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“You’re Fired!” Legal and Technical Challenges of Terminating a Designer in Design-Build Projects

Thanh Do

BRG

Director

Los Angeles, CA

Michael Cowan

BBG Law

Partner

Denver, CO

Karen Denys

Faegre Drinker

Counsel

Princeton, NJ

Todd Bressler

BBG Law

Partner

Los Angeles, CA

Amy Skaggs

Gensler

Principal

Chicago, IL

PANELISTS



Thanh Do

Director
Berkeley Research Group
Los Angeles, CA



Karen Denys

Counsel
Faegre Drinker Biddle & Reath
Princeton, NJ



Amy Skaggs

General Counsel / Principal
Gensler
Oak Park, IL



Todd Bressler

Partner
BBG Construction Law
Los Angeles, CA



Michael Cowan

Partner
BBG Construction Law
Denver, CO



QUICK SURVEY

- Who has handled a designer termination?
- Share your story – what worked, what didn't
- Key challenges and lessons learned



KEY PLAYERS

- Key participants:
 - Contractor
 - Original designer
 - Replacement designer
 - Owner
- Nuances of Design-Build project delivery



SCENARIO

- Design-Build Project
- Struggling Architect/Designer
- Pressure on GC to Replace



LEGAL STANDARD

- A GC may terminate its architect or a design consultant when the designer is in material breach of contract.
- Notice and opportunity to cure



EARLY TERMINATION

- Terminated Designer's Perspective
- Replacement Designer's Perspective
- Technical Challenges
- Owner's Perspective
- Design-Builder's Perspective



TERMINATION DURING DESIGN PHASE

- Terminated Designer's Perspective
- Replacement Designer's Perspective
- Technical Challenges
- Owner's Perspective
- Design-Builder's Perspective



TERMINATION AFTER DESIGN COMPLETED

- Terminated Designer's Perspective
- Replacement Designer's Perspective
- Technical Challenges
- Owner's Perspective
- Design-Builder's Perspective



CONTRACT PROVISIONS

- Mitigate Risks in the Design-Build Agreement
- Mitigate Risks in the Design Agreement

 **AIA**® Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

and the Design-Builder:
(Name, legal status, address and other information)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

KEY TAKEAWAYS



High Risk



Legal and Technical
Challenges



Contract Terms May
Reduce Risks

TECHNICAL CHALLENGES

- Lack of access to original assumptions, calculations, or models
- Risk of inconsistent design philosophies and detailing approaches
- Coordination breakdowns across disciplines (MEP, structural, façade, etc.)
- Risk attribution: identifying whether issues stem from original or successor design
- BIM access and ownership disputes, especially where documentation is incomplete
- Disruption to field execution: handling RFIs, clarifications, and construction support

LEGAL CONSIDERATIONS

- Grounds for termination
- Ownership and use of instruments of service
- Indemnity and limitations of liability
- Licensing issues – who can stamp or revise work post-termination?
- Compensation disputes – pre-award effort, payment triggers, termination costs
- Insurance
- Owner's expectations in a Design-Build contract – cost/ schedule relief for GC?

BEST PRACTICES – PREVENTION & MITIGATION

- Drafting clear contract terms to anticipate termination scenarios
- Alternatives to termination
- Dispute resolution tools – peer reviews, DRBs, early mediation
- Structured transition planning – design documentation handover, version control, onboarding support
- Strategic use of releases, licenses, and indemnity agreements to manage risk between first and second designers
- Due diligence before taking over a partially complete design