

CONSTRUCTION CONTRACTS AND DISPUTE RESOLUTION

Contracts as part of the project delivery system, components of a construction contract, intended and unintended contract changes, payment process, alternative dispute resolution, mechanics lien, risk management through insurance.

Course Syllabus

1. Course Overview

Construction Contract Types

- Lump Sum
- Cost Plus
- Guaranteed Maximum Price (GMP)
- Construction Management vs. General Contractor
- Design Build
- Consultant

Industry Standard Agreements (AIA/AGC)

Subcontracts in general

2. What is a Contract?

- Elements
- Enforceability
- Quasi-Contract / Quantum Meruit Theory
- Goals
- Privity of Contract
- Precedence

3. Breaking down the “Dirty Dozen” of Construction Contracts

- Design Liability
 - Design vs. Performance Specification
 - “Designer of Record”
 - Value Engineering
 - Recommendations During Preconstruction
 - Code Requirements
 - Review of Plans and Specifications
- Changes / Contingency
 - Are We Obligated to Perform Them?
 - How is the Contract Adjusted?
 - Procedure Identified
 - What is Included?
 - Dispute Resolution

4. The “Dirty Dozen” Continued

- Costs to be Reimbursed
 - Clearly Defined
 - Does it Include Everything?
- Contract Documents
 - Is the Work Clearly Defined?
 - How do the Qualifications and Assumptions Function as a Limitation of Scope?
 - Errors and Omissions
 - What is “Reasonably Inferable and Consistent with”?

5. The “Dirty Dozen” Continued

- Indemnification
 - Broad Form Hold Harmless Clause
 - Limit Exposure to:
 - Bodily Injury & Property Damage (other than the Work itself)
 - Arising Out of Work Only
 - “Gross Negligence” and/or “Willful Misconduct”
 - Not Architect Professional Liability
- Insurance / Bonds
 - Builders Risk
 - In Place prior to Construction
 - Waiver of Subrogation
 - Who is Responsible for Deductibles?
 - General Liability
 - Worker’s Compensation
 - Efficacy
 - Subguard
 - CCIP/OCIP

6. The “Dirty Dozen” Continued

- Damages – Delay / Negligence / Breach / Default
 - Time is of the Essence
 - Excusable Delays
 - Compensible Delays
 - Consequential Damages
- Site Conditions
 - Whose Site is it?
 - Construction Risk vs. Owner Risk
 - Responsibility to Investigate
 - Hazardous Material – Who is Responsible?

7. The “Dirty Dozen” Continued
 - Payment Terms / Liens
 - Right to Payment Tied to Objective Standards?
 - Retainage Held in General Conditions and Fee?
 - When is Retainage Released?
 - What are the Contractor’s Lien Responsibilities?
 - Limited Lien Release to only What has been Paid
 - Limited Lien Protection to Parties Contractor is Responsible for

8. The “Dirty Dozen” Continued
 - Substantial Completion
 - Clearly Defined
 - Are the Requirements within Contractor’s Control
 - Termination
 - What are the Mechanisms?
 - Contractor’s Rights
 - Owner’s Rights
 - What are the Consequences?

9. Fundamentals of Risk Management
 - Generalist Approach
 - Steps to Risk Management and how they relate to the Contract
 - Understanding the Types of Risks
 - Seven Cardinal Rules to effective Risk Management
 - Avoiding Litigation

10. Alternative Dispute Resolution (ADR)

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Textbook: Common Sense Construction Law, edited by Kelleher, Mastin and Robey, 5th edition, John Wiley & Sons

Grading:

- Class Participation 20%
- Midterm Exam 30%
- Final Exam 50%