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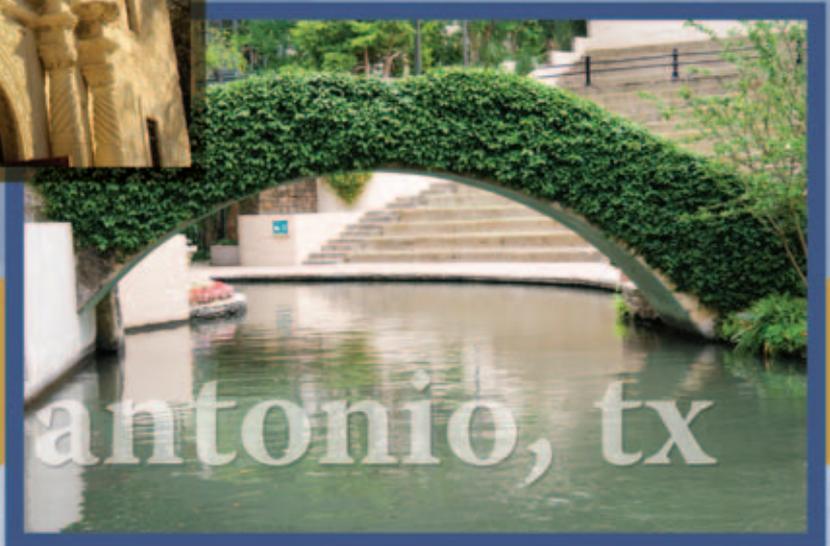


san antonio, tx



ABA FORUM ON THE CONSTRUCTION INDUSTRY

# THE 2007 AIA DOCUMENTS: NEW FORMS, NEW ISSUES, NEW STRATEGIES



February 7, 2008

Westin Riverwalk

San Antonio, TX



# DEAR COLLEAGUES:

The Forum on the Construction Industry will meet on February 7, 2008 in San Antonio for a repeat performance of the Joint Midwinter Program held on January 31, 2008. The program will be held at the Westin Riverwalk Hotel, 420 West Market Street, located on the San Antonio Riverwalk. Our program is literally a once-in-a-decade event. This fall, the American Institute of Architects (AIA) will publish its new suite of design and construction documents. We will focus on two major agreements: (1) The A201 General Conditions Document, and (2) the B101 Owner/Architect Agreement.

The AIA documents in many respects reflect consensus with respect to a number of industry practices. A detailed working knowledge of these agreements is critical to any construction practice, whether you litigate or draft construction contracts. There have been a number of significant changes to these documents. The A201 has a new claims and dispute process, including the introduction of a new concept known as the "Initial Decision Maker." The Owner/Architect Agreement is a new agreement which reflects a reworking of the prior B141 and B151 Documents. You will learn not only what is new, but also its importance given what has not changed. We have assembled experts from around the country to bring these documents to life. Not only have we gathered practitioners that have extensive working knowledge of these agreements, but also a number of individuals involved directly in the drafting process. You will get an inside view of how these documents were crafted.

Our first session tackles the General Conditions. Our moderator was outside counsel to the AIA Documents Committee. The panel will address the important changes to the claims and dispute provisions, as well as a number of other important revisions to this critical document. Session two focuses upon the new Owner/Architect Agreement. Once again, we have a speaker who was directly involved in creating this new document. Our third session is divided into two parts. Part I addresses the coming revolution in digital practice. Technology is changing the construction industry and we, as lawyers, must understand the consequences. Our speaker is very knowledgeable on this topic and will walk us through a number of the key issues we need to understand in order to adjust to the changing landscape. Part II provides a lessons-learned from ten years of experience working with the 1997 A201 General Conditions. The speakers will cover such important topics as the mutual waiver of consequential damages, contractor's review obligations, and design delegation issues. Session four returns to the Owner/Architect Agreement with a vigorous debate on the hot button issues often arising in owner and designer negotiations. Once again, we will hear from someone directly involved in the drafting process. Finally, the last session provides a give-and-take on the key provisions of the A201 General Conditions Document, including the thinking behind the substantial revisions to the claim and dispute provisions. The current chair of the AIA's Document Committee will provide his insights as a part of the panel.

The Riverwalk is one of the most visited places in all of Texas and the greater San Antonio area has a world of fun and exciting things to do and see. San Antonio and the Riverwalk feature delicious dining and restaurants, great nightclubs, historic attractions, the Alamo, and great entertainment.

## SEE YOU IN SAN ANTONIO!

**Steven B. Lesser**  
*Program Co-Chair*  
Becker & Poliakoff  
Ft. Lauderdale, FL

**R. Harper Heckman**  
*Program Co-Chair*  
Nexsen Pruet Adams & Kleemeier,  
Greensboro, NC

**Andrew D. Ness**  
*Governing Committee Liason*  
Thelen Reid Brown Raysman & Steiner LLP  
Washington, DC

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**Michael D. Tarullo**

*Schottenstein, Zox & Dunn  
Columbus, OH*

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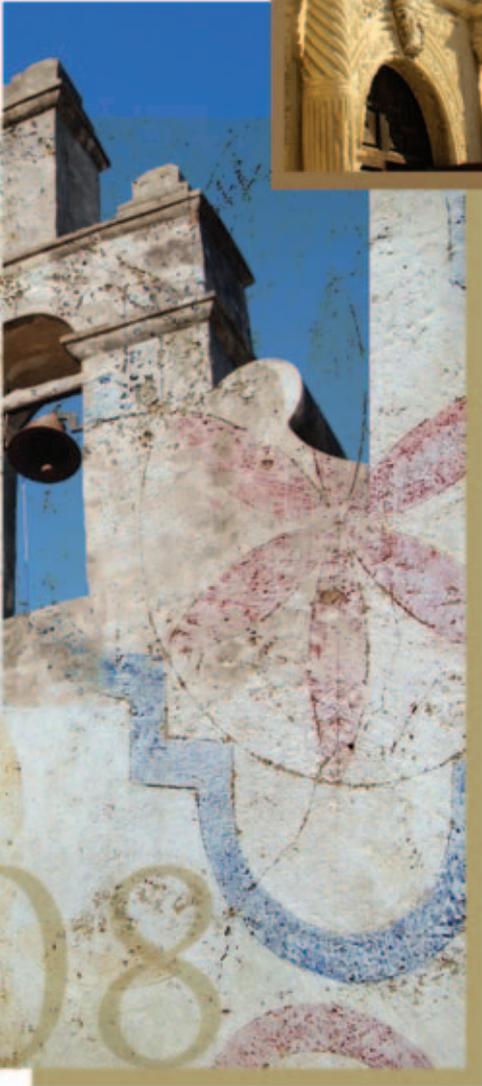
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*DLA Piper US LLP  
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*Zetlin & De Chiara, LLP  
New York, NY*

# PROGRAM SCHEDULE

## WEDNESDAY

3:00 – 5:00PM

ADVANCED REGISTRATION

## THURSDAY

7:30 A.M. – 5:00 P.M.

REGISTRATION/EXPOSITION  
OPEN

7:30 A.M. – 8:30 A.M.

CONTINENTAL BREAKFAST

8:15 A.M. – 8:35 A.M.

WELCOME/INTRODUCTIONS

Michael D. Tarullo  
Chair

Steven B. Lesser  
Program Co-Chair

Andrew D. Ness  
Governing Committee Liason

8:35 – 10:30 A.M.

PLENARY SESSION 1 —

*What & Why: An Overview*

As the most widely used AIA document, the 2007 A201 General Conditions raise new issues and challenges. This segment will address what may be the most controversial and challenging of the revisions, including:

- The “Initial Decision Maker” Concept
- “Checkbox” Dispute Resolution Methods
- Consolidation and Joinder of Parties and Disputes
- 10 year Contractual Repose Period
- Owner “Self-Help” Remedies

MODERATOR:

Howard G. Goldberg  
Goldberg, Pike & Besche, PC  
Baltimore, MD

SPEAKERS:

James O’Connor  
Maslon Law Firm, Minneapolis, MN

Linda A. Klein  
Baker Donelson, Atlanta, GA

Richard J. Tyler  
Jones Walker, New Orleans, LA

10:30 A.M. – 10:45 A.M.

COFFEE BREAK

10:45A.M. – 11:45 P.M.

PLENARY SESSION 2 —

*Starting Over — The Newly  
Created B101 Owner/Architect  
Agreement.*

Critical changes have been introduced by the replacement of the two-part B-141 with the new B-101 that pose new traps for unwary architects attempting to navigate their way through increased powers and potentially greater liability exposure. Our panelists will guide us through B-101, highlighting:

- Architect’s Standard of Care
- Instruments of Service
- Environmentally Responsible Design Requirements
- Veto Rights of the Architect Over the A201 terms and conditions

SPEAKERS:

James C. Jankowski FAIA  
OWP/P, Chicago, IL

Mark C. Friedlander  
Schiff Hardin, LLP, Chicago, IL

11:45 A.M. – 1:15 P.M.

LUNCHEON

SPEAKER:

Keith Manning  
Zachary Construction Company,  
San Antonio, TX

1:30 P.M. – 2:45 P.M.

**PLENARY SESSION 3 —**

*The Future & The Past*

*Part I — The New AIA Digital Rights Documents— Dealing with Drawings in the Electronic Age*

Learn the pitfalls associated with the digital transfer of CAD documents and understand how transfer impacts intellectual property rights. This session will highlight:

- Protocols for creating, revising and transmitting digital information
- Allocating risks associated with digital data
- Ownership and licensing of digital data

**SPEAKER:**

**Christopher L. Noble**

*Noble & Wickersham LLP, Cambridge, MA*

**PART II**

*Lessons Learned: How the 1997 Revisions to A201 Have Fared After 10 Years. Litigation Experience and Negotiating Tips.*

The 2007 edition retains many provisions that have proven problematic to construction practitioners. This “look back” session will examine how these provisions have fared in court, and provide practical suggestions for negotiation.

- Mutual Waiver of Consequential Damages
- Delegation/Division of Design Duties
- Contractor’s Review of Contract Documents and Field Conditions
- Termination for Owner’s Convenience
- Post-Completion Correction Obligations

**SPEAKERS:**

**Mark Heley**

*Coleman Hull & Van Vliet PLLP, Minneapolis, MN*

**Shannon J. Briglia**

*Moore & Lee LLP, McLean, VA*

2:45 P.M.-3:00 P.M.

**BREAK**

3:00 P.M. – 4:00 P.M.

**PLENARY SESSION 4 —**

*Point /Counterpoint on Key B101 Provisions: The Hot Button Issues and How They Have Changed*

A key AIA participant in drafting B101 will debate the wisdom of significant new provisions with experienced counsel for the owner and architect. Learn the rationale for these new provisions and what provisions still cause heartburn for each party.

**MODERATOR:**

**R. Harper Heckman**

*Nexsen Pruet Adams & Kleemeier, LLC, Greensboro, NC*

**SPEAKERS:**

**L. Wearen Hughes**

*Bass Berry & Sims, Nashville, TN*

**Keith J. Bergeron**

*Deutsch Kerrigan & Stiles LLP, New Orleans, LA*

**Suzanne Harness**

*American Institute of Architects, Washington, DC*

4:00 P.M. – 5:00 P.M.

**PLENARY SESSION 5 —**

*Point /Counterpoint on Key A201 Provisions: The Hot Button Issues and How They Have Changed*

An AIA leader who helped draft the new A201 will debate the wisdom of key provisions with experienced counsel for the owner and contractor. Learn what industry trends prompted innovative changes such as introducing the “Initial Decision Maker” and moving away from arbitration as the only binding method for resolving disputes. Tough questions will be posed as to why some changes were adopted and other longstanding issues passed over in this revision cycle.

**MODERATOR:**

**Jules Hoffar**

*Watt Tieder Hoffar & Fitzgerald, LLP, McLean, VA*

**SPEAKERS:**

**Timothy R. Twomey, AIA**

*Shepley Bulfinch Richardson & Abbot Boston, MA*

**W. Alexander Moseley**

*Hand Arendall LLC, Mobile, AL*

**Lynn R. Axelroth**

*Ballard Spahr Andrews & Ingersoll, Philadelphia, PA*

# CONFERENCE INFORMATION

## ADVANCE REGISTRATION

Please complete and return the attached registration form with your payment by **JANUARY 17, 2008**. If you wish to have your name appear on the pre-registration list distributed at the program, we must receive your registration no later than **JANUARY 17, 2008**.

Conference registrations will only be accepted when accompanied by a check, money order, Visa, American Express or MasterCard information. Credit card registrations may be FAXED directly to 312-988-5677. Registrations cannot be held without payment. A registration form is included in this brochure as well as online at [www.abanet.org/forums/construction](http://www.abanet.org/forums/construction).

## ON SITE REGISTRATION

On site registration is available for those persons who missed the registration deadline. If you plan to register at the door, you must call (312) 988-5579 at least 72 hours before the conference to confirm that space is still available. Failure to call in advance may result in not being admitted to a sold out program. On site registration will only be accepted when accompanied by a check, money order, American Express, Visa or MasterCard information. Registrations will not be accepted without payment.

## REGISTRATION CONFIRMATION

In order to be listed in the pre-registration list distributed at the program, registrations must be received by **JANUARY 17, 2008**. If you do not receive a **written confirmation by JANUARY 17, 2008**, please call (312) 988-5678 to verify that your registration form and payment were received. Failure to call in advance of the program may result in not being admitted.

## TUITION

Tuition includes admission to the program, coffee breaks, lunch, reception ticket, and one set of program course materials. Lunch is limited to registrants, faculty and members of the press.

## CANCELLATION POLICY

No refunds will be granted for cancellations received after **JANUARY 17, 2008**. To receive a fund (less a \$50 administrative fee), cancellations must be made **IN WRITING and RECEIVED on or before JANUARY 17, 2008**. Registrants who are unable to attend may send a substitute or receive course materials in lieu of a refund. The ABA reserves the right to cancel any program, and assumes no responsibility for personal expenses.

## HOTEL

The conference will be held at The Westin Riverwalk Hotel, 420 West Market Street, San Antonio, TX 78205. Reservations can be made by calling the hotel directly at (210) 224-6500. The Forum on the Construction Industry room rate is \$239 S/D. We have reserved a block of rooms, and the reservation deadline is Friday, January 4, 2008 or until our block is sold out (whichever comes first). After this date (or the block is sold out) the ABA cannot guarantee rooms or availability, and the hotel will assign rooms on a space available basis. All changes to and cancellations of hotel reservations must be made 48 hours prior to the scheduled date of arrival to avoid a one-night cancellation charge. Rooms shall be available for check-in no later than 3:00pm with a check-out time of noon. Please refer to the ABA Forum on Construction 2008 AIA Program, to receive the negotiated rate.

## AIR TRANSPORTATION

Discounted airfares are available for travel to ABA Master Calendar meetings. ABA and Travelocity negotiated airfare discounts and web only fares are available to members at ABA Online Travel. To access ABA online travel, go to [www.abanet.org](http://www.abanet.org), "Member Tools," and at ABA Online travel you will have automatic access to meeting airfare discounts, web fares and web book only. The ABA's toll free number for Travelocity Business is 1-866-321-8403.

## CLE CREDIT

Accreditation has been requested for the conference from every state with mandatory continuing legal education (MCLE) requirements for its lawyers. AIA accreditation has also been requested for this program. Please be aware that each state has its own rules and regulations, including its definition of "CLE". Check your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and Pennsylvania are required to pay state accreditation fees directly to that state. Certificates of attendance will be available at the conclusion of this conference. For questions pertaining to the number of credit hours granted by each state, call (312) 988-5678 2 to 3 weeks before the conference.

## MEMBERSHIP

As an added bonus to new members, the member's tuition rate will be available to registrants who become members of the Forum on or before the first day of the program. For your convenience, a Forum membership form is included in the brochure. Membership dues are not deductible as charitable contributions for federal income tax purposes. However, such dues may be deductible as a business expense.

## TAX DEDUCTION FOR EDUCATIONAL EXPENSES

In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (see Treas. Reg. 1.162-5) (Coughlin vs. Commissioner 203 F 2d 307).

## COURSE MATERIALS

If you are not planning to attend the program and wish to order the course materials, check the appropriate box on the registration form and send it with the appropriate fees. Allow approximately 3-4 weeks after the program for delivery.

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please submit your request in writing to Shannon Harrity, American Bar Association, 321 N. Clark Street, Chicago, IL 60610, or Fax to (312) 988-5677, no later than **JANUARY 17, 2008**.

## FORUM ON THE CONSTRUCTION INDUSTRY WEBSITE

[www.abanet.org/forums/construction/home.html](http://www.abanet.org/forums/construction/home.html)

## CELL PHONE POLICY

As a courtesy to speakers and attendees, we request that all cell phones and pagers be turned off in the meeting rooms.

# PROGRAM REGISTRATION FORM

Housing Deadline: JANUARY 4, 2008

EARLY BIRD Registration Deadline: JANUARY 17, 2008

Please print or type

## 1. REGISTRANT INFORMATION:

Last Name

First Name

M.I.

(Name as you wish it to appear on attendee list & name badge)

ABA Member ID#

Firm/Company/Agency

Address

City

State

Zip

(Area Code) Business Phone Number

(Area Code) Business Fax Number

E-mail Address

Spouse or Guest (Print as you wish name to appear on badge)

## 2. REGISTRATION FEES:

	ON OR BEFORE	AFTER
	1/17/08	1/17/08
<input type="checkbox"/> General Attendees	\$550	\$600
<input type="checkbox"/> Forum Members	\$450	\$500
<input type="checkbox"/> Government/Academic/YLD	\$320	\$370
<input type="checkbox"/> Law Students	\$225	\$275
<input type="checkbox"/> Additional Reception Ticket	\$50	\$60
Subtotal	\$ _____	\$ _____

I am a New Member

I would like a liaison to contact me

If you are an attorney licensed in the state of New York, please check here

## 3. MEMBERSHIP APPLICATIONS:

Please enroll me as a member of the Forum on the Construction Industry. Membership fee (\$50 Regular/\$5 Law Student). I understand I must be a member of the ABA and at least one Section. I belong to the following Section(s):

## 4. MATERIALS ONLY:

I will not be attending the seminars and wish to order Program materials for \$150

## 5. TOTAL PAYMENT:

Total (Add subtotals 2, 3, or 4): \$ \_\_\_\_\_

## 6. PAYMENT INFORMATION:

Check (made payable to ABA)

MasterCard  American Express  VISA

Season Pass Voucher  Money Order

Credit Card Number

Expiration Date

Signature

## 7. THREE WAYS TO REGISTER: ONLINE:

[www.abanet.org/forums/construction/home.html](http://www.abanet.org/forums/construction/home.html)

### MAIL:

ABA Forum on the Construction Industry  
321 N Clark Street  
Chicago, IL 60610

### FAX:

(312) 988-5677