

## Checklist for Owner/Architect Agreements

In construction, it is often useful to have a checklist. The following checklist is for use by an architect in preparing the owner-architect agreement, although parts of it can be used by engineers and other consultants to the architect, as well as by other parties to the construction process.

- Is the "Owner" properly identified? Is the owner a corporation or other entity with limited liability? If so, who will pay you and who can you sue? Think about getting personal guarantees. Is there a lender who will finance the project?
- Is the owner a public entity? If so, is there a proper resolution that authorizes the entity to enter into this contract? Are all other legal requirements met for this owner to enter into this contract?
- Identify a person who is authorized to make decisions for the owner. If the owner is a public entity, verify that this person has statutory authority for decisions. For instance, if this person authorizes a \$10,000 expenditure, does he have authority for that amount? If not, you will not have any way to get paid for this item.
- Is the A/E firm properly licensed to do this work? Pay close attention if the work is in another state.
- Describe the project in sufficient detail. This is especially true if other consultants will be working on the project. If possible, refer to plans or other documents that give greater detail about exactly what the project is, such as feasibility studies.
- Make sure you know all of the owner-required milestone dates which you have to meet. If a schedule is incorporated into the agreement, be sure it is reasonable.
- What is the budget for the work which you will design? Make sure the owner understands the difference between a budget for the cost of the actual construction as opposed to the overall budget which includes soft costs such as financing, legal and accounting fees, your design fees, and similar costs.
- Make sure a project delivery method is set out in the agreement. After the agreement is signed, beware of sudden changes in the method by which the owner intends to procure the project, i.e. going from a traditionally bid project to a fast track project.

*This article is not legal advice. Consult with an attorney familiar with the law in your area.*

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- Beware of owner generated documents which do not mesh with the AIA Standard Documents that you are using, i.e. owner-generated general conditions which do not mesh with your B141-1997 Owner/Architect Agreement or non-standard owner/architect agreements to be used with A201.
- List the things the owner is supposed to do, such as furnish surveys, etc.
- List the things the A/E is supposed to do. Note that the latest version of B141 (the 1997 version) has a longer list of architect-provided services than prior editions. The intent is that the owner and architect are to negotiate the services and cross off any services that the owner does not want. Do not use that document without thoroughly going through those services.
- Beware of changes to the Instruments of Service (copyright) provisions and changes in ownership of documents or the copyrights to them.
- Beware of the owner's attempt to delete the Waiver of Claims for Consequential Damages. Such a waiver means that the party damaged by a delay cannot recover for lost profits and similar damages. This waiver probably benefits the A/E more than the owner.
- Make sure that the state laws that govern the agreement are the same state laws in which you practice. Have your agreement state that the parties agree to be subject to the jurisdiction of a court system that is at a location convenient to your office. If you have an arbitration clause, make sure the location of the arbitration will be convenient to you and your witnesses.
- Use the language in the B141-1997 pertaining to the start of the statute of limitations. Deletion of that particular provision will greatly extend your liability exposure on the project.
- Make sure the agreement requires mediation prior to arbitration or litigation. Consider limiting the scope of arbitration. Litigate claims for large dollar amounts rather than arbitrating them, due to the inability to appeal a bad decision in arbitration. Litigation allows for an appeals process.
- Avoid the owner's attempts to insert consolidation and joinder clauses in the arbitration provisions.
- Check all of the insurance requirements of the agreement to confirm that they are reasonable and that you can obtain the limits of coverage called for.
- Beware, beware, beware of owner drafted indemnity provisions. Review all such provisions with your insurance carrier and attorney.

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If you cannot delete such provisions, make them mutual.

- Check all of the payout provisions and the owner's ability to withhold payments to you. Make sure you get a retainer that is as large as possible, and that will be applied to the final payment due. Provide the ability to stop work if the owner does not pay on time.
- Review site observation provisions carefully to avoid having more liability exposure than contained in the standard observation provisions contained in the B141-1997.
- Check the provisions concerning shop drawing review. Beware of liability exposure for documents you do not produce, but merely review.
- Make sure that all agreements have a provision stating that construction means, methods techniques, sequences or procedures are solely the responsibility of the contractor.
- Make sure that all agreements have a provision stating the contractor is solely responsible for safety.
- Beware if the owner attempts to increase your standard of care by stating that you are to perform to the highest standards of care. This is an undefined term that cannot be achieved. If you sell your services as being of an above-average quality, you may be held to such a standard in court, giving you far greater liability exposure that you otherwise may have.
- Check to make sure there are no waivers of your rights, including your right to lien the project should you not be paid. No-lien provisions should be avoided.
- Make sure you do not waive any of your rights under the terms of your agreement with the owner after the agreement is signed.

Consider this list when you negotiate your next contract. It should be obvious that most letter agreements will not even come close to covering most of these items. If you are a contractor or supplier, think about what similar items you may want to consider for your contracts.

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