

## Preface

The comments offered in this article are intended to explain some of the reasoning behind an Owner's choice to formalize his/her relationship(s) during the design and construction of any given project.

Much of the article deals with the "liability" that an Owner can accumulate during the construction phase of the project. This is not intended to be slight toward Contractors, Subcontractors or any other agents working to construct a project.

When an Owner decides to improve his/her property by building, the Owner often retains the services of a design professional. During the design phase, the design professional works with the Owner to document the decisions necessary to build the project. In the design phase, the Owner's financial liability is only the fee of the design professional.

When the project graduates from the design phase into the bidding and construction phases, the Owner begins to incur the financial liability for actually constructing the project described in the contract documents. As you might guess, this is substantially more than the Owner's financial liability in the design phase.

Additionally, the project team in the design phase is the Owner, the design professional and any other members (if any) working with the design professional. In the construction phase, the project team grows dramatically to include the Owner, design professional, design professional's team, the General Contractor, Subcontractors and consultants. The increase in the size of the project team in the construction phase requires all parties to be much more vigilant about proper communication.

Since the contract documents are the mechanism through which the work is documented and shared among

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# AIA Contract Docs

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The American Institute of Architects offers a collection of some ninety contract documents for your projects

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the project team, the contract documents are of particular importance in the construction phase. One could argue that the Owner also accumulates liability as more people are added to the project team to carry out their portion of the work. This is one of the key reasons why the relationships in the construction phase are governed by two documents while the relationships in the design phase are only governed by one document.

## An Advertisement

Upon reading this article, one might be under the impression that it's an open advertisement for contract documents published by the American Institute of Architects. This is certainly not the intention of the article. taylor28design LLC has not received any consideration (financial or otherwise) for authoring this article.

In fact, there are a number of organizations that publish contract documents intended to govern the relationships among the project team. Two of the most common are the National Society of Professional Engineers (NSPE) and The Associated General Contractors of America (AGC).

The NSPE, through its Engineers Joint Contract Development Committee (EJCDC), develops, publishes and updates contract documents. The most common reference to these documents is probably as "EJCDC" contract documents, rather than NSPE contract documents. You may visit the NSPE web site at [www.nspe.org](http://www.nspe.org) to learn more about the EJCDC contract documents.

The AGC contract documents are published much the same way as the EJCDC contract documents. You may visit the AGC web site at [www.agc.org](http://www.agc.org) to learn more about the AGC contract documents.

Owners, working with a design professional to research various contract documents may find it helpful to bear in mind the relationship between the Owner and the party authoring the contract documents. For example, does the financial interest of the party authoring the documents align with the financial interest of the Owner?

## Contract Documents

As a reminder, Owners should consult a design professional to address any confusion about terminology they've encountered. By providing an in-depth description of the various terms, language and relationships, a design professional can give the Owner the perspective to understand the issues.

One of the most confusing issues is the overlap in terminology. The term "contract documents" is an excellent example. The term "contract documents" is an inclusive term meaning the contracts between the design professional, Owner and Contractor. The contract documents also include all supporting documents referenced in the contracts between the various parties.

For example, when the Owner signs a contract (the traditional 8.5" by 11" format that you might envisage if someone says "contract") with the Contractor, the contract has a section where the Owner records all the documents that he/she wishes to bind to the contract. In plain English, the Owner works with a design professional to produce drawings and other necessary documents to describe the work. The Owner then literally records all of the drawings, specifications and/or other documents in the contract. In this manner, all the documents then become "contract documents". The AIA, NSPE & AGC produce contracts *and* supporting documents that are bound to the contracts.

## Defining Relationships

Owners, whether working on simple renovations or new construction, often assemble a project team to “deliver” the project. The project team may be as simple as an architect or interior designer who prepares some sketches and a contractor who makes the physical improvements. No matter how small the project, the Owner should take the time to record the relationships of the project team with contract documents. In response to this need, the American Institute of Architects (AIA) produces a collection of contract documents for a variety of different project sizes.

The AIA contract documents that most thoroughly describe the relationship between Architect, Owner and Contractor are: the B141 *Standard Form of Agreement Between Owner & Architect*, the A101 *Standard Form of Agreement Between Owner & Contractor* and the A201 *General Conditions of the Contract for Construction*. These documents literally reference one another to establish the expectations or responsibilities of each project team member. The number of pages of legal jargon in this trinity is not only intimidating to a first-time Owner, they address issues that don't often arise in single-family residential projects.

In response to this need for documents for small(er) projects, the AIA offers a similar trinity in an abbreviated format: the B155 *Standard Form of Agreement Between Owner & Architect for a Small Project*, the A105 *Standard Form of Agreement Between Owner & Contractor for a Small Project* and the A205 *General Conditions of the Contract for Construction of a Small Project*. Though these contracts are considerably less definitive than their parent documents, they may also be intimidating to an Owner not used to negotiating a contract.

The contracts work as an Owner's Manual for the project. This is a key point for the Owner to consider when determining which contract or

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collection of contracts is best for his|her project. Many industry insiders refer to the contract negotiation phase as the “honeymoon phase”.

In this initial period of negotiation, the Owner must set the standard for the relationship(s). The best intentions of the parties at the beginning of the project make it more difficult to bring up potentially contentious issues. Whether the Owner likes contract language and negotiation or not, using well developed contracts results in well defined relationships.

The term “contract negotiation” is also enough to put some people off the entire idea. The result of this head-in-the-sand attitude can be detrimental. Instead, the Owner should embrace contract negotiation as an opportunity to explore and record the relationships between the parties.

Experienced project team members understand the benefit of coming to an agreement on the terms contained in the contract because each term or section of the contract makes the various responsibilities of the parties all the more clear to the participants. This clarity helps avoid confusion and the potential for disagreement as the project progresses. This confusion can translate directly into financial liability for the Owner.

For example, who pays to reproduce the drawings during the construction phase? Assume that the cost of printing one square foot of black and white bond paper is twenty cents. Assume the Architect has produced thirty twenty-four inch by thirty-six inch drawings for the project. The cost to reproduce one set of drawings is then thirty-six dollars. Over the course of the construction phase, the cost to provide the General Contractor, Subcontractors, Consultants and Local Authorities

with drawings could easily exceed one thousand dollars.

Negotiating these issues before signing the contract allows the Owner to anticipate such financial liabilities. This is of particular importance because each unforeseen issue (or financial liability) often reduces the construction budget.

The practical application then becomes: the Owner has to determine what he|she wants to cut from the project. The Owner has invested his|her time and money making decisions about what will be included in the project. Having to cut money from the project because of an unforeseen issue can be a frustrating experience for all parties.

With this in mind, the next logical question is how then, does the Owner know what issues should be negotiated? The answer to this question lies within the parent documents: the B141, A101 and A201.

Even if the Owner elects to use the abbreviated forms of these documents, the Owner (with a design professional) can review the B141, A101 and A201 documents to find issues that he|she wants to include in the abbreviated format. It's difficult, if not impossible, to anticipate every issue. The goal is to cover the most common issues, thus reducing the Owner's financial liability to an amount that can be paid for with the contingency in the project budget.

All the documents are assignable: the Owner can make an amendment(s) so long as the affected parties accept the change by signing the final draft. In that sense, the documents are actually quite accommodating.

It is obviously important for Owners to work with design professionals

The American Institute of Architects  
tel + (800) AIA-3837 [www.aia.org](http://www.aia.org)

The National Society of Professional Engineers  
tel + (703) 684-2800 [www.nspe.org](http://www.nspe.org)

The Associated General Contractors of America  
tel + (703) 548-3118 [www.agc.org](http://www.agc.org)

who have a working knowledge of the (AIA) contract documents.

The Owner does not have to participate in the contract negotiation. Though the Owner can direct the design professional to prepare the contract(s) without input from the Owner, he or she, as one of the parties bound by signature to the contract(s) should read and understand the contract(s).

The strength of the AIA contract documents is that they are commonly used and have been in use for so long, there is legal precedent (case law) that addresses most of the potentially contentious items in the contracts. The AIA publishes updated contracts to address changes in the construction industry, Matthew Bender & Company, Inc. publishes a legal citator that documents court cases involving the AIA contract documents and third parties like Werner Sabo have published titles such as, "Legal Guide to AIA Documents".

To be clear, there is little need for a single-family residential property Owner to purchase and read a text like the legal citator or Werner Sabo's books. This information is offered to illustrate the point that the AIA contract documents are a known quantity to most parties in the construction industry.

AIA contract documents are also relatively fair to all parties. Because the base documents are relatively fair, the parties to the contract should have few amendments, making the contract negotiation period as short as possible.

Your design professional may offer electronic (AIA) contracts that can be edited and transmitted via email. This method is more convenient than working with printed contracts. For additional information about the documents and software, visit the AIA web site at [www.aia.org](http://www.aia.org).

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**A Series (Owner|Contractor Documents)**

**A101 Standard Form of Agreement Between Owner & Contractor** This contract is available with different stated methods of compensation for the Contractor: "stipulated sum" or "cost of the work plus a fee" ("cost plus"). It includes the listing of contract documents (drawings, specifications, product data sheets, etc.) bound to the contract. It also includes any time requirements such as a completion date or duration of construction.

**A105 Standard Form of Agreement Between Owner & Contractor for a Small Project** This abbreviated version of the A101 contains the absolute necessities but omits some of the verbiage regarding payment and miscellaneous provisions.

**A305 Contractor's Qualification Statement** This document allows an Owner to simply ask the Contractor to complete the document and return it. An Owner may choose to use this document to contact a number of potential contractors, distill the results to a "short list" and schedule a follow-up interview with those contractors on the short list.

**A701 Instructions to Bidders** This document explains the bidding process for competitive bids.

**B Series (Owner|Architect Documents)**

**B141 Standard Form of Agreement Between Owner & Architect with Standard Form of Architect's Services** Often the first contract the Owner signs, this comprehensive document covers issues ranging from compensation to services provided to copyright.

**B155 Standard Form of Agreement Between Owner & Architect for a Small Project** This abbreviated version of the B141 covers the many of the same subjects in the B141 but provides much less detail.

**B431 Architect's Qualification Statement** This document, similar to the A305, can be used to collect background information about a potential Architect(s).

**D Series (Architect|Industry Documents)**

**D200 Project Checklist** Though one checklist cannot accommodate all projects, this helpful reminder sorts the tasks by project phase.

**G Series (Construction Administration Documents)**

**G701 Change Order** Any change in the project schedule or budget is recorded by a change order. This document provides a formal mechanism for transmitting the change to the project team so all parties can make the necessary adjustments.

**G702 Application & Certification for Payment** Contractors make applications for payment from the Owner at certain intervals during the construction phase. This document provides a formal mechanism for the pay application.

**G706 Contractor's Affidavit of Payment of Debts & Claims** This document indicates the Contractor has paid all debts and claims from Subcontractors, Suppliers and other parties. It's often paired with the G706A.

**G706A Contractor's Affidavit of Release of Liens** This document indicates the Contractor and parties bound to the Contractor waive their right to place a mechanics lien on the Owner's property as a means to collect unpaid debts.

**G716 Request for Information** As the Contractor interprets the drawings, specifications, etc. he/she may need additional information. This document provides a formal mechanism for the Contractor to make such a request.