

## Construction- USA

### New Dispute Resolution Process Under 2007 Form Agreements

Contributed by [Schiff Hardin LLP](#)

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The American Institute of Architects publishes form agreements which are widely used in the US construction industry and which influence the architectural and engineering forms used in other countries. Major revisions to these forms occur every 10 years. The latest revisions will be released in both paper and electronic format in Autumn 2007.

One major change in the 2007 documents relates to the dispute resolution process (for further details please see "[Dispute Resolution under American Institute of Architects Documents](#)"). Under previous editions of the form agreements between an owner and its architect and builders, disputes over time, money and quality flowed from an architect's decision to non-binding mediation and binding arbitration. Mediation was a condition precedent to arbitration or any litigation. Aesthetic decisions made by the architect were not subject to appeal to arbitration. The arbitration and mediation procedures incorporated the Construction Industry Rules of the American Arbitration Association, which are also subject to frequent modification.<sup>(1)</sup>

Several significant changes have been made under the 2007 form agreements, as follows:

- Although a design professional's decision is required before the commencement of arbitration or mediation, that person does not have to be the architect of record and may be an 'agreed decision-maker'. Although not officially mentioned, this now presents the opportunity for the adoption of UK-style adjudication, which has been quite successful in reducing the number of disputes that go to court or arbitration.
- As in the previous editions, non-binding mediation using the Construction Industry Rules of the American Arbitration Association is a condition precedent to either arbitration or litigation going further than filing stage.
- Arbitration must be affirmatively selected through a check box on the form agreement. If arbitration is not selected, the default remedy is the court system. The question of whether the filing of a demand for arbitration constitutes a commencement of legal proceedings for statute of limitations purposes has not yet been addressed in the form.

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#### Endnotes

(1) Available at [www.adr.org](http://www.adr.org).