

# AGC FAILS TO ENDORSE NEW AIA GENERAL CONDITIONS BUT ENDORSES NEW CONSENSUSDOCS

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Despite previous endorsements to the AIA Contract Documents by The Associated General Contractors of America (“AGC”), the AGC did not endorse the 2007 Edition of the AIA A201 General Conditions. The AGC decided not to endorse the A201 for several reasons. For example, the AGC concluded that the new A201 creates an inappropriate standard of care by requiring contractors to perform “perfectly” to avoid liability when operating under owner-mandated means and methods. The AGC also viewed the changes to the contractor’s right to obtain financial assurances from the owner as more restrictive than the 1997 A201. The AGC also disliked the use of language from the 1997 version that encourages owners and contractors to communicate through the architect rather than directly. Focusing on recent trends toward collaboration, especially in light of BIM and other delivery methods, the AGC

determined that this requirement is not consistent with industry best practices.

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Docs. ConsensusDocs, released in September 2007, resulted from a collaboration of owner, contractor and subcontractor groups, including AGC. The “DOCS” part of ConsensusDocs stands for Designers, Owners, Contractors, Subcontractors/Sureties which represents the types of associations participating in the “consensus” effort. ConsensusDocs is being marketed as “a new generation of con-

tract documents...born from a chorus of industry representatives working in a truly collaborative atmosphere”. The general theme of the ConsensusDocs is that they attempt to allocate risk to those who control the risk.

ConsensusDocs appear to address some of the concerns AGC asserted with respect to the 2007 A201. For example, ConsensusDocs allow contractors to obtain owner financial information prior to commencement and thereafter upon written request. Additionally, the production of such information by the owner is a condition precedent to the contractor commencing or continuing work. This provision appears to be consistent with the language included in the 1997 A201.

AGC is now actively marketing ConsensusDocs. Of course, only time will tell whether they take-hold in the industry as an alternative to the traditional AIA Contract Documents.

Whether using the AIA Contract Documents, ConsensusDocs or another form document, the parties should always negotiate the terms of the contract to have it reflect their concerns relative to the particular project. Also, many provisions included in these forms impose mandatory obligations on the parties which, if overlooked, could result in significant losses to both parties. As a result, it is always advisable to negotiate the terms of any contract and have it reviewed by counsel prior to signing. That way, you are sure to understand the risk you are assuming and the obligations imposed on you by the contract.

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