LEGAL ISSUES WITH INTEGRATED PROJECT DELIVERY
UNC Charlotte - 2013

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If a builder build a house for someone, and does not construct it properly, and the house that he built fall in and kill its owner, then that builder shall be put to death. If it kill the son of the owner, the son of that builder shall be put to death. If it kill a slave of the owner, then he shall pay slave for slave to the owner of the house. If it ruin goods, he shall make compensation for all that has been ruined, and inasmuch as he did not construct properly this house which he built and it fell, he shall re-erect the house from his own means. If a builder build a house for some one, even though he has not yet completed it; if then the walls seem toppling, the builder must make the walls sold from his own means.

Your Contract is your chance to manage both your risk and the expectations of your client and the other parties to the construction project.
GAAA!!! OUR BOSS'S BOSS IS COMING!
WHERE?

UH- OH.
HELLO, HEAD-COUNT.

I NEED TO RUN.
TONS OF WORK.

WHY ARE YOU POORLY MANAGED?

NO! WE HAVE EVERYTHING WE NEED!
EVERYTHING IS PERFECT!

SO... WAS YOUR BOSS CONFUSED, LYING OR MISINFORMED WHEN HE ASKED ME FOR MORE FUNDING FOR YOUR BUDGET?

NOOO!!! IGNORE ME! I DON'T KNOW ANYTHING!!!

DILBERT SAYS YOU DON'T COMMUNICATE WITH THE STAFF, AND YOU DON'T NEED MONEY.

PHEW! I'M GLAD THAT'S OVER.
EVOLUTION OF CONTRACTUAL RELATIONSHIPS

Hey, I'm being followed by monkeys!
AIA Contract Documents

Contract Relationship Diagrams

June 2010
Conventional (A201) Design-Bid-Build

Key Attributes:
- For use when the owner’s project is divided into separate contracts for design (Architect) and construction (Contractor)
- Suitable for conventional project delivery (design-bid-build)
- Owner retains Architect
- Architect and his/her Consultants prepare drawings and specifications
- Architect assists Owner in obtaining bids/proposals and then Owner awards contract(s) for construction
- Contractor(s) and Surety(ies) obligate to Owner for bid, performance and payment bonds
- Contractor and Subcontractors build the work

Conventional (A201) Design-Bid-Build
Contract Relationship Diagram:

*B104 and A107 are in the A201 family because the abbreviated General Conditions in A107 are based on A201. If C401 and A401 are used with B104 and A107, appropriate modifications should be made with the assistance of insurance and legal counsel.
COMPETING INTERESTS MAY AFFECT THE PROJECT
Key Attributes:

- Owner retains an Architect and a Construction Manager who acts as an additional adviser to the Owner
- Prime Contractor(s) and Subcontractor(s) are responsible for construction
- Construction Manager gives Owner construction management advice through design and construction phases -- increases expertise in managing a project from start to finish

Construction Manager as Adviser (2009-CMa)
Contract Relationship Diagram:
Construction Manager as Constructor (CMc)

Key Attributes:

- Single party (Construction Manager) provides construction management services in pre-construction phase AND then completes construction (Constructor)
- Gives Construction Manager (Constructor) responsibility and control over construction work via direct contract(s) with Subcontractor(s)
- Construction phase services paid on the basis of cost of work plus a fee either with (A133) or without (A134) a Guaranteed Maximum Price

Construction Manager as Constructor (2009-CMc) Contract Relationship Diagram:
ATTEMPTS TO DEAL WITH THE COMPETING INTERESTS: CONSTRUCTION MANAGER

MICRO MANAGING
Hire intelligent, competent people to do the job, then watch every move they make!
Design-Build

Key Attributes:
- Owner enters into a contract with a single entity Design-Build
- Design-Build is then obligated to both design and construct the project
- Owner may also hire Consultant to assist Owner in working with Design-Build
- Design-Build then enters into contracts with Architect and/or construction Contractor(s) if necessary
- Design-Build may be:
  - A Developer or Single Purpose Entity (design and construction in one shop)
  - An Architect-led organization
  - A Contractor-led organization (most often the case)

Design-Build Contract Relationship Diagram:
ATTEMPTS TO DEAL WITH THE COMPETING INTERESTS: DESIGN-BUILD

SAVING YOU TIME AND MONEY, NOT QUALITY

WELLINGTON DESIGN/BUILD APPROACH

- design concept
- design development
- detail drawings
- construction

lower costs established

TRADITIONAL APPROACH

- design concept
- design development
- detail drawings
- bid
- construction

higher cost established
ATTEMPTS TO DEAL WITH THE COMPETING INTERESTS: INTEGRATED PROJECT DELIVERY
INTEGRATED PROJECT DELIVERY

The AIA defines IPD as:
A project delivery approach that integrates people, systems, business structures, and practices into a process that collaboratively harnesses the talents and insights of all participants to:

• Optimize project results
• Increase value to the owner
• Reduce waste
• Maximize efficiency through all phases of design, fabrication, and construction.
Integrated Project Delivery: Transitional Documents

Key Attributes:
- Integrated Project Delivery is an emerging process and these Transitional Agreements are a comfortable first step into IPD
- A collaborative project delivery approach that utilizes the talents and insights of all project participants through all phases of design and construction
- Structured similar to existing Construction Manager as Constructor agreements

Integrated Project Delivery: Transitional Documents
Contract Relationship Diagram:

*If A401 or C401 is to be used on a project with the Transitional Forms, appropriate modifications should be made with the assistance of insurance and legal counsel.
Similar to design/bid/build, but creates collaboration through joint general conditions and mission statement

- Compels collaboration through combining the scope of work for both the architect and the general contractor in the General Conditions.

- Requires BIM to be used as much as possible to design and virtually “build” the project prior to physical construction.

- Anticipates that the contractor will be heavily involved in the design phase, including getting costs and schedules from subs, to calculate the GMP.
Integrated Project Delivery: Multi-Party Agreement

Key Attributes:

- These Agreements more fully integrate the project parties into IPD
- Owner, Architect and Contractor, at a minimum, enter into one contract (Multi-Party Agreement)
- The Multi-Party Agreement allows for sharing of risk and reward in a fully integrated collaborative process

Integrated Project Delivery: Multi-Party Agreement Documents
Contract Relationship Diagram:

*If A401 or C401 is to be used on a project with the Multi-Party Agreement, appropriate modifications should be made with the assistance of insurance and legal counsel.
CREATES COLLABORATION THROUGH JOINT CONTRACT

- **Multi-party agreement through which the owner, architect, contractor, and perhaps other key project participants execute a single agreement for the design, construction and commissioning of a project.**

- **Provides the framework for a collaborative environment in which the parties operate in furtherance of cost and performance goals that the parties jointly establish. The non-owner parties are compensated on a cost-of-the-work basis.**

- **Primary management of the project is the responsibility of the Project Management Team, comprised of one representative from each of the parties.**
Integrated Project Delivery: Single Purpose Entity

Key Attributes:

- These Agreements more fully integrate the project parties into IPD
- Creates a limited liability company (Single Purpose Entity) for the purpose of furnishing the planning, design and construction of the project through separate contracts with appropriate entities.
- The Single Purpose Entity (SPE) allows for complete sharing of risk and reward in a fully integrated collaborative process.

Integrated Project Delivery: Single Purpose Entity Documents
Contract Relationship Diagram:
LLC CONTRACTS WITH THE ARCHITECT AND CONSTRUCTION MANAGER.

OWNER RETAINS MAJORITY VOTE ON LLC BOARD.

NON-OWNER MEMBERS MUST PROVIDE SERVICES FOR REIMBURSEMENT OF COSTS ONLY – PROFITS MAY BE EARNED ONLY BY ATTAINING PROJECT GOALS AND TARGET COSTS.
Consensus Docs

ConsensusDOCS 300 is a tri-party agreement signed by the owner, architect and contractor, who comprise the project “Management Group” team.

- The Management Group can later add key design consultants and trade contractors via a joining agreement.

- The Management Group is required to “act in the best interests of the Project as a whole without considerations to each member’s own interest.”
IPD CONTRACTUAL MECHANISMS FOR DEALING WITH DISPUTES

- Waiver of Claims
- Financial Incentives
- Shared Responsibilities
- ADR Mechanisms
WAIVER OF CLAIMS

Subject to the Allowed Claims set forth in Section 12.2, the Parties, Cost Reimbursable Subcontractors, and Cost Reimbursable Consultants waive and release all claims and liability between and among each other related to the performance of this Agreement or the Work.
FINANCIAL INCENTIVES

• ConsensusDocs - The contractor, owner and architect create a Project Target Cost Estimate for the project that serves as a benchmark goal. At the time the PTCE is made, it is determined how the project participants will participate in any savings or losses. Conversely, financial penalties may be imposed for losses for exceeding the PTCE, although losses are capped at negotiated amounts.
**Shared Responsibilities**

From the Consensus Docs:

**Designer's Responsibilities**

The Designer shall furnish or provide all the design and engineering services necessary to design the project in accordance with the Owner's objectives ... the Designer shall draw upon the assistance of the Constructor and others in developing the project design, but the Designer shall retain overall responsibility for all design decisions. ... Cost and schedule are design criteria and the Designer, in collaboration with the CPD Team, shall ensure that design fully considers cost and schedule implications.
ADR Mechanisms

• All disputes that cannot be resolved by the members must be mediated with a neutral identified at the time the LLC is formed.

• If after 60 days the mediation process has been unsuccessful, the neutral issues a decision that is binding on all the members.
INSURANCE

• For the Contractor, duties go beyond traditional CGL Coverage.

• For the Designer, similar risk that a traditional E&O Policy will not cover expanded scope of responsibilities.

• The October 2012 Issue of AIA Trust notes 2 kinds of IPD team coverage are now available – Project Specific Coverage utilizing the SPE concept, or broader coverage for all design team members on one policy on a multi-party IPD contract as in the C191.
While this would cover 3rd party claims, it would not cover claims between group members.

Thus, consider asking the owner to take out supplemental insurance such as project specific insurance or “Owners Professional Protective Insurance” – a separate policy that indemnifies the owner for first party losses resulting from the design professional’s negligence.
Use of Your Seal

- The NC Board of Architecture has a brochure outlining the requirements for sealing a drawing. However, the rules and laws of the Board of Architecture make no reference to IPD or BIM.

- Because a model by its nature is changing and evolving, ergo not a final drawing, there is no reason the model must be sealed.

- So what can you seal?
WHICH TYPE OF LICENSEE MUST PREPARE AND SEAL THE PLANS?

CAN ARCHITECTS PREPARE AND SEAL ENGINEERING PLANS?

Although "incidental" engineering is allowed, architects generally should not seal electrical, mechanical, plumbing, civil or structural engineering drawings.

CAN PROFESSIONAL ENGINEERS PREPARE AND SEAL ARCHITECTURAL PLANS?

Although building design is allowed, if within the competency of the professional engineer, professional engineers cannot represent the work as architecture and should not seal drawings labeled as architectural ("A Sheets").

WHAT PROJECT PLANS MAY BE EXEMPT IN THE BUILDING CODE FROM THE REQUIREMENTS AND PREPARED BY OTHERS?

While there are certain exemptions from the requirements of a professional architect's or engineer's seal, it is important that the code official exercise judgement to require seals where necessary to protect the public.

ARE THERE SPECIAL REQUIREMENTS REGARDING THE SEALS?

MUST THE LICENSE SEAL, SIGN AND DATE EACH SHEET OF ORIGINAL DRAWINGS ISSUED FOR BUILDING, PERMITTING OR CONSTRUCTION?

Yes, required on original or reproducible.

MUST THE LICENSE SEAL, SIGN AND DATE INDEX PAGE IDENTIFYING EACH SET OF SPECIFICATIONS OR TECHNICAL SUBMISSIONS?

Yes.

CAN A LICENSEE USE AN ELECTRONIC SEAL?

Permitted subject to detailed requirements described in rules.

FARM BUILDING PLANS?

Exempt if not for public use.

PLANS FOR BUILDING UNDER 2500 SQ. FT?

Exempt, but in calculating "square footage" must include all total ground floor area, both heated and unheated, within inside perimeter of exterior walls.

PLANS FOR COMMERCIAL STRUCTURES LESS THAN $99,000 IN VALUE?

Exempt, but "value" is defined as probable completed construction cost including change orders (but not including land value) and the total value of the building for an addition to a building.

SHOP DRAWINGS?

Exempt.

Not exempt.
ARE CHURCH PLANS EXEMPT?

Yes. No.

ARE "RECORD DRAWINGS" REQUIRED TO BE SEALED?

No, optional with disclaimer.
Yes, with disclaimer.

WHAT KINDS OF DOCUMENTS REQUIRE A SEAL?

MUST A LICENSEE SEAL ALL PLANS PREPARED FOR BIDDING, PERMITTING OR CONSTRUCTION?

Yes.

ARE SPECIFICATIONS REQUIRED TO BE SEALED?

Yes.

MUST A LICENSEE SEALS PLANS HE/SHE PREPARES FOR EXEMPT PROJECTS?

Yes.

ARE CHANGE ORDERS REQUIRED TO BE SEALED?

Yes, if the documents can only be lawfully prepared by a licensee.

ARE ADDENDA AND FIELD CHANGES REQUIRED TO BE SEALED?

Yes, if changes are presented in a document of a type that must be prepared by a licensee.

shall bear seal and registration number of consultant responsible therefore.

No, not unless licensee is engineer "in responsible charge".

CAN NON-EXEMPT PLANS BE SEALED OR DESIGN OF ONE DISCIPLINE (CIVIL ENGINEERING, STRUCTURAL ENGINEERING, MECHANICAL ELECTRICAL ENGINEERING OR ARCHITECTURE) COMBINED WITH NON-SEALED DRAWINGS OF OTHER DISCIPLINES BE ACCEPTED FOR BIDDING, PERMITTING OR CONSTRUCTION?

No, all drawings must be sealed and signed by the appropriate licensee.

CAN LICENSEES USE SIGNATURE REPRODUCTIONS SUCH AS RUBBER STAMPS OR COMPUTER GENERATED OR FACSIMILES?

No.

MUST LICENSEE SEAL PRESENTATION DOCUMENTS (RENDERS AND DRAWINGS USED TO COMMUNICATE CONCEPTUAL INFORMATION ONLY) NOT A PART OF A SET OF DRAWINGS?

Not required to be sealed or signed.

CAN OR MUST LICENSES SEAL INCOMPLETE DOCUMENTS?

May be released for interim review without architect's seal or signature, but shall bear architect's name and be conspicuously marked "not for construction".

Not required if marked "preliminary, not for construction".

UNDER WHAT CIRCUMSTANCES ARE LICENSEES LIMITED FROM SEALED CERTAIN DOCUMENTS?

No, sheets or pages prepared by licensed professionals such as structural, mechanical or electrical engineers retained by architect

shall not be sealed or signed.

No, unless hired by an agency or the owner to specifically do a code review of plans already bearing the seal of the licensee.

CAN A LICENSEE SEAL A DOCUMENT THAT WAS NOT PERSONALLY PREPARED BY LICENSEE OR UNDER HIS/HER DIRECT RESPONSIBLE CONTROL?

No.

CAN A LICENSEE MODIFY AND SEAL DECREASED LICENSEE'S SEALED DRAWINGS WITHOUT COMPLETELY REDRAWING THEM?

Yes, only if licensee clearly marks modifications and puts written disclaimer on the plans.

CAN LICENSEE MODIFY AND SEAL DRAWINGS PREVIOUSLY SEALED BY ANOTHER LICENSEE WHO WAS TERMINATED BY THE OWNER WITHOUT COMPLETELY REDRAWING THEM?

Yes, if licensee clearly marks modifications and puts written disclaimer on the plans.

CAN A LICENSEE SEAL PLANS REDESIGNED FOR THE SAME PROJECT?

No, unless the licensee redraws the plans, making them his/her own work product.

WHOM CAN I CONTACT?

(919) 733-9344 nchbo@ncchbo.org
(919) 841-4000 nchbo@ncchbo.org

PROPER SEALS

SEALS PROPERLY SIGNED AND DATED:

Acceptable statements include:

- Preliminary - Do Not Use for Construction
- Progress Drawings - Do Not Use for Construction
- Final Drawings - For Review Purposes Only

WHAT TO DO?

- Question the professional as to circumstances and qualifications
- Get correct plan
- Reject
- Contact licensing board
- File complaint

"RED FLAGS"

FOR PLAN REVIEWERS!

- Engineering ("E") sheets sealed by an architect
- Plans sealed by an architect or engineer who is an employee of a non-licensed firm or company
- Incomplete documents sealed without a disclaimer
- Plans that have not been sealed, signed and dated by the licensee
- Standard plans that do not bear the seal of the original preparer
- Standard plans that do not bear the seal of a NC licensee and disclaimer
- Plans for applying a shell structure without a current certificate of occupancy
- Unsealed civil plans stating that the "plans are for own use and safety"
- Seals appear to be cut and pasted
- Contact person is not the licensor or it is difficult to contact the licensor
- Plans, details, letter reports, etc, do not appear to apply to the project
- Plans have numerous or serious code violations
- Non-dated revisions

BE ALERT TO THESE ISSUES:
USE OF YOUR SEAL

• 21 NCAC 02.0206 – REQUIREMENT FOR AND USE OF PROFESSIONAL SEAL - “No architect shall affix his/her seal and signature to contract documents developed by others not under his responsible control.”

• USE OF OFF-SITE DRAFTING SERVICES – “Use by an architect of off-site drafting services is permissible only if there is direct supervision…”
OWNERSHIP OF INTELLECTUAL PROPERTY

THE DAY BEGINS AT A COPYRIGHT LAW OFFICE
DON'T OPINE ON MEANS AND METHODS
DON’T ASSUME THE CONTRACTOR WILL UNDERSTAND

*Please be careful when you put revision clouds on your drawings, some of the contractors do not understand.*
No Matter How Careful the Work or the Contract, Problems Will Arise

(A/k/a Lawyers are Ruining the World)
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GENERAL RULES TO PROTECT YOURSELF

- Document your good work
- Watch what you say in e-mails
- Have a document retention policy that will protect you
QUESTIONS?