yet endorsed the contracts.

Key Differences between AIA A201 and ConsensusDocs 200 – General Conditions

- A. **Owner Financial Information.** Unlike the AIA A201, ConsensusDocs 200 permits a Contractor to obtain Owner financial information both before *and after* commencement of the work, simply upon written request by the Contractor.
- B. **Order of Precedence of Documents.** ConsensusDocs 200 details the order of precedence of documents in the case of an inconsistency, conflict or ambiguity among the Contract Documents. There is no comparable provision in A201.
- C. **Change Directives – Disagreement on cost.** Under the A201, whenever the parties cannot agree on an adjustment to the contract price for a change directive, then the Architect determines the method of adjustment. Under the ConsensusDocs the cost is determined by the reasonable, actual expenses and savings resulting from the change. Overhead and profit are adjusted accordingly for a net increase. However, for a net decrease in the contract sum, the overhead and profit are *not* adjusted *unless* 10% or more of the project is deleted.
- D. **Indemnification.** Overall, A201 and ConsensusDocs 200 provide similar indemnification provisions with regard to the Contractor indemnifying and holding harmless the Owner and Architect for damages, losses and expenses arising out of the Contractor's or Subcontractor's negligent acts or omissions. The ConsensusDocs, however, require the *Owner* to indemnify and hold harmless the Contractor and its Subcontractors for any injury or property damage arising from the **Owner's or Architect/Engineer's** negligent acts or omissions in performing the Work.
- E. **Dispute Resolution.** ConsensusDocs does not employ an Initial Decision Maker, but focuses on direct discussions between the Contractor and the Owner. ConsensusDocs requires the Contractor and Owner, or their respective representatives to engage in good faith direct discussions. If the parties cannot resolve the dispute within five (5) days, then the parties' senior executives must meet within five (5) days to attempt to resolve the issue. If the matter remains unresolved after fifteen (15) days from the date of the first discussion, then the parties must submit the dispute to "mitigation" or mediation, depending on their selection in the contract.

In mitigation, the parties submit the dispute to either a Project Neutral or a Dispute Review Board. After a dispute is referred to the Project Neutral/Dispute Review Board, it issues nonbinding findings within five (5) business days. If the Project Neutral/Dispute Review Board fails to issue nonbinding findings or if the matter remains unresolved after issuance of the findings, then the parties move on to either binding arbitration or litigation.

If the parties are unable to resolve the dispute through direct discussions and have not selected a dispute mitigation procedure, then the dispute is submitted to mediation within thirty (30) business days of the matter first being discussed and must conclude within forty-five (45) days of the matter first being discussed. Should mediation be unsuccessful, then the parties may pursue arbitration or litigation.

Both the AIA A201 and the ConsensusDOCS family of documents have just been released, so it is too soon to tell if the ConsensusDOCS will make inroads into territory long held by the AIA.