

“Substantial Completion” on the Construction Project

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Substantial completion is one of those "terms of art" that lawyers love. What does it mean when your project is substantially complete? If you are an owner, you really are only interested in one thing: when is it done? Right? Well, not exactly. Particularly on larger projects, there may be a big difference between when a project is substantially complete and when it is finally complete, so it's good to know what the difference is and what your contract provides.

Substantial completion is generally a defined term in a contract, but regardless of exactly how it is defined in essence it means that the owner can use the building as intended. It usually indicates that only minor, punch list type work remains.

In the AIA general conditions, substantial completion is defined:

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

While this is standard language found in most form contracts, it can--and should--be altered to fit any unusual circumstances you anticipate on your project.

Note that the AIA general conditions do not state that either a temporary or permanent certificate of occupancy must be issued for substantial completion to occur. For example,

in the case of an office building, once the building is able to be used for upfitting purposes by the owner it is substantially complete, even if the building is not yet able to be occupied. This can be significant if the owner is self-performing much of the upfit work, and the acceptable degree of finished work may be something altered by the parties at the time of contract negotiation.

Whatever the defined date of substantial completion in your contract, however, it is extremely important. This is the date that triggers:

- retainage release
- the warranty period
- determination of any actual or liquidated damages
- the running of the statute of limitations and repose

Therefore, it is important that you read your contract and understand what the date of substantial completion will be for each of your projects.

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