

# The Current Landscape for Construction Contract Documents

For over 100 years, the American Institute of Architects (AIA) has published model construction contract documents. These form contracts are used by architects, owners and contractors in construction projects.

Although AIA contracts have been the industry standard for generations, a new set of form documents are emerging as an alternative. Over the last few years, a consortium of owner, contractor and trade groups developed and published another set of form contracts known as ConsensusDOCS. Recently, several owner, contractor and surety associations endorsed the use of ConsensusDOCS. At this point, however, the AIA documents remain the most prevalent.



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The AIA Documents Committee revises most AIA contract documents every ten years, most recently in November, 2007. The 2007 revisions encompass broad changes which appear to be, at least in part, a response to ConsensusDOCS. Two important documents in the AIA series are the Owner/Architect Agreement and the General Conditions of the Contract for Construction. Revisions to these documents include:

**Initial Decision Maker.** Previous AIA form documents designated the architect as the decision maker to decide disputes between the owner and contractor. Now, the initial decision maker may be someone other than the architect.

**Removal of Mandatory Arbitration.** The new contract forms include an optional checkbox to make arbitration the method of binding dispute resolution. The judicial system will handle the dispute when the box is not checked. Prior versions of the AIA forms required mandatory arbitration.

**Consolidation of Arbitrations.** The architect, owner, contractor and subcontractors may elect to consolidate arbitratable issues into one multi-party arbitration if they involve common issues of law or fact and if certain conditions are met.

**Improved Payment Terms for Subcontractors.** The new forms require payment by the contractor to the subcontractor no later than seven days after the owner pays the contractor. The owner has the right to request written evidence that subcontractors have been paid. If the owner has doubts about whether the contractor is paying the subcontractor, the owner may issue a joint check to the contractor and the subcontractor.

**Architect's Evaluation of the Work.** In previous AIA forms, architects had a duty to "endeavor to guard the Owner against defects and deficiencies" in the work of the contractor. Now, the architect promises only to report observed construction defects or deviations from the contract. So, the architect must advise an owner of an observed problem, but there is no obligation to report undetected defects.

For more information on the revisions to the AIA contract documents, ConsensusDOCS or other construction law issues, please contact Josh Johnson at 983-9357.

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