

# Construction Law in North Carolina

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## Planning Ahead for Additional Compensation

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By Melissa Brumback



Does your designer contract have provisions in it for additional compensation in the event the construction project takes longer than the parties anticipate? If you use the AIA 201 (2007) general conditions for the Contractor, it may. The AIA provisions include:

### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. **The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.**

The language that I bolded is very important language. It may provide a mechanism to recoup additional service fees for extended construction administration services. Note, however, that I said "may."

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If your fees are based on a set number of construction days, what happens if the project gets extended? Do you simply go without pay for extra months of CA services? Do you re-negotiate with the Owner at that time? You should consider this issue in advance to avoid disputes later on.

**Best practice?** A clause in the Owner-Designer contract that states that additional services compensation will kick in after a certain date, at a set value per month.

If you wait until the issue comes up during the final phase of construction, you have much less bargaining power. You also run the risk of the Owner claiming errors and omissions against you when you present a bill for extra services. Deal with the issue up front, in much the same way that unit prices for rock overages are provided for upfront in the contractor's contract.

**Do you have experience with getting additional compensation after construction delays? What worked best for your company? Share below.**

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