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## LOOK BEFORE YOU LEAP

*Understand the new 2007 AIA form agreements BEFORE you use them.*

The American Institute of Architects (AIA) has published form contracts for use by Owners, Contractors and Design Professionals since 1888. Over the years the AIA's catalog of form contracts has evolved to reflect the needs of the construction industry. The AIA's contracts are commonly used and their terms have been interpreted on hundreds of occasions by New York Courts. Although the AIA forms are typically an excellent starting point from which to create construction project agreements they should not be used indiscriminately or without consideration of their applicability to the circumstances of a particular project.

The most recent set of major revisions to the AIA documents was issued in 1997. In order to reflect the ever-changing dynamics of the construction process the AIA periodically reviews its form agreements and issues updated versions. Over the past four years the AIA has solicited and reviewed comments from various construction industry organizations representing the views of owners, general contractors, subcontractors, and design professionals. As a result of that process a revised set of AIA form agreements will be released later this year. The purpose of this article is two-fold, 1) to caution you against using the revised agreements until you fully understand their terms and how they will impact your particular situation, and 2) 1) to highlight some of the changes the revised agreements are expected to contain.

Having spent nearly thirty years representing design professionals and others involved in the construction industry I can, with the utmost confidence, provide the following advice; ***Do not sign a contract unless you know what it says!*** I suspect that more than one of you who are reading this article (if there is more than one of you) may be thinking, "It took him thirty years to figure that out?" Well, the sad truth is that in the great majority of the hundreds of cases I have handled and continue to handle one or more of the parties to a construction contract did not understand what the contract they had signed required. When it comes to contracts there is no "one size fits all". Courts typically enforce contracts as written so be sure you understand what you are agreeing to before you agree to it whether it is contained in an AIA form or otherwise.

The 2007 version of the AIA form contracts will include major revisions to two of the most basic and commonly used contractual documents the "*General Conditions for the Contract for*

*Construction*” and the “*Standard Form of Agreement Between Owner and Architect*”. The revisions to these documents, which are numerous, are expected to include:

**Architect’s Standard of Care-** an expressly defined standard of care which the design professional is obligated to meet is included and requires “services consistent with that level of skill and care ordinarily provided by architects practicing under the same or similar circumstances”.

**Arbitration, Mediation and Litigation-** The form agreement will no longer provide for arbitration as the default dispute resolution mechanism. Parties will be free to choose arbitration, however, should they fail to do so, litigation is the default. Mediation remains a required prerequisite to either arbitration or litigation.

**Environmentally Responsible Design-** The revised agreements require the Architect to consider “environmentally responsible design alternatives” in developing the design of a project. Of course, the Owner ultimately decides the extent to which the environmentally friendly concepts are incorporated into the project.

**Commencement of Statute of Limitations-** The current AIA form agreement provides that for most actions against an architect the Statute of Limitations begins to run on the Date of Substantial Completion of the Project. This current provision coupled with New York’s three year Statute of Limitations for claims against professionals can significantly reduce a design professionals risk of a claim by an owner. The revised AIA forms eliminate this provision and replace it with language which will generally result in a greater period of exposure. I anticipate that I will be advising the design professionals I represent to use the current language whenever possible.

*The Sugarman Law Firm, founded in 1909, provides a full range of legal service to professionals, business owners and individuals, through its offices in Syracuse, Auburn and Buffalo. For more information on issues related to practice as a design professional or construction law, please visit our website at [www.sugarmanlaw.com](http://www.sugarmanlaw.com) or contact us:*

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