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## AIA Construction Contracts

*Understanding an Industry Standard*



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**Introduction** – Parties frequently find themselves responsible to construct, remodel or improve property. When that happens, a contractor is hired to perform the work, and in some cases an architect or designer is hired to prepare plans. Many times, the parties document their transaction using forms prepared by the American Institute of Architects (AIA). The AIA has developed comprehensive forms for use in construction projects, widely recognized as the industry standard. This article will discuss certain key AIA agreements and their issues. For simplicity, we refer to the party that hires the contractor as the “*Owner*” though they could be a tenant.

- **Industry Bias** – It’s important for an Owner to know that AIA documents are designed with the concerns of architects and contractors in mind, not Owners. So it is vitally important that an Owner using an AIA contract ensure that they thoroughly review and negotiate the document to ensure their expectations are met and that they will be able to resolve issues and disputes fairly.
- **Contractor Agreements** – The AIA has forms for when an Owner hires a Contractor, and other forms for when an Owner hires an Architect. Let’s first discuss forms when an Owner hires a Contractor.
- **Two-Part Agreements** – AIA Contractor Agreements are composed of two (2) documents. One is a short agreement that specifies the parties, payments and a few other critical issues. These are the A-Series of documents. The second part is the General Conditions document.



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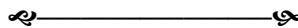


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- **A 100 Series Agreements** – The A 100 Series are standard forms between the Owner and the Contractor. A101 through A104 are four different forms which vary depending upon how the Contractor is paid. The Contractor can be paid based on a stipulated sum (flat amount), or based on the cost of work plus a fee. Some forms add the concept of a guaranteed maximum price. It's critical that an Owner selects the form that matches how they intend to pay the Contractor.
- **A 200 Series Agreements** – Each of the A-100 Series forms must be used with a corresponding A 200 Series "General Conditions" document. The General Conditions document is a much longer agreement that address many issues that come up during the construction process (delays, changes in material costs, how subcontractors are managed, what happens if there's a default, etc.).
- **B 100 Series Agreements** – All AIA agreements with Contractors assume that the Owner will also sign a separate agreement with an Architect using one of the AIA's B 100 Series. The B 100 Series are standard forms between the Owner and the Architect. B101 through B107 are seven different forms which vary depending upon the size, type and scope of the construction project the architect will be working on.
- **Right to Use Plans** – When negotiating an agreement with an Architect, an Owner should make sure it has broad rights to use the plans the Architect prepared. An Architect has an ownership interest in the plans it prepares and unless the Owner negotiates for broad rights, the Owner may not be able to give the plans to a buyer of its property, or use them a second time for a different property.
- **The Architect's Role** – The A-Series construction contracts call for the Architect to have an active role in managing construction including approving the Contractor's payment requests. The Architect does not sign the A 100 agreement, however, because the AIA assumes the Architect signed a B 100 Series agreement. If an Owner and Architect do not sign a B 100 form, the Owner must make sure it gets the Architect to agree to perform all obligations required of the Architect under the construction contract.

**Conclusions** – AIA contracts can be used in lieu of an agreement custom-drafted by an attorney, though an Owner must understand all the inter-related documents that the AIA requires for its transaction. In addition, an astute Owner will have the AIA contracts reviewed and negotiated by an experienced commercial real estate attorney to avoid unexpected costs and liabilities.



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