



REAL ESTATE
COUNSELORS

AIA Construction Contracts

The AIA 201 General Conditions



Bruce Rosen
BRosen@RECDC.com
(202) 577-3552



Peter Pokorny
Peter@RECDC.com
(703) 850-9099

Introduction – Many construction projects are documented using an “AIA” form drafted by the American Institute of Architects. AIA forms are widely recognized as the industry standard. AIA documents, however, primarily protect and focus on issues that concern contractors and architects. It is critical that an owner using an AIA contract thoroughly review and negotiate the construction contract to ensure its expectations are met and that any issues and disputes are resolved fairly. As we did previously, we refer to the party that hires the contractor as the “Owner” though they could be a tenant.

Our last article provided a broad overview of some of various types of AIA construction contracts and how they are structured. In this article, we focus on one of the more widely used forms used in AIA Construction Contracts entitled “*General Conditions of the Contract for Construction*,” or more commonly known as the “*General Conditions*” or “A201.” Below are some key provisions that Owners should be aware of.

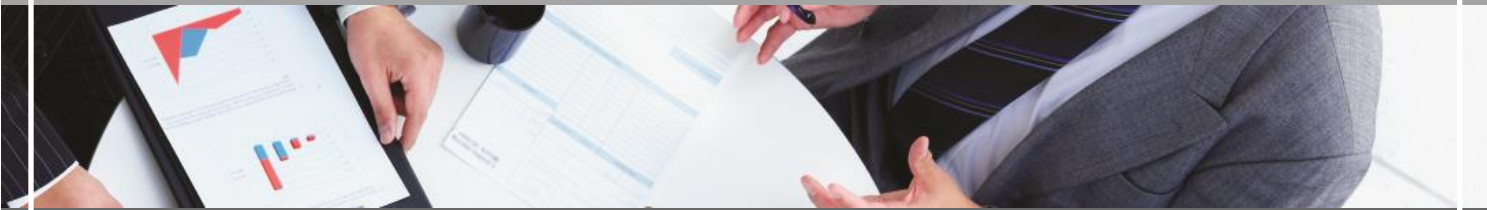
- **Financial Disclosures** – The A201 requires that the owner furnish the contractor evidence that it has made financial arrangements to fulfill the its obligations under the contract before the contractor is required to start its work. Further, the owner is required to make continuing financial disclosures during the term of the contract and may not vary its financial arrangements unless it gives notice to the contractor. There is no such reciprocal obligation on the contractor. From the owner’s perspective, this open-ended provision may be subject to abuse. We recommend owners delete this provision.



www.RECDC.com
DC ♦ MD ♦ VA ♦ NY

DC: (202) 577-3352
MD: (240) 252-3386

PA: (484) 437-4097
VA: (703) 740-1766



REAL ESTATE
COUNSELORS

AIA Construction Contracts

The AIA 201 General Conditions

- **Consequential Damages** – The owner wants to be compensated if its project is not completed on time. The A201 limits, however, the owner’s damages as a result of a late delivery under a so-called “*mutual*” waiver of consequential damages. This provision benefits the contractor more than the owner because under several provisions of the A201, the contractor can recover lost profits (which are consequential damages). The owner would be well advised to delete this provision, or specifically carve-out any liquidated damages or late delivery penalty the owner negotiates if the contractor finishes the project behind schedule.
- **Construction Loan** – Though many construction projects are financed, A201 has limited reference to lenders. A construction loan will have detailed requirements and timing for the release of progress payments. These requirements may not, however, match up with when the owner must pay the contractor under the A201. If such conflicts are not fixed, an owner could be required to pay its contractor before the lender is obligated to release necessary funds. An astute owner may want to have an experienced commercial real estate attorney ensure that the construction contract and the construction loan documents are consistent and work together.
- **Architect’s Powers** – Under the A201, the architect is given broad powers to administer the contract, act as the owner’s representative and resolve disputes. Not only does the architect serve as the initial arbiter but also has the final say on many decisions (including whether the contractor is entitled to payment). The owner may want to curtail some of the Architect’s powers depending upon the owner’s experience and trust with the architect it selects, and how active a role that the owner or another party such as a construction manager, may serve. An owner may feel more in control of their project if some or many of the architect’s key decisions are subject to the owner’s mutual agreement.
- **Liens** – The provisions of the A201 regarding mechanic’s liens does not afford the owner strong protection. An owner should add a detailed provision to its construction contract regarding required lien waivers and make sure that provisions regarding mechanic’s liens are consistent with any requirements that the owner’s landlord or construction lender may impose in the lease or loan agreement, respectively.

Conclusions – There are many other issues and provisions in an A201 that are not covered by this brief overview that a prudent owner would have an experienced commercial real estate attorney review and modify to protect its interests.



DC: (202) 577-3352
MD: (240) 252-3386

PA: (484) 437-4097
VA: (703) 740-1766