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Architects Should Not Make Initial Decisions on Construction Disputes

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A common provision often deleted from the standard form AIA documents is the provision in the AIA A201 General Conditions requiring an Initial Decision Maker (IDM) for claims between the contractor and owner. In the A201, the contracting parties have the option of naming their own IDM for the project. If an IDM is not selected (which is typically the case) the architect serves this role by default. While it is in all parties' best interests to resolve disputes quickly and efficiently, using the architect as the IDM is not the best way to achieve such a resolution.

Several reasons work against using the architect as the IDM. Contractors typically don't trust architects to be impartial in resolving disputes because the architect is paid by the owner. Most architects don't have the temperament or any training to facilitate dispute resolution. An architect's "initial decision" could even drive the parties further apart and lead to further issues later in the project. The architect may also be perceived to be part of the problem that led to the dispute in the first place. Also, many architects simply prefer to avoid serving the thankless role of an IDM altogether. Lastly, inserting the architect into the dispute resolution process as a required IDM adds an additional unnecessary step to dispute resolution, which can delay the overall procedure.

Rather than serving as an IDM, an architect is better suited to facilitate a resolution in a different capacity, as part of a "settlement team." The architect is readily familiar with the project and can offer insight on and analysis of the facts that led to the dispute. The architect can point out strengths and weaknesses to both sides without taking a position one way or the other. Moreover, disputes can be resolved or reduced without direct payment of additional compensation and the architect is well-suited to propose and/or evaluate such potential resolutions.

Not all projects and parties are the same and what may work to resolve disputes on one project may not work for another. However, the concept of a team approach to settle disputes (more like that expressed in the Consensus DOCS 200) should at least be considered for every contract. As a general proposition, if a claim cannot be resolved informally, a construction contract should require authorized representatives for the owner and contractor to meet with the architect at an initial settlement meeting. Such a meeting should be held promptly and made a condition precedent before moving onto mediation or arbitration/litigation. The parties should be required to analyze and exchange their best, good-faith settlement offers, along with the backup supporting their positions, prior to the initial settlement meeting. Copies should be submitted to the architect as well. The

sooner each party seriously examines their respective claims, the more likely a resolution can be reached. Additional provisions can also be added to the contract to incentivize the process.

If all the issues are not resolved at the initial settlement meeting, either party can immediately move forward with the next step toward dispute resolution. Much of the work required for the next step should already be completed and the parties can quickly line up a qualified mediator to help resolve the dispute short of litigation or arbitration.

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