

# American Institute of Architects Design and Construction Contracts: What's New in the 2017 AIA A201, AIA B101, & AIA E204



Course Number: MSP1902

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Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.




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### COURSE DESCRIPTION

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This course will highlight 10 key revisions of the 2017 American Institute of Architects ("AIA") A201 (General Conditions of the Contract for Construction) and AIA B101 (Owner-Architect Agreement), related to parties working on religious projects.

This course will also introduce and review the key points of the AIA Document E204-2017 (Sustainable Projects Exhibit)

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### LEARNING OBJECTIVES

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1. At the end of the program, participants will be able to understand key new / different terms in the 2017 revised AIA B101 (Owner-Architect Agreement) and A201 (General Conditions of the Contract for Construction) Documents, as well as providing an introduction to the AIA E204-2017 (Sustainable Projects Exhibit), using examples and the new contract templates.
2. At the end of the program, participants will be able to understand their contractual rights and obligations better, using the 2017 AIA B101 (Owner-Architect Agreement) and A201 (General Conditions of the Contract for Construction) Documents, using examples and the new contract templates.

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### LEARNING OBJECTIVES

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3. At the end of the program, participants will be able to manage risk better based on their understanding of the 2017 AIA B101 (Owner-Architect Agreement) and A201 (General Conditions of the Contract for Construction) Documents; in addition, participants will be able to enhance the health and well-being of building occupants, benefit the environment and improve energy efficiency in buildings by employing the AIA E204-2017 (Sustainable Projects Exhibit); using examples and the new contract templates.
4. At the end of the program, participants will be able to understand the value of communication in the contracting process, using examples and the new contract templates.

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Agreement between Owner and Architect

# AIA B101-2017

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**All New:**

## Article 1: Initial Information



- Programming
- Project description
- Owner's budget
- Timeline milestones
- Procurement method
- Delivery method
- Sustainable project? E204
- Party representatives
- Consultants?
- Protocols for Instruments of Service, BIM

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## New to Article 2 re Architects



- Representation of licensure
- Insurance requirements set forth here
- Additional Insured obligations

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## New to Article 3: Basic Services

- “Procurement”
- Site visits/evaluations of work
- 3.6.4.3 – review if contractor provides design services

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## New to Article 4: Supplemental vs. Additional Services

- “Supplemental Services” – new category
  - Not included in Basic Services, but may be required
  - Additional payment
- Chart and descriptions – may be by Owner or Architect
- “Additional Services”
  - Need identified after execution of contract
  - Architect notify owner with reasonable promptness
  - Provide explanation/circumstances of need
  - Owner’s written authorization required
  - Additional payment
  - Construction Phase services 60-days post substantial completion

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## New to Article 5 re Owners

- Sustainable project? E204
- Communication critical – include Architect in all communication relating to design services/responsibility
- Financial assurances section moved to 5.15

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## In Other News:



### Article 6: Cost of Work

- When cost exceeds budget:
  - Limitation on Architect redrafting without pay
    - If bid exceeds budge and cost increase is due to unforeseeable market conditions, Architect paid for plan revisions as additional service
  - Otherwise, no additional payment

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## In Other News:



### Article 8: Disputes

- If you do not select a method of dispute resolution, you will go to court!

### Article 9: Termination

- If Owner terminates for convenience, must pay Architect's related costs
- Agreement sunsets 1 year after substantial completion

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## In Other News:



### Article 10:

- Right to use photos survives termination of agreement unless terminated for cause.
- New confidentiality provision
- Savings clause

### Article 11:

- Sets compensation for basis, supplemental, additional, and sustainable services
- Prior payments on percentage basis will not be retrofitted if budget changes after the fact

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General Conditions to the Contract

# AIA A201-2017

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## New Insurance Terms

Substantial revision of Article 11 on Insurance

- Insurance cancellation – notice now responsibility of parties, not carrier
- Adjustment and settlement of insured losses
  - Owner must give Contractor prior notice of proposed settlement and allocation of proceeds
  - 14 days for Contractor to object
  - If no objection, Owner will settle & bind Contractor
  - If objection, Owner may settle, and any dispute about settlement or allocation of proceeds will be resolved per dispute resolution process in contract

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## New Insurance Exhibit

- Incorporated into agreements between Owner and Contractor: A101, A102, A103
- Intended to make it easier to send to insurance carrier for review/consideration
- Requires Owner or Contractor to purchase
  - Builder's Risk coverage on "all risks" completed value or equivalent
  - Sufficient to cover total value of entire project on replacement cost basis
  - Remodeling? Include replacement cost of existing structure as well

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## New Insurance Exhibit



- Property Insurance maintained to substantial completion
- Then replaced with policy for total project value that is maintained during one-year for contractor's correction
- Owner assumes liability for any loss not covered because of deductibles or self-insured retention
- Identifies various other optional extended property coverages for Owner to procure
- Requires Contractor to maintain various coverages
- Insurance companies must be licensed in state
- Procure prior to commencement of Work; show proof

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## New Provisions on Schedule



- 3.10 - Contractor's Schedule must provide:
  - Orderly progression of Work to completion
- Detail appropriate for project, including:
  - Date of Commencement of Work
  - Apportionment of Work by activity
  - Time required for completion of each portion of Work

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## New Provisions on Contractor's Means & Methods



- 3-3.1
- IF:
  - Contractor believes Contract Documents give specific instructions for M&M, and
  - Contractor determines M&M might not be safe
- THEN:
  - Contractor gives notice to Owner & Architect, proposing alternate M&M
  - Architect evaluates proposal solely for conformance with design intent of completed construction
  - If Architect does not object, Contractor may proceed

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## New Provisions on Notice



- Not eliminated, just relocated! Old 13.3 -- Now 1.6
- Standard Notice requirements:
  - In writing
  - To designated representative
  - Delivered in person, via mail, via courier, or
  - Via electronic transmission if selected in the Agreement
- Notice of Claims requirements:
  - In writing
  - To designated representative
  - Via certified mail or courier providing proof of delivery

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## New Provisions on IDM



- Initial Decision Maker
- Agreements provide Architect as default IDM unless parties choose someone else
  - A201 clarifications:
    - 1.1.8 - Requires IDM be impartial when deciding claims between Owner and Contractor, and
    - Releases IDM from liability for decisions made in good faith
    - 15.1.3 - Claims prior to expiration of correction period go to IDM with copy to opposing party & Architect, and
    - Claims after correction period go to mediation and arbitration/litigation without need for IDM
    - 15.2 - Limits IDM authority to decide claims only

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## New Provisions on Liens



- Mechanic's Liens
- 9.3.1 - Owner may require Contractor to submit lien waivers from subs/suppliers for periodic payment
  - 9.6.8 - Contractor must defend and/or bond off mechanic's lien claims by subs/suppliers so long as Owner has met payment obligations under contract

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## New Provisions on LDs



### Liquidated Damages

- All agreements (except A105 short form) contain a fill point for parties to negotiate liquidated damages
- 15.1.1 – Owner is not required to file a claim in order to impose liquidated damages

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## New Provisions on Owner's Right to Carry out Work



- 2.5 - Clarification in event of Contractor Default; no longer requires change order for corrected work
- When Owner carries out work to cure, Architect may withhold or nullify certification of Contractor pay application in whole/part to allow for reimbursement of Owner.
- If Contractor disagrees, may file a claim.

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## New Termination Provisions



### Owner's Termination for Convenience:

- 14.4.3
- Eliminated overhead/profit on unperformed work
- Added a "termination fee" for parties to negotiate
  - For Contractor:
    - Fee meant to address lost business opportunity as well as lost OHP for Contractor and its subs/suppliers
    - Not intended to be full liquidation of liability

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## New Termination Provisions



Owner's Termination for Convenience:

- For Architect:
  - B101, 9.6-9.7 Entitled to payment for work, expenses, costs incurred, including costs related to terminated consultant agreements
  - Plus may negotiate termination fee
  - If Architect gets termination fee, must also pay its consultants a termination fee as set forth in C401.

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Sustainable Projects Exhibit

## AIA E204-2017




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## E204 Overview



- Sets forth roles/responsibilities for participants related to sustainable design & construction
- Identifies, develops, and assigns responsibility
- E204 is incorporated into the standard Owner-Architect and Owner-Contractor agreements

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## E204 Overview



- Sustainable Objective – Owner's goal (sustainable certification or other benefit to environment, health, well-being of building occupants)
- Sustainable Measure – element/use necessary to achieve the Sustainable Objective
- Sustainability Plan – outlines Objective, Measure, strategies to achieve those measures; parties' roles/responsibilities in achieving those measures; documentation required

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## E204 Overview



- Sustainability Certification – 3d party process for declaring project has met certain criteria
- Certifying Authority – 3d party entity such as LEED®, Energy Star, etc.
- Sustainability Workshop – meeting between Architect, Owner, consultants
- Same design phases – SD, DD, CD

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## E204 Overview



- Certification is document intensive
  - Design team usually gathers, prepares, submits data
  - Time-intensive
  - Additional Service – can be costly, but necessary
- Certification is dependent on many factors outside Architect & Contractor control – namely Owner operation & maintenance of site
- Certification may put project on specific timeline
- If certification denied, Owner responsible for appeal

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This concludes The American Institute of Architects  
Continuing Education System course.

At this time, the course participants  
are free to ask questions.



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