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2007 Revisions to the AIA A201

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Although parties can become complacent concerning dispute resolution procedures when the contract is being negotiated and the parties' relationship is strong, dispute resolution procedures become vitally important when disputes arise. The 2007 revisions to the A201 make substantial changes to all stages of the dispute resolution process. These changes fall into two broad categories: (1) the initial resolution of disputes between the Owner and Contractor; and (2) formal dispute resolution after the initial resolution. Following are some of these amendments to the A201.

I. Changes To The Initial Resolution Of Disputes Between The Owner And Contractor ("The Initial Decision Maker") The 2007 series of AIA contracts allows the Owner and Contractor to add an additional person to the construction project - the "Initial Decision Maker."
The Initial Decision Maker assumes several roles traditionally performed by the Architect in rendering initial decisions for disputes between the Owner and the Contractor. The amendments also shift to the Owner and the Contractor one related area of authority held by the Architect in previous A201 editions.

A. How the 1997 A201 Provided for Initial Dispute Resolution.
Under the 1997 A201 the Architect served, generally speaking, as the initial decider of disputes between the Owner and the Contractor.[1] Claims by the Owner or Contractor for matters such as contract adjustment and interpretation, payment and time extensions[2] were presented to the Architect for an initial determination before the Owner or Contractor could initiate further dispute resolution. The Architect's initial decision was binding on the Owner and Contractor unless one of them demanded mediation and then commenced arbitration or litigation.[3] An Architect could also force an early final decision on the dispute by including in the written decision a statement that the decision was final and binding unless the Owner or the Contractor demanded arbitration within thirty days after receiving the Architect's decision.[4]

The Architect's duties to render initial decisions also included two related duties that arose when an Owner sought to terminate the Contractor for cause. First, before the Owner could terminate the Contractor, the Architect had to certify that "sufficient cause existed" for termination based upon a finding that the Contractor (i) repeatedly failed to provide sufficient workers or materials, (ii) failed to properly pay its subcontractors, (iii) persistently ignored laws, ordinances, or other rules or regulations, or (iv) substantially breached the contract.[5] Second, after termination the Architect certified the amount, if any, by which the Owner's costs to finish the Work and the Owner's damages exceeded the unpaid contract balance.[6]

The 1997 A201 allowed only the Architect to perform these initial decision making duties.

B. Initial Decisions Under the 2007 A201
1. Establishment of an Initial Decision Maker
The 2007 A201 allows the Owner and Contractor to choose someone other than the Architect to serve as the "Initial Decision Maker" for most initial decisions on claims between them.[7] However, the Architect serves as the Initial Decision Maker by default if the Owner and Contractor do not select someone else for that role.[8] Text of footnote ...

According to the AIA, the decision to allow the parties to select an Initial Decision Maker arose from complaints by Owners and Contractors that they wanted someone other than the Architect to make initial decisions on some projects. Some Owners expressed a preference to have the Architect advocate for the Owner in a dispute with the Contractor rather than serve as a neutral decision maker. Some Contractors were skeptical about whether Architects could serve impartially as the initial decision makers because they are paid by the Owner, particularly when the Contractor's claim included allegations that the Architect was negligent or had engaged in wrongful conduct. The AIA responded to these concerns by adding the Initial Decision Maker.[9]

The A201 sets forth the duties and responsibilities of the Initial Decision Maker. Both the Owner and the Contractor may initiate a claim by submitting it in writing to the Initial Decision Maker and the other party, with a copy to the Architect.[10] As in previous versions of the A201, the Initial Decision Maker (or Architect) doesn't handle claims relating to hazardous materials, or disputes arising from the Owner's decisions in adjusting claims covered by the Owner's property insurance.[11]

The Owner and Contractor must seek an initial determination from the Initial Decision Maker as a condition precedent to mediation, arbitration and/or litigation, except for those claims that the Initial Decision Maker is not authorized to decide.[12] However, if the Initial Decision Maker does not issue a decision within 30 days after submission of the claim, then a party may demand mediation without further delay.[13] The Architect is required to prepare change orders and issue certificates of payment consistent with the decisions rendered by the Initial Decision Maker.[14]

The Initial Decision Maker follows almost the same process used by the Architect under the 1997 A201 to reach an initial decision.[15] After receiving a claim the Initial Decision Maker has 10 days to (i) request additional supporting materials from the claimant and/or a response and supporting materials from the other party; (ii) reject all or part of the claim; (iii) approve the claim; (iv) propose a compromise to the claim; or (v) advise the parties that the Initial Decision Maker is unable to resolve the claim or believes that it is not appropriate for him/her to resolve the claim.[16] If the Initial Decision Maker requests additional information, the Owner and the Contractor must, within 10 days, provide their response or advise when, or if, a response will be forthcoming. [17] The Initial Decision Maker may consult with the Owner, the Contractor or any other persons with knowledge or expertise to assist the decision making process and may request that the Owner retain and pay for the assistance of such other persons.[18] The Initial Decision Maker must issue decisions in writing.[19]

Interestingly, the 2007 A201 deletes the phrase “adjustment or interpretation of Contract terms” from the definition of “claims” found in the 1997 version.[20] Presumably, this deletion was made because § 4.2.11 remains unchanged. The 2007 A201 states that the Architect “will interpret and decide matters concerning performance under, and requirements of, the Contract Documents” upon written request of the Owner or Contractor.[21] The 2007 A201 does not state what, if any, deference the Initial Decision Maker must give to such determinations by the Architect. (The consequences of this omission are discussed in Section I. C, infra, at p. 6.).

2. Changes to the Procedure for Requiring an Early Challenge to an Initial Decision.
Another significant change in the 2007 A201 is that the initial decision maker can no longer force the Owner and Contractor to promptly demand mediation or waive that right.[22] Instead, the Owner and the Contractor now have that power. Either of them may within 30 days after an initial decision is issued demand that the other party request mediation within 60 days of the initial decision. After such a notice is issued, if both parties fail to demand mediation, the initial decision becomes final and binding and the right to seek further dispute resolution is waived.[23]

This change arose from criticism of the Architect having the right to force an early binding resolution of a dispute. Owners and Contractors complained that it was not appropriate for the initial decision maker to have

such authority. Some asked why the Architect should be allowed to force an early resolution if neither party desired one, particularly given the costs of piecemeal dispute resolution.[24] Whether this change reduces piecemeal dispute resolution remains to be seen because the parties still have the ability to initiate piecemeal dispute resolution proceedings. Indeed, taking this decision out of the hands of the Architect may increase piecemeal dispute resolution proceedings, particularly if one party decides to abuse the right.

3. The Initial Decision Maker Role in Contract Termination

The Initial Decision Maker also assumes the Architect's role when the Owner wishes to terminate the Contractor for cause. First, the Initial Decision Maker must certify that "sufficient cause exists" to warrant the Owner terminating the Contractor.[25] Second, the Initial Decision Maker certifies the amount, if any, by which the Owner's costs to finish the Contractor's work and the Owner's damages exceed the unpaid balance of the Contract or how much the Contractor is owed.[26]

C. Practical Considerations and Issues Relating to a Neutral Initial Decision Maker

The Initial Decision Maker concept allows an independent person to resolve disputes between the Owner and the Contractor early in the construction process. Introducing a true neutral at the initial decision stage may reduce conflicts by giving the initial decisions an increased level of credibility and acceptance that may not exist if the Owner's Architect, who is often perceived by the Contractor as having a bias, is rendering the decisions. If so, this change will benefit both Owners and Contractors.

However, introducing a new party to the construction process also raises questions that the Owner and the Contractor must consider. One major consideration will be the relationship between the Architect and the Initial Decision Maker in the initial decision making process. The Architect retains the right to reject work that does not conform to the contract documents and to interpret and decide matters concerning the contract document requirements and performance under them.[27] However, these matters still fall within the broad definition of "Claims" that must be submitted to the Initial Decision Maker.

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.[28]

Unfortunately, the A201 does not state what, if any deference the Initial Decision Maker must give to these determinations by the Architect.

Consider the process when the Owner asks the Initial Decision Maker to certify that sufficient cause exists to justify terminating the Contractor. Presumably, the Initial Decision Maker is called upon to exercise independent judgment in deciding whether to certify a termination; there is no need to delegate to an Initial Decision Maker a ministerial role of executing the certification. However, if the Owner seeks to terminate the Contractor for substantial breaches of the contract based upon faulty work by the Contractor, what deference must the Initial Decision Maker give to a decision by the Architect to rejecting the work in question pursuant to § 4.2.6.? No deference? Complete deference? Deference unless the Initial Decision Maker believes the Architect's decision is completely erroneous?

These are considerations that both the Owner and the Contractor must consider during the contract negotiations. Do the parties want the Architect's decisions to bind the Initial Decision Maker or do they want to be able to approach the Initial Decision Maker even if the Architect disagrees with the Owner? It would appear that the Owner usually would rather have the decisions of the Architect, who it is paying, to bind the Initial Decision Maker. In such cases, the Owner should consider clarifying §14.2.2.

From the Contractor's perspective, allowing the Initial Decision Maker to exercise independent judgment provides a check against the Owner's presumed influence on the Architect. However, §14.2.2 does not provide the Contractor with notice and an opportunity to respond to the Owner's request for certification. Although the 1997 A201 also did not provide for the Contractor to receive notice when the Owner submitted the matter to the Architect, the Contractor presumably had regular contact with the Architect concerning the project, which provided some opportunity for the Architect to evaluate the Contractor's performance from the Contractor's perspective. On the other hand, a referral by the Owner to the Initial Decision Maker for certification could occur without the Contractor having had any prior, meaningful contact with the Initial Decision Maker. With the Initial Decision Maker having no obligation to hear from the Contractor, the Contractor may be at a disadvantage compared to when the Architect was performing the certification role. The Contractor may wish to have the contract require that it be given notice and an opportunity to respond prior to any decision by the Initial Decision Maker to certify termination. This may be particularly important if the Initial Decision Maker's first involvement on the project is responding to an Owner's request to certify a termination. Failing that, the Contractor should take special care in consenting to a specific Initial Decision Maker.

The deference issue becomes particularly important if the dispute between the Owner and the Contractor involves matters relating to the integrity of the structure under construction. Allowing for an Initial Decision Maker to reach a different conclusion than the Architect on such matters may not benefit the Project. For example, if the Architect determines that the foundation work is defective and the Contractor disagrees, can the Contractor seek a ruling from the Initial Decision Maker that the work is not defective? Given that “Claims” includes all matters in question arising out of the contract, the answer appears to be “yes.” But does allowing for such second guessing further the Project?

This same concern could arise in disputes of less magnitude. For example, if the Architect rejects the quality of the finish on a segment of the drywall, does it benefit the parties to have to also submit the dispute to an Initial Decision Maker? The time and expense involved in this second layer of decision making may not be justified. However, the A201 requires the aggrieved party to submit the claim within 21 days to the Initial Decision Maker or it is waived. Thus, these changes appear to encourage duplicative efforts by the Architect and the Initial Decision Maker.

Other considerations for the Owner and Architect in deciding whether to use someone other than the Architect as the Initial Decision Maker include the following:

- Who will pay for the costs of the Initial Decision Maker? The additional expense could be substantial, particularly given that the Owner and the Contractor will have to educate the Initial Decision Maker about the project when a dispute arises, unlike the Architect who is already deeply involved.
- If the Owner pays the cost of the Initial Decision Maker, has the risk of bias from the initial decision maker really decreased?
- What role should the Contractor have in choosing the Initial Decision Maker? Should the Contractor share in the cost of the Initial Decision Maker to influence the choice?
- The parties may need to be more creative in the cost structuring rather than having one party bear all of the costs or a set division of costs. Otherwise, the initiation of claims may become a weapon for one or both parties. For example, if the owner bears all of the costs of the Initial Decision Maker, then the Contractor has the opportunity to increase the Owner's costs through the claims process. The parties may consider a “loser pay” or “initiating party pay” agreement.
- If both the Owner and the Contractor have a voice in who fills the Initial Decision Maker role, will they be able to reach an agreement? Both parties will want someone who favors their position (or at least someone not biased toward the other party).

- Presenting a conflict to someone who is not thoroughly familiar with the project will likely require more sophisticated advocacy skills, which the Owner and/or the Contractor may not possess or wish to purchase.
- Will the Initial Decision Maker be more prone to errors given his/her limited involvement in the project?
- Will an Initial Decision Maker be more or less likely to certify a termination than the Architect?
- How will having the imprimatur of a neutral party's decision impact subsequent dispute resolution? Will a fact finder in an arbitration or litigation give more weight to such decisions? Will it be admissible in litigation?
- Who can terminate the Initial Decision Maker and under what conditions?
- What limitations will be placed on the fees and costs that the Initial Decision Maker can incur in carrying out his/her duties?
- Should the Initial Decision Maker attend job meetings to stay informed about the project?
- Does the Initial Decision Maker need insurance? If he/she is not a design professional, can he/she obtain insurance?
- However, having a separate Initial Decision Maker allows the Owner and the Contractor to separate the purely architectural role from the initial decision maker role. There are some good architects who do not perform well as initial decision makers. Many architects prefer not to serve in this role. Splitting the roles allows for the selection of the best person for each role.

The Owner and the Contractor (or at least one of them) will need a contract with the Initial Decision Maker setting out his/her duties and the scope of the engagement considering the issues previously discussed. The Initial Decision Maker may wish to have a written limitation on his/her liability for the work performed and/or an indemnity.

Thus, although the Initial Decision Maker may benefit some projects, it is not clear that it is a panacea for the perceived problems arising from the Architect rendering initial decisions.

II. CHANGES TO THE PROCEDURES FOR FORMAL DISPUTE RESOLUTION AFTER THE INITIAL DECISION

A. Check Box Dispute Resolution

The AIA documents have mandated arbitration since 1888 when the first owner/contractor agreement was published.[29] The claim resolution scheme of the A201-1997 continued that tradition by favoring arbitration. Section 4.6.1 of A201-1997, as drafted, requires the submission of all Claims to arbitration for resolution, except for Claims involving aesthetic effect. The 2007 revisions to the AIA documents, however, represent a significant philosophical departure from the tradition of mandated arbitration.

The revised Owner/Contractor agreement, A101-2007, adopts a “check box” dispute resolution.[30] Meaning, section 6.2 of the revised owner/contractor agreement allows the parties to designate a method of binding dispute resolution, providing boxes for the parties to “check off” arbitration, litigation in a court of competent jurisdiction or “other” to be specified in a fillpoint. Hence, the tradition of mandatory arbitration has been abandoned. (The revised Owner/Architect agreement, B101-2007, also implements check box dispute resolution for Claims between the Owner and Architect.[31])

According to the AIA, industry participants have expressed strongly held, differing opinions about continuing the mandate of arbitration.[32] In the last ten years, “more and more industry participants have demanded a choice between arbitration and litigation, and every industry group that met with the AIA supported the idea of giving project participants a choice in the agreement form.”[33]

B. Default to Litigation

In the event the parties do not check off arbitration, litigation or "other," the revised documents instruct that litigation is the default method of binding resolution.[34] The default to litigation is obviously a significant shift from mandated arbitration. While some strongly supported making arbitration the default method, the AIA concluded that to do so would create ambiguity, i.e., "concerns arose as to whether a court would rule that the parties had agreed to arbitrate [– a purely consensual method of dispute resolution –] if they had failed to select 'arbitration' in the check box . . . ."[35] Accordingly, the AIA resolved the issue by requiring the parties to express unequivocally their consent to arbitrate Claims.

C. Default to AAA

If the parties select arbitration (and with respect to mediation, which remains a condition precedent to the selected method of binding dispute resolution), the revised documents specify that the proceedings will be governed by the American Arbitration Association rules and procedures in effect on the date of the agreement.[36] Citing the uncertainty that rules changes may occur in the interim,[37] the AIA elected to depart from the 1997 version of the agreements providing that the rules "currently in effect" would govern such proceedings.[38]

D. Practical Considerations

1. Be Sure to Check the Box

The more obvious, practical impact of the 2007 amendments is that parties favoring arbitration must ensure that the arbitration box is checked off. Often, less sophisticated or imprudent parties will execute an agreement assuming its form reflects terms with which they are familiar, or without reading or understanding its provisions. Given the relatively unfamiliar design of check box dispute resolution, parties must be educated and cautioned to avoid these mistakes, which could have a drastic consequence on the intended method of binding dispute resolution, particularly if the parties are used to the binding arbitration provisions in the prior A201.

2. Consistency of Selected Method

Consistency is one advantage of utilizing the AIA family of documents. In that regard, parties to more than one project-related contract should be consistent in the utilization of one method of mandatory dispute resolution. For example, if the Owner and Architect check off the arbitration box within B101-2007, the Owner should negotiate with the Contractor to check off of the arbitration box within A101-2007. Otherwise, the Owner may be forced to litigate the Contractor's Claims of Architect fault and to arbitrate the Owner's pass-through Claims against the Architect. Given that arbitration is no longer the default, a Contractor may be able to use an Owner's desire to keep the dispute resolution procedure consistent with its agreement with the Architect to negotiate favorable terms in other areas of the contract.

3. Litigation Provisions

Noticeably absent from the 2007 amendments are provisions contemplating that the parties have chosen litigation to be the binding method of dispute resolution. Accordingly, parties choosing litigation may desire to supplement the A201-2007 and B101-2007 provisions with, among other things, clauses waiving trial by jury, selecting a mandatory venue, submitting the parties to the jurisdiction of the chosen venue and addressing whether contractual obligations must be performed during the pendency of litigation.

4. AAA Rules

Disputes can arise years after the date of the parties' agreement. Now that proceedings will be governed by the AAA rules and procedures in effect on the date of the agreement, parties, mediators and arbitrators may be required to locate out-of-date rules and procedures and may not enjoy advantages and improvements that the revised AAA rules would otherwise afford to them. Furthermore, it is plausible that counsel, mediators and arbitrators will be required to become familiar with different versions of the same AAA rules. Given these circumstances, parties may choose to modify the 2007 version of the agreement by providing that the AAA

rules “currently in effect” would govern proceedings instead of those in effect on the date of the agreement. Otherwise, the parties may wish to attach a copy of the applicable AAA rules as an exhibit to the contract.

E. Consolidation and Joinder

Assuming the parties check off arbitration as their preferred method of dispute resolution, the 2007 AIA documents alter significantly the documents' approach concerning the consolidation of arbitration proceedings and joinder of parties to arbitration proceedings. Indeed, the 2007 documents shift from a posture against consolidation and joinder to one in favor of consolidated resolution of disputes, while still retaining a focus on the parties' contractual choices regarding arbitration and consolidation and joinder therein.

Under the 1997 version of A201, no arbitration arising out of or related to the Contract can include by consolidation, joinder, or in any other manner the Architect, the Architect's employees, or the Architect's consultants, except by written consent specifically referencing the Agreement and signed by the Architect, Owner, Contractor, and the person or entity sought to be joined.[39] Moreover, even with the required written consent, the only parties who can be joined in an arbitration are the Architect, Owner, Contractor an Owner's separate Contractor under Article 6, or “other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration.”[40] Any such person or entity cannot be joined if its interest or responsibility is insubstantial.[41] Consistent with these provisions, the 1997 version of B141 specifically prohibits consolidation or joinder of any additional person or entity not a party to the Owner/Architect Agreement, except by written consent containing a specific reference to the Owner/Architect Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined.[42]

The disfavor for consolidation of disputes with the Architect arises from the conclusion that those claims are likely related solely to unpaid fees. The Owner and Contractor likely dispute more significant and substantive claims, in which the Architect is not involved.[43] Thus, many viewed the 1997 documents' anti-consolidation position as a compromise, with the Architect agreeing to arbitrate any claims between it and the Owner, but refusing to be drawn into arbitrations concerning Contractors and subcontractors with whom the Architect has no privity of contract.[44]

However, the anti-consolidation approach of the 1997 documents potentially gives rise to inefficiency and inequity, especially in the current environment of multi-party construction defect disputes (i.e., mold and moisture intrusion claims) involving both alleged design-related errors and omissions and defective construction.[45] If an arbitration between the Owner and Architect cannot be consolidated with an arbitration between the Owner and Contractor, there arises the potential for inconsistent results, as well as the duplication of time, efforts and resources of all parties and the arbitrators to resolve often identical factual and legal issues. Indeed, the critics argue that the provisions prove to be a strategic advantage to the Architect and other design professionals in large construction disputes, with the Owner and General Contractor typically bearing the burden of the duplicated efforts.

The 2007 versions of the AIA documents turn 180 degrees to take an approach in favor of economy in the dispute resolution process. Such an approach is arguably more consistent with the arbitration process generally and the goals parties generally intend through incorporation of alternative dispute resolution provisions.

Under both the A201 and B101, either party to an arbitration is permitted to consolidate the parties' pending arbitration with another arbitration to which it is a party if:

1. the arbitration agreement governing the other arbitration permits consolidation;
2. the arbitrations to be consolidated substantially involve common issues of law or fact; and

3. the arbitrations employ materially similar procedural rules and methods for selecting arbitrators.[46]

The parties to the consolidated arbitration may consolidate other arbitrations to which they are parties, provided the above three criteria are present.[47] Additionally, with respect to the joinder of parties, any party to an arbitration may join persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, if the party sought to be joined consents in writing to the joinder.[48]

Notwithstanding the shift, the 2007 documents retain an emphasis on the parties' contractual elections. Therefore, the documents' consistency and the parties' ability to consolidate proceedings are easily eliminated through amendment of just one of the agreements to prohibit consolidation.

Assuming the agreements are not revised to prohibit consolidation, the remaining criteria should be easily met in most instances. Most arbitrations that the parties will wish to consolidate will involve the same project and will involve the same or similar procedural rules and rules for selection of arbitrations, because the AAA Construction Industry Arbitration Rules are specifically designated to govern the dispute procedure.[49] Note, however, that the documents also contemplate mutual agreement of the parties to different governing rules and procedures, which could result in a material difference in procedural rules and methods for selecting arbitrators and eliminating the ability to consolidate. [50]

Even under the 2007 documents some duplicated costs and efforts may still exist. The 2007 documents focus on consolidation of arbitrations, not consolidation of claims. Thus, in a multiparty dispute, although the Owner can now consolidate an arbitration against the Architect with one against the Contractor, the Owner cannot institute a single arbitration proceeding against both the Architect and Contractor, unless the party to be joined agrees to joinder in writing.[51] Thus the Owner could still bear the additional expense of instituting two separate proceedings. Therefore, an Owner may wish to revise all documents to allow consolidation of claims against the Architect and Contractor in one proceeding.

In most situations, the Contractor's position under the new documents is not much improved. If the Owner institutes separate arbitrations against the Contractor and Architect, the Contractor has no means to facilitate consolidation of the two proceedings. Therefore, the Contractor may urge revisions to all documents to allow consolidation of proceedings concerning the Owner, Architect, or Contractor.

However, if the parties are of substantially different economic strengths, consolidation could quickly deplete the assets of the weaker participant. For example, should a solo practitioner architect be drawn into a multiple issue dispute where the architect is only accused of an omission in one of the issues, the process will be far more expensive for the architect.

CONCLUSION

The 2007 version of the A201 has substantially altered the dispute resolution procedures. It appears that the express theme of these changes is to offer more choices for the parties to tailor the contract to fit the project, such as choosing who will make initial decisions and the forum for formal dispute resolution. However, “choices” tend to foster “complexity” and “unintended consequences.” These new AIA documents are no different. For example, inviting the parties to have someone else serve as the initial decision maker creates additional negotiations about who will serve in the role and under what terms. Departing from the time tested practice of having an Architect serve in that role is likely to result in some surprises for the parties during the performance of the project, as will the “check box” and the consolidation provisions. Whether these changes benefit the parties in the balance remains to be seen.

[1] A201 - 1997 § 4.4.
[2] A201 - 1997 § 4.4.1. Claims relating to hazardous materials were excluded from this procedure. A201 - 1997 § 10.3-10.4.
[3] A201 - 1997 § 4.4.5.
[4] *Id.*
[5] A201 - 1997 § 14.2.1-2.
[6] A201 - 1997 § 14.2.4.
[7] A101 - 2007 § 6.1.
[8] *Id.*
[9] Suzanne Harness, 2007 Revisions to AIA Contract Documents (2007) (unpublished comment, on file with the American Bar Association Forum on the Construction Industry).
[10] A201 - 2007 § 15.1.1-2. The practitioner should note that claims procedure has been moved from Article 4 to Article 15.
[11] A201 - 2007 § 15.2.1 (referencing §§ 10.3, 10.4, 11.3.9, and 11.3.10).
[12] A201 - 2007 § 15.2.1.
[13] *Id.*
[14] A201 - 2007 § 15.1.3.
[15] *Compare* A201 - 1997 § 4.3 with A201 - 2007 § 15.1.
[13] A201 - 2007 § 15.2.2.
[17] A201 - 2007 § 15.2.4.
[18] A201 - 2007 § 15.2.3.
[19] A201 - 2007 § 15.2.5.
[20] *Compare* A201 - 1997 § 4.3 with A201 - 2007 § 15.1.1.
[21] A201 - 2007 § 4.2.11.
[22] *Compare* A201 - 1997 § 4.4.6 with A201 - 2007 § 15.2.6.1.
[23] A201 - 2007 § 15.2.6.
[24] Suzanne Harness, 2007 Revisions to AIA Contract Documents (2007) (unpublished comment, on file with the American Bar Association Forum on the Construction Industry).
[25] A201 - 2007 § 14.2.2.
[26] A201 - 2007, § 14.2.4.
[27] A201 - 2007, §§ 4.2.6, 4.2.11.
[28] A201 – 2007 § 15.1.1
[29] Suzanne Harness, 2007 Revisions to AIA Contract Documents (2007) (unpublished comment, on file with the American Bar Association Forum on the Construction Industry).
[30] The AIA documents for the design-build delivery process, released at the end of December 2004, contain check box resolution. A141 – 2004, Exhibit A, § 6.2.
[31] B101 – 2007, § 8.2.4.
[32] Suzanne Harness, 2007 Revisions to AIA Contract Documents (2007) (unpublished comment, on file with the American Bar Association Forum on the Construction Industry).
[33] *Id.*
[34] A101 – 2007, § 6.2; B101 – 2007, § 8.2.4.
[35] Suzanne Harness, 2007 Revisions to AIA Contract Documents (2007) (unpublished comment, on file with the American Bar Association Forum on the Construction Industry).
[36] A201 – 2007, §§ 15.3.2 (providing for the administration of mediation by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the agreement), 15.4.1 (providing for Construction Industry Arbitration Rules in effect on the date of the agreement); B101 – 2007, §§ 8.2.2, 8.3.1.
[37] Suzanne Harness, 2007 Revisions to AIA Contract Documents (2007) (unpublished comment, on file with the American Bar Association Forum on the Construction Industry).
[38] A201 – 1997, §§ 4.5.2, 4.6.2; B141 – 1997, §§ 1.3.5.1-2; B151 – 1997, § 7.2.1.

[39] A201 - 1997 § 4.6.4.
[40] *Id.*
[41] *Id.*
[42] B141 - 1997, § 1.3.5.4.
[43] BRUNER, PHILIP L. AND O'CONNOR, PATRICK J., JR., BRUNER & O'CONNER ON CONSTRUCTION LAW § 20:75 (2002).
[44] *Id.*
[45] *See id.*
[46] A201 - 2007 at § 15.4.4.1; B101 - 2007 § 8.3.3.1.
[47] A201 - 2007 at § 15.4.4.2; B101 - 2007 § 8.3.3.2.
[48] A201 - 2007 at § 15.4.4.3; B101 - 2007 § 8.3.3.3.
[49] See A201 -2007 at § 15.4.1; B101 at § 8.3.1.
[50] *Id.*
[51] *See* A201 - 1997 at § 15.4.4.3; B101 at § 8.3.3.