



May 2011

www.ober.com

IN THIS ISSUE

[2011 Maryland
General Assembly:
Which Bills Will Affect
Your Operation?](#)

[Word to the Wise
Follow-Up: the 2007
AIA Form Contract](#)

*Construction Group
Co-Chairs
Joseph C. Kovars
John F. Morkan III*

Editors: Eric Radz

Word to the Wise Follow-Up: the 2007 AIA Form Contract

By: [Anthony F. Vittoria](#)

In the [last edition of *Construction OberView*](#), we focused on the respective intellectual property rights that an owner and its architect have in the plans created by the architect, but paid for by the owner. In that article, we pointed out that, under the 1997 American Institute of Architects (“AIA”) B141 form contract, the architect retains all intellectual property rights in the plans, while the owner is provided only a nonexclusive license to use and reproduce that material. Under the B141, if the contract is terminated for any reason, the owner’s license to use the architect’s work is terminated and the owner must return the work to the architect within seven (7) days. A second license that enables the owner to use the architect’s work arises only after the architect is “adjudged” to have been in default of the contract.

In 2007, the AIA issued revised standard form contracts for the owner-architect relationship. While those form contracts, numbered B101 through B104, still vest full copyrights with the architect, they provide a more level playing field between the owner and the architect in the event of a dispute. Specifically, the new AIA form contracts provide that the owner’s license to use the plans is terminated only if the architect “rightfully” terminates the agreement – such as for non-payment of fees – and not “for any reason,” as set forth in the B141 version. The new form contracts also provide a “fill in the blank” section in which the parties can provide the amount of the licensing fee that the owner will pay to the architect for the continued use of the plans in two limited situations: (1) when the architect terminates the contract because work has been stopped for more than 90 days or (2) if the owner terminates the contract for convenience.

An exception is the new B105 form contract, which is designed for use in residential or small commercial projects. Unlike the new B101 through B104 form contracts, the B105 form contract provides that the owner’s right to use the architect’s drawings ceases immediately upon the completion of the project or termination of the contract – and not solely upon the rightful termination by the



[Subscribe](#)

[Construction Group](#)

[Construction OberView Archive](#)

architect. In addition, the B105 does not provide the “fill in the blank” licensing fee section provided by B101 through B104.

It is important to note, however, that the changes embodied in the new form contracts have no binding or precedential effect and, thus, do not change the outcomes that result if the parties (1) are still using the B141 version, (2) are using another form contract that addresses the issue in a different manner (i.e. ConsensusDOCS 240), or (3) have an oral or written contract that does not address the issue.