

**CONSTRUCTION CONTRACTS PRIMER:**  
**WHAT REAL ESTATE ATTORNEYS SHOULD KNOW**  
**Chicago Bar Association – Real Property Law Committee**  
**December 10, 2020**

Thank you CBA Real Property Law Committee and Judge Chupack for allowing me to give today's presentation. The "clickable live" hyperlinks below will take you to video and article content which elaborates on the presentation:

**VIDEOS**

- [WHY ARE PROJECT DELIVERY METHODS SO IMPORTANT FOR CONSTRUCTION PROJECTS?](#)
- [SHOULD I START CONTRACT NEGOTIATIONS USING MY OWN CONTRACT FORM?](#)
- [WHAT MAKES GOOD CONTRACTS FOR DESIGN AND CONSTRUCTION PROJECTS?](#)
- [WHAT IS YOUR APPROACH TO NEGOTIATING DESIGN AND CONSTRUCTION CONTRACTS?](#)
- [WHY IS INSURANCE SO IMPORTANT IN DESIGN AND CONSTRUCTION CONTRACTS?](#)
- [SHOULD DESIGN AND CONSTRUCTION CONTRACTS ALLOW 'PREVAILING PARTIES' TO RECOVER ATTORNEYS' FEES?](#)
- [HOW DO YOU GET PAST IMPASSE IN CONTRACT NEGOTIATIONS?](#)
- [CAN A LAWSUIT SAVE ME FROM BAD DESIGN AND CONSTRUCTION CONTRACTS?](#)
- [ARE SHORT CONTRACTS BETTER THAN LONG CONTRACTS?](#)
- [WHAT SHOULD PROJECT OWNERS KNOW BEFORE EMBARKING ON A DESIGN AND CONSTRUCTION CONTRACT?](#)
- [WHY ARE GOOD CONTRACTS SO IMPORTANT FOR DESIGN AND CONSTRUCTION PROJECTS?](#)
- [WHAT CONTRACT TERMS PROMOTE EARLY, COST-EFFICIENT DISPUTE RESOLUTION?](#)

I try to add four videos per month to my [Video Library](#). There are many other related videos at [www.buildchicagolaw.com](http://www.buildchicagolaw.com).

**ARTICLES**

- [FIXED FEE V. COST-PLUS GMP: WHICH IS BEST?](#)
- [THE HIDDEN BENEFIT TO THOUGHTFUL CONTRACT NEGOTIATIONS](#)
- [WHAT IS THE BEST LENGTH FOR DESIGN AND CONSTRUCTION CONTRACTS?](#)
- [BEWARE THE "ONE YEAR" WARRANTY: CONTRACTOR CALLBACK PERIODS V. WARRANTIES OF QUALITY WORK](#)

- [AIA'S NEW 2019 CMC AND CMA CONTRACT DOCUMENTS](#)
- [THE B152-2019 INTERIOR DESIGN AGREEMENT: IMPORTANT FF&E CHANGES](#)
- [NEGOTIATING DISPUTE RESOLUTION CLAUSES IN CONSTRUCTION CONTRACTS](#)
- [THE AIA'S SUSTAINABLE PROJECTS EXHIBIT: E204-2017](#)
- [THE NEW ROLE OF THE AIA'S DIGITAL PRACTICE DOCUMENTS](#)
- [AIA DOCUMENT B101-2017: BUSINESS CONSIDERATIONS FOR OWNERS AND ARCHITECTS](#)

There are more “clickable live” hyperlinks below. This summarizes the presentation’s main points:

### [CONTRACTS / PROJECT DELIVERY METHODS](#)

Contracts and project delivery methods are intertwined – but their relationship is often misunderstood. Thoughtful selection of the best delivery method for the project should come *before* contract negotiations. Each project structure has its pros and cons. Only *after* the ideal delivery method is chosen should contract preparations begin. Often developers and owners pick their project team, and leap right to the selection of contract forms. They default into one of several possible project delivery methods. This is a missed opportunity. You should consider the best delivery method for your projects, and then negotiate a suite of interrelated contracts to help implement the one you choose.

### [PROJECT DELIVERY METHODS](#)

There are many ways to structure a construction project. There is no “best” project delivery method, no “one-size-fits-all” option for all projects. The best delivery method depends on the kind of project and the goals of the project participants. Sometimes, speed of project completion is key. Other times sticking to a strict budget is most important. Sometimes the quality of the finished building predominates over concerns for both cost and speed. In other cases, project owners are most concerned with single-point responsibility, and hire one party to both design and build the project. Owners and developers pick the project delivery method. Factors they should consider include the project participants, their strengths, relationships and experience working together, the tightness of the budget, the kind of project, whether it must be complete by a date certain, and the risk each party is prepared to assume.

### [CONTRACT NEGOTIATION](#)

Good contracts are essential. They promote dispute avoidance and met expectations. They are a roadmap for project success. As the project ‘desk reference’ they should be consulted often. Project participants can avoid headaches by understanding their contracts. This is often misunderstood. Contracts are not an annoyance or a necessary evil. While it is true that people with bad contracts tend to ‘lose’ in disputes, they are not something just ‘for the lawyers’ or to be ‘shoved in a drawer’ until a dispute arises. The act of negotiating contracts is itself useful. It can get people on the same page. Early attention to issues like scope and fee, the roles and risks of project participants, and any foreseeable complications, can help avoid later disputes. Thoughtful contract negotiations – guided by experienced counsel, who pose the right questions at the right time – can help to align the parties’ expectations. This is where design and construction counsel can backstop real estate attorneys, who bring important but different skill sets from design and construction attorneys.

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Links to other design and construction Baker Law Group LLC website content:

- Project Participants: [ARCHITECTS AND ENGINEERS](#), [REAL ESTATE DEVELOPERS](#), [COMMERCIAL PROPERTY OWNERS](#), [HIGH-END SINGLE FAMILY RESIDENTIAL](#), [CONTRACTORS](#)
- Dispute Resolution: [COST-EFFICIENT DISPUTE RESOLUTION](#), [MEDIATION](#), [ARBITRATION](#), [LITIGATION](#)
- IL Mechanics Liens: [MECHANICS LIENS](#), [USING LIENS TO GET PAID](#), [DEFEATING LIEN CLAIMS](#)
- Miscellaneous Links: [NEWSLETTER SIGN-UP](#), [DOWNLOADABLE PUBLICATIONS](#), [BLOG POSTS](#), [VIDEO LIBRARY](#), [GENERAL COUNSEL](#), [PRICING BASED ON VALUE PROVIDED](#)

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