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Major editing of AIA contracts with architects changes the standard of care

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Most people who work in the real estate and construction industries are well aware of the American Institute of Architect contracts, known familiarly as the "AIA" contracts. Often when I speak to clients about these contracts, they refer to these agreements as "the boilerplate." They only think about filling in the blanks and signing at the end. While it is true that they are printed, form contracts, they have become anything but boilerplate, in part, due to the age of electronic documents. In keeping with the saying "Give 'em an inch, they will take a mile," some lawyers working for owners have run amok and taken to completely redrafting these contracts electronically, while leaving the AIA logo at the beginning of the document. Whether you like these documents, dislike them or think they are too one-sided in favor of architects, they are very widely used and must be understood and used in the manner intended in order to work.

As an attorney who frequently drafts and reviews construction contracts, I am amazed at how the ability to electronically edit these documents has led to such extensive editing that some cases, the content is barely recognizable as an AIA document. Owners like to use the AIA documents, since they are so widely used that it is like having a "stamp of approval." They are instantly recognized by the recipient. However, once you start to review them and see edits in all colors of the rainbow, this should give both owners and architects pause for thought about what this can mean for both sides.

The AIA system of contracts is meant to be an integrated system. If you use the architect's form contract, then you must also use the general contractor's contract to have the system make sense. This is because the services from all the parties are meant to blend together. In other words, if in the contract between the owner and the general contractor, the architect, for example, is supposed to have periodic meetings with the general contractor, then one should expect to have that requirement also in the owner-architect contract.

The other aspect of this ability to modify documents is the possibility that the architect's "standard of care" has been modified. The architect may be asked to do "more" than an architect would normally do or to make representations that an architect would not normally make. If the documents are modified, architects may be expected to do more or different things than what other architects "customarily" do in their area. I frequently see buzz words asking the architect to "represent," "certify" and "warrant" things. While some owners might think this is a good thing, because the more responsibility the architect has the better, it can create areas where the architect is not covered by insurance. That is not a good thing.

Then there are the changes that just make it too difficult for the architect to work and still make a living. I see creative provisions where the architect is required to keep working, whether he is being paid or not. I find that there is something of a direct correlation between the size of the project and how "creative" the owners and developers attorneys are in making these extensive changes, as

though the more changes that are made, the better job the attorney has done for the client. I believe there needs to be a "balance." The contract should be firm, but fair- not weighted too favorably to one side or the other with the recognition that the architect needs to get paid and the owner needs to get his project completed on time.

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