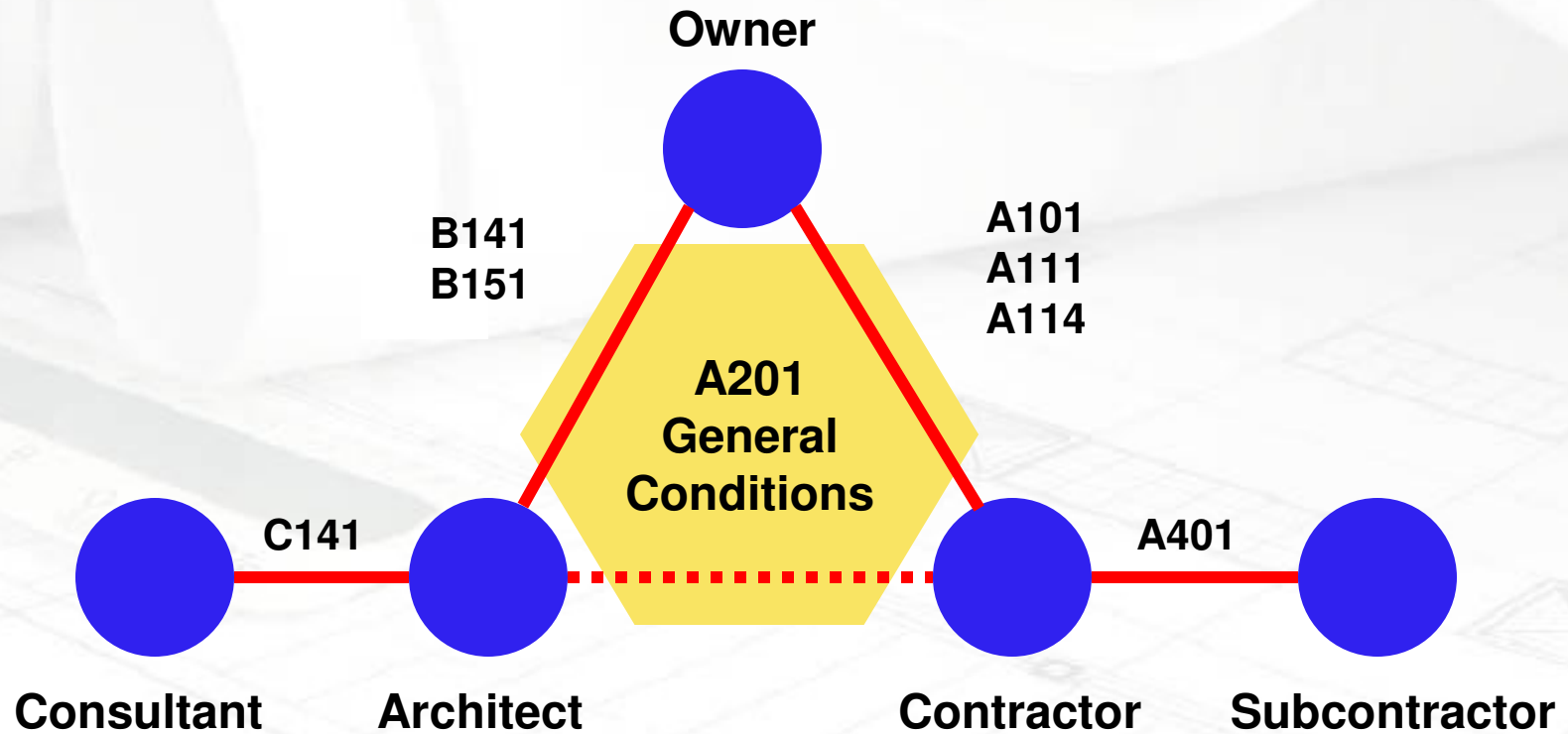


A201-2007: What's New?

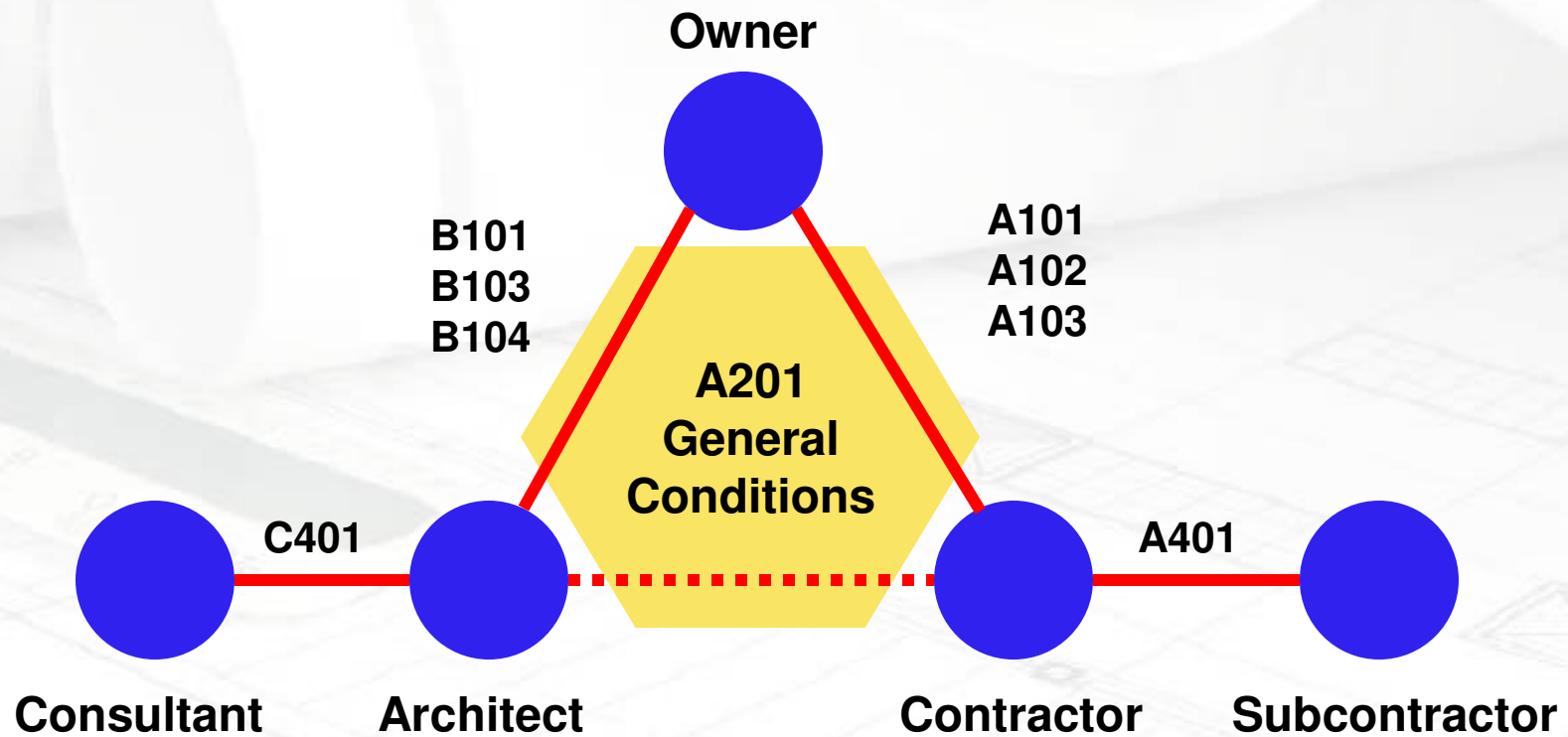
ABA RPTE
Spring Symposium
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1997 A201 Family



2007 A201 Family



A201-1997 Issues

- Architect as initial decision maker
- Mandatory Arbitration
- Consolidation and Joinder
- Time limit on claims
- Consequential Damages Waiver
- Submittal Reviews
- Insurance

1997: Architect as Decision Maker

- Condition precedent to mediation
- Owners don't want architects deciding against them
- Contractors allege architects cannot be impartial
- Architects do not like being caught in the middle
- Initial decision keeps project moving – avoiding a halt in work

2007: Initial Decision Maker (IDM)

- IDM identified in O/C Agreement
- Architect = default IDM
- IDM's Initial decision a condition precedent to mediation
- IDM may decide disputes between parties other than the Owner and Contractor
- Party may demand that the other party request mediation w/in 30 days or waive further right

1997: Mandatory Arbitration

- Mandatory arbitration included in AIA documents since 1888
- Mediation added as condition precedent in A201-1997
- Arbitration often deleted from AIA documents
- AAA is not, but is thought to be, mandatory

2007: Arbitration is an Option

- Mediation remains a condition precedent
- Arbitration is an option that has to be selected
- Litigation is the dispute resolution default
- AAA rules are the default
 - AAA rules require AAA case management
 - Redrafting clarifies that AAA is optional

2007: Dispute Resolution Checkbox

§ 6.2 BINDING DISPUTE RESOLUTION For any claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, General Conditions of the Contract for Construction, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing ... the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007, General Conditions of the Contract for Construction**
- Litigation in a court of competent jurisdiction**
- Other (*Specify*)**

1997: Consolidation/Joinder

- Joinder of architect or consolidation of arbitration w/architect without architect's consent prohibited
- A201/A401 text protects subcontractors from joinder in owner-contractor disputes
- Architect/subcontractor protected from arbitration when it may not be liable
- Non-joinder potentially forces sequential arbitrations = inefficient

2007: Prohibitions Removed

- The Owner and Contractor may consolidate arbitrations, if conditions met
- Other arbitrations can be consolidated at the election of the party whose arbitration is consolidated
- Parties may be joined with consent
- Common issues of law or fact required

1997: Time Limit on Claims

- Inconsistency between O/C and O/A disputes:
 - A201 has three phased commencement of limitation period
 - B141 limitations period begins to run no later than date of architect's substantial performance
- Owners say unfair restriction-should rely on state law

2007: Time Limit on Claims

- All claims must be filed in accordance with state law, but not more than 10 years from the date of Substantial Completion
- Parties waive claims not commenced in accordance with provision
- O/A limitation will mirror A201-2007

1997: Consequential Damages

- Non-direct damages: extended home office overhead, lost rents, etc.
- Mutual consequential damages waiver added in 1997 (Perini)
- Owners find the waiver unfair although it is mutual
- Protects contractors from liability they can't control

2007: Waiver Remains

- Provides benefit to both Owner and Contractor: prevents runaway claims
- Parallel clauses important: similar clause in O/A and A/C agreements
- Does not preclude award of liquidated damages

1997: Submittal reviews

- Contractor prepares submittal schedule for Architect's approval
- Architect to review submittals “with reasonable promptness as to cause no delay in the Work ... while allowing sufficient time to permit adequate review”
- Contractors seldom provided submittal schedules

2007: Submittal Reviews

- Contractor prepares submittal schedule for Architect's approval
- Architect reviews submittals in accordance with approved submittal schedule
- If no submittal schedule:
 - Architect reviews with reasonable promptness allowing sufficient time for adequate review in architect's professional judgment
 - No increase in Contract Sum or extension of Contract Time based on time required to review submittals

1997: Insurance

- Project Management Protective Liability
- Contractor's CGL
 - Operations and completed operations
 - No “additional insured” status for owner and architect
- 3.18 Indemnity coverage

2007: Insurance

- No PMPL
- Contractor's CGL to include:
 - Owner, architect and architect's consultants as additional insureds for claims arising from the contractor's negligent acts or omissions during the Contractor's operations
 - Owner as additional insured for claims arising from the contractor's negligent acts or omissions during the Contractor's completed operations
- 3.18 Indemnity coverage