

## ***Changes in the 2017 AIA A201/A101/A401***

**Executive Summary:** Probably the most common construction contract documents in use in America are the AIA (American Institute of Architects) documents. The A101/A201 for Owner-General Contractor and the A401 for General Contractor-Subcontractor were both reissued in 2017. See some of the substantive changes here.

**What are the changes?** I recently attended a webinar by two editors of The 2017 A201 Deskbook – Peter Hahn and Amanda MacVey. The general message from them was that not all that much changed. Here are the things contractors should know, and some of them repeat between the Owner-General Contractor and the General Contractor-Subcontractor agreements, so make sure to read the entire list:



- **The Documents**
  - A201 is the General Conditions of the Contract for Construction between Owner and Contractor
  - A101 is the Standard Form of Agreement between Owner and Contractor
  - A401 is the Contractor-Subcontractor Agreement
- **§ 1.7 Digital Data Use and Transmission (A201)** – receiver of digital information shall have responsibility for errors if a protocol is not established by the parties. So, the answer is, make sure that you establish a protocol that puts the onus of accuracy on the author, not the receiver.
- **§ 3.7.4 Notice for Differing Site Conditions (A201)** – notice requirement changed from 21 days to 14 days.
- **§ 9.6.8 Indemnification for Liens (A201)** – most owners had their lawyers add in an indemnification for liens that required contractors to substitute a surety bond for the property. Now this language is a fixed part of the A201.
- **§ 11 Insurance (A201)** – the insurance section was pretty much gutted. It now recognizes the need to be flexible to changes in the insurance market. Talk to your insurance agent the first time you sign the 2017 A201 agreement – insurance is getting more complex and is putting more liability on the contractor.
- **§ 14.4.3 Termination for Owner's Convenience (A201)** – it used to be that the contractor received payment for overhead and profit on uncompleted work. Now there is an upfront negotiated termination fee. This forces owner and contractor to hash out a number at time of contract negotiation. Many think this is an owner win, which likely means they'll select an unreasonably small number.
- **§ 4.5 Liquidated damages (A101)** – no real change. It was moved so that it could be more easily found in the documents. They were in **§ 8** before.
- **§ A.3.2.2.2 Limitation on exclusions (Insurance Exhibit)** - the contractor can't have certain exclusions in their Commercial General Liability coverage. Your standard policy may very well exclude things that cannot be excluded per this section and adding it on after the fact can be very spendy! **Make sure your insurance agent knows about this change!**

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- **§ 3.3.5 Contractor's obligation to give timely notice of defective work (A401)** – this potentially helps subcontractors and puts additional risk on the general contractor. This new language requires the GC to notify the subcontractor of a defect in the work. So, the defense by the subcontractor can be “hey, you never notified me, so it's now going to cost ten times as much because the defect is covered up by other trades, et cetera, et cetera...”
- **§ 4.1 Liquidated damages flow-down (A401)** – the LDs that the general contractor is exposed to are passed down to the subcontractor.
- **§ 4.2.3.2 Subcontractor submittals (A401)** – although subcontractors (and GCs) have always had to traverse the slippery slope of submittal compliance and the nuances of approved versus reviewed submittals and what all that means, this language now squarely puts more responsibility on the subcontractor to review their own submittals.

**My Story.** I've seen these documents on very small to very large jobs. I've never had to actually rely upon them or suffer a blow from them, in any dispute, on projects in which I was the contractor.

I know that the AGC does not participate in the edit of these documents. The reasons are probably twofold: (1) AGC has their own competing product called ConsensusDocs and (2) AGC likely doesn't feel as if they would be *heard* at any collaborative meeting to modify the documents.

The common understanding is that AIA favors the design professional while the ConsensusDocs favors the contractor. My position is that ConsensusDocs is a more balanced approach to the work. More on this later.

