

over who lost the RO&P calculation, and a blank is provided to fill in a termination fee. However, Owners typically refuse to include a termination fee. The absence of any termination fee poses a significant risk to the Contractor if the Owner terminates without cause.

Claims

The 2007 edition was unclear as to the types of matters subject to a Claim. The 2017 version specifies the circumstances in which a Contractor may submit a Claim in the following sections:

- §2.5 (Owner's right to carry out work);
- §3.7.4 (concealed conditions);
- §7.3.5 (adjustment of Contract Time for Construction Change Directive);
- §8.3.2 (certain delays);
- §9.5.2 (withholding payment); and
- §10.2.5 (damage, injury, or loss due to parties not under Contractor's control).

The Owner does not need to file a Claim in order to assert liquidated damages (see §15.1.1). Claims asserted after the correction of Work period do not require a decision by the Initial Decision Maker (IDM) (see §15.1.3.2).

Under the 2017 edition, the Architect is still the default IDM. The IDM's Decision is a condition precedent to mediation, arbitration, or litigation (unless 30 days expire without receiving the IDM's Decision). A201™–2017, §15.2.1. The time to demand mediation after the IDM's decision is reduced from 60 to 30 days. See A201™–2007, §§15.2.6, 15.2.6.1. Under revised §15.2.6.1, if a party fails to demand mediation within 30 days after receipt of the Decision, then mediation and the ability to challenge the Decision are waived. Under revised §15.3.3, after the IDM's Decision and mediation, either party may demand that the other file its claim in either arbitration or litigation; if they do not do so within 60 days, both parties waive their rights to binding dispute resolution (*i.e.*, arbitration or litigation) with respect to the Decision.

These new timing rules underscore the parties' need to be vigilant if they want to maintain their right to challenge a Decision.

Conclusion

With changes in technology and instant access to information, the construction industry is evolving faster than the AIA forms. Parties and their counsel should keep in mind that AIA forms can be, and usually are, modified. Our next article will discuss key changes in the Owner-Architect agreements (A101, A102, and A103; B101, B102, B103, and B104) and the scope of service agreements (B201, B203, B205, B207, and B210). The third article will discuss the Insurance Exhibit, which is to be used in conjunction with many of the standard form agreements, and the Sustainable Project Exhibit (E204™–2017).

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