

## Who or What is the Initial Decision Maker in Construction Contracts/Disputes?

Every ten years or so the American Institute of Architects ("AIA") issues a new set of contract documents for the construction industry. For many years these were the standard construction contracts. Today, these contract documents remain prominent, along with other industry leaders like the ConsensusDOCS.

In 2007, several AIA contract documents introduced a new term/actor: the Initial Decision Maker ("IDM"). This term is found in the A101-2007, the A102-2007, the A201-2007, and some lesser-used construction contracts. The IDM is similar to, but *not* the same as the project neutral in ConsensusDOCS. The IDM is the person who decides all disputes between the Owner and the General Contractor while work is ongoing. In previous iterations of these contract documents, the architect of record fulfilled these duties. Contractors were critical of that arrangement because they (rightfully) questioned the architect's ability to impartially decide disputes given that the architect's fees were being paid by the owner. Owners, on the other hand, often felt that architects should favor the owner's interests as a matter of fiduciary loyalty. In completion of the relationship triangle, architects often reported unease with having to make decisions that might go against the client/owner.

In response to those criticisms, the AIA created a new role - the IDM. This is not a mandatory position. In fact, if no IDM is appointed, the architect of record serves as the IDM.

The IDM can be anyone not a party to the construction document that the parties feel comfortable with. The person could be an architect, engineer, lawyer, diesel mechanic, an assistant manager at McDonald's, etc.

After hearing a dispute, the IDM has 30 days to render a decision. If no decision is given within the 30 days *or* one party wishes to, the matter will be submitted for mediation. If mediation fails, binding arbitration often follows by default.

The intent of designating an IDM is quick, efficient, and cheap resolution of disputes. However, there are many issues with using an IDM also that should be addressed in the contract documents. These issues will be dealt with in later posts. But suffice it to say that the issues are significant enough for us to STRONGLY

RECOMMEND that before you sign a contract designating an IDM, that you contact an attorney experienced in these matters.

ConstructLaw, L.L.C. provides contract reviews, and drafts construction contract supplements concerning IDMs and other issues in Louisiana. We also provide IDM services. If you have specific questions or needs, feel free to contact us at any of our myriad communication mediums (email: [alan@myconstructlaw.com](mailto:alan@myconstructlaw.com); phone: 318.841.1253; facebook: <http://bit.ly/dOef7o>; twitter: [www.twitter.com/myconstructlaw](http://www.twitter.com/myconstructlaw); via our website: [www.myconstructlaw.com](http://www.myconstructlaw.com); or our blog at [www.louisianaconstructionlaw.blogspot.com](http://www.louisianaconstructionlaw.blogspot.com)).