

***Building Information Modeling:  
Today's Contracts Might Not Work With Tomorrow's Technology.***

Three-dimensional building modeling is no longer just a design tool of the future. The technology is here today and will rapidly make its way into the landscape of routine commercial construction design. What is still uncharted, however, is who is on the hook if the as-built project doesn't resemble the 3-D design.

To realize maximum possible benefit, an owner utilizing 3-D design technology will require not just the designer but also the prime contractor and all subcontractors to input their design and coordination information into the model. The model should then provide, for example, coordination details that identify conflicts between trades or design errors. But what if one trade's contribution is incomplete through a data loss or human error? What if the modeling program fails to properly incorporate the information provided? What about judgment calls and field coordination issues that the model isn't savvy enough to provide? Not surprisingly, the law has not caught up with the emerging technology.

No doubt new issues presented by this evolving technology will be resolved by familiar concepts. The owner may be deemed to have impliedly warranted the suitability of the modeling program specified. The designer may be responsible because he or she created the model used as the projects "plans and specifications." The contractors may carry the blame for failure to coordinate or providing incomplete information.

Then – as now – the construction documents will provide courts with the answers to disputes to come as building information modeling becomes more widely used. Contractors and designers must avoid using "old" form documents with new technology. When 3-D modeling is used on a project, careful reconsideration must be given to all aspects of the construction documents, including indemnification, limitations of liability, bonding and insurance, scope of work, order of precedence of the documents, etc. By doing so, each parties' areas of responsibility can be clarified in advance of any problems that may arise on the Project with the use of 3-D modeling.

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*This update is a summary overview that may be relevant to the construction industry and does not cover all recent development or issues pertaining to the topic. The information is intended to provide readers with awareness of topics and issues and is not legal advice.*