

FEATURED ARTICLES**New AIA Documents Require the Parties to Rework Their Agreement**

Timothy R. Sullivan

Introduction

This is the second of three articles regarding the 2017 editions of the American Institute of Architects (AIA) standard form contracts. The first article discussed the key changes in A201™, the General Conditions form. See Sullivan, *New AIA Documents May Require Parties to Remodel Their Procedures*, 41 CEB RPLR 63 (May 2018). This article discusses key changes in the Owner-Contractor agreements (A101™, A102™, and A103™), the Owner-Architect agreements (B101™, B102™, B103™, and B104™), and the scope of service agreements (B201™, B203™, B205™, B207™, and B210™). A third article will discuss the Insurance Exhibit that is to be used in conjunction with many of the standard form agreements, as well as the Sustainable Project Exhibit (E204™–2017).

2017 Changes in All Three Owner-Contractor Forms (A101™, A102™, and A103™)**Retainage**

The 2007 editions provided no clear explanation of how retainage was to be paid and what payments are not considered “retainage” for purposes of payment of any remaining balance of the Contract Sum. The 2017 editions now provide an entire section on retainage, which prompts the parties to specify

- The amount to be withheld from each progress payment made before Substantial Completion of the Work;
- What pay items are not subject to retainage;
- Any reductions or limitations of retainage; and
- How and when retainage is paid.

See §5.1.7 of A101™–2017; §12.1.8 of A102™–2017; and §12.1.7 of A103™–2017.

Owner’s Payment for Delays

The 2017 editions provide, “If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.” See A101™–2017 §5.1.8; A102™–2017 §12.1.9; A103™–2017 §12.1.8. The 2007 edition of A102™ did not contain this provision. A101™–2007 §5.1.7.2 contained different language, stating: “Add, if final completion of the Work is *thereafter* materially delayed through no fault of the Contractor, any additional amounts payable in accordance with §9.10.3 of AIA Document A201–2007.” (Emphasis added.)