



The 2007 Changes to AIA A201 General Conditions in a Nutshell

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In 2007, the American Institute of Architects (AIA) made several significant changes to its A201-1997 "General Conditions" commonly used in construction contracts across the U.S. These changes will likely affect contracts usually entered into between owners and contractors as well as contractors and subcontractors. Further, non-AIA contracts may be affected as well considering many use provisions and concepts found in AIA documents.

- 1. Dispute Resolution.** A201-1997 required binding arbitration to settle disputes. The A201-2007 version still requires mediation prior to any binding dispute settlement process. However, it now allows parties to "check the box" to elect whether disputes will be resolved by litigation, arbitration or "other." If no box is checked, the default process is litigation. Parties may also now choose their own provider of arbitration services rather than being required to utilize the American Arbitration Association.
- 2. Joining Architects in Arbitration.** Previously, a party was prohibited from joining the architect in a dispute between the owner and contractor. The 2007 revisions now allow the architect, as well as any other party, to be joined in such a dispute where it "involves a common question of fact or law" and the person's "presence is required if complete relief is to be accorded in arbitration."
- 3. Extended Time Period to Assert Claims.** The A201-1997 provided that the statute of limitations would commence upon substantial completion of a project. As many states have statutes contrary to this provision, AIA now provides that the statute begins to run according to the applicable state law. However, the AIA has now included a 10-year "statute of repose" limiting claims against the contractor to those asserted within 10 years of substantial completion.
- 4. Owners' Financial Disclosures.** The A201-1997 required owners to provide evidence that they could pay the contractor throughout the project. Now, the owner need only provide such evidence during the course of the project (a) if the owner has failed to make payments as required by contract; (b) where the contract price is materially changed by changes in work; or (c) where the contractor has identified in writing a reasonable concern in the owner's ability to pay.
- 5. Concealed Conditions.** A201-2007 now requires a contractor that finds human remains or burial markers, archaeological sites, or wetlands, not previously disclosed by the owner, to immediately cease work and notify the owner and architects. The owner must then obtain all necessary governmental approval before the contractor can proceed.
- 6. Initial Decision Maker.** As opposed to the architect initially deciding any claims or disputes arising on the construction project, the 2007 documents allow the parties to fill in the name of the person to act as the initial decision maker. However, if no name is provided, then the architect will act as such.

7. Additional Insurance Requirements. AIA no longer requires the contractor to maintain "Project Management Protective Liability Insurance." Rather, the contractor must instead name the owner, architect and the architect's consultants as additional insureds under its Commercial Liability policy. Further, the contractor must maintain completed operators coverage.