

Architect's Guide to Risk Management: Custom Residential

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June 21, 2:15-3:15pm & June 22, 10:30-11:30am

A'18 AIA Conference on Architecture 2018
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Speakers

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Learning objectives

- **Survey** the unique risks that custom residential architects face when designing projects for home owners.
- **Examine** how a clear understanding of each party's unique roles and responsibilities will reduce project delays, misunderstandings and disputes.
- **Identify** key contractual provisions that can help alleviate the risks and challenges of residential design and construction in order to achieve a successful project.
- **Learn** where to get AIA resources- tools, contracts and guides developed to enhance your understanding of residential contract and risk management issues to the benefit of all project team members.

Who are we?

aiacontracts.org/committee

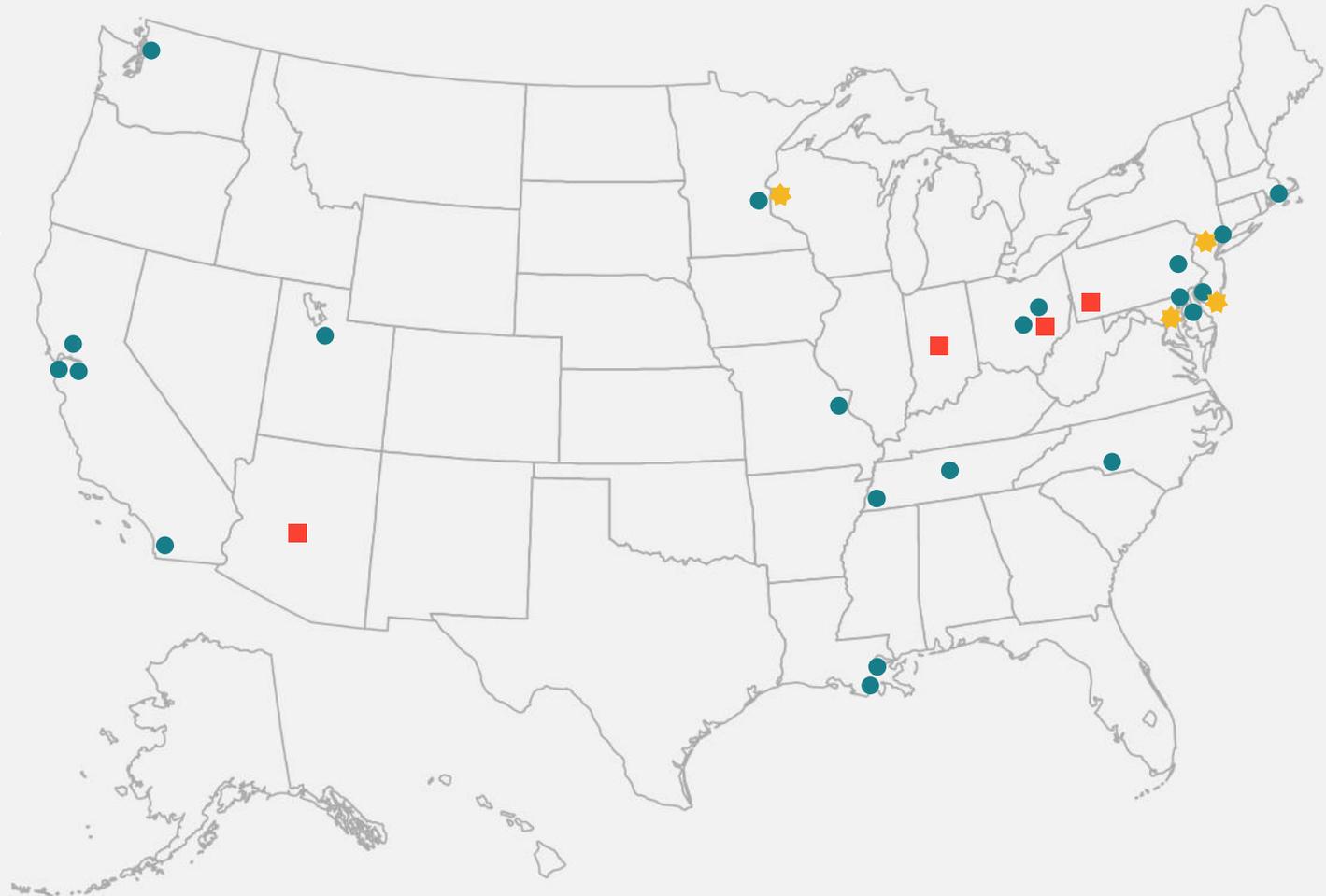
30 to 35 volunteers

AIA members, outside Legal Counsel and Industry Advisors

Custom Residential Practitioners

2018 Contract Documents Committee

- Owners
- Architects
- ▲ Construction
- ★ Insurer, Outside Legal Counsel, & Liaison



Who are you?

How many of you design **Custom Residences**?

- New homes?
- Additions and renovations?

Is anybody doing **Architect-led design-build**?

How many also design **Multi-family projects**?

How are Custom Residential Projects unique?

Client

Intimacy

Experience and expectations

Consumer protection obligations

You

Degree of hands-on involvement

Personal commitment

Degree of detail

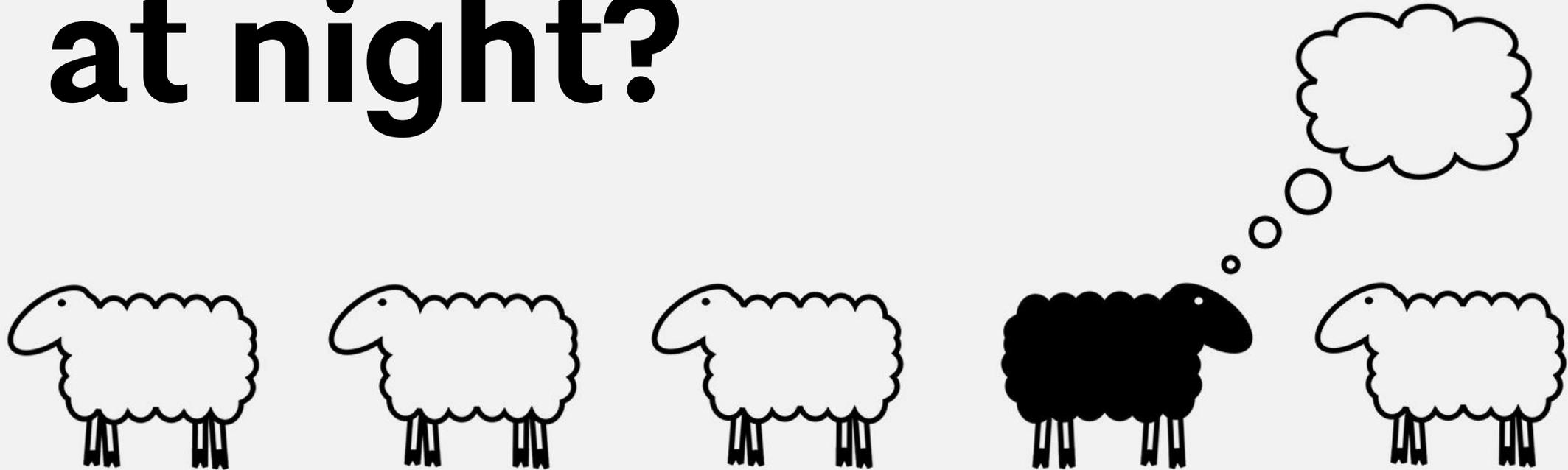
Contractor

Sophistication

How sub-contractors are selected

Procurement and pricing

What keeps you up at night?



Sounds familiar?

Getting paid

Protecting the Intellectual Property

Scope creep / clients changing their mind

Protecting the design during construction

Changes to previously approved instructions

Clients showing the drawings to their all-knowing friends (design by committee)

Clients without the confidence to make decisions / the lack of timely decisions

Spouses on different pages

Too much communication from clients, including cocktail hour emotional emails

Fast-tracked construction

Who has time to sleep?

Plan for all this in your contract and sleep better!

Address all of those risks and concerns with a good contract.

Use the structure and contents of your agreement to:

- explain your services
- set the expectations
- justify your compensation



You do use some form of contract, right?

How many use **letter agreements**?

How many use **written contracts**?

How many use **AIA documents**?

Survey results (SPP, SFX, CRAN)

What type of agreement did you use for residential projects?

- Letter agreement: **46%**
- Verbal Agreement: **4%**
- AIA Contract Documents: **29%**
- Manuscript Agreement: **10.5%** (prepared by an attorney)
- Other: **10.5%** (combination/own agreement)

Contract phobia?

We hear you.

Intimidating to clients

Not sufficiently tailored to residential projects

Too legalistic

Fair enough, but your home owner encounters that kind of stuff almost every single day: EULA's for apps and software, automotive service, cell phone contracts, home purchase and mortgage documents.



Ok, so what's wrong with my Letter Agreement?

Unanticipated items

Compliance with jurisdictional requirements

Out of date

Not current with practice

Standard of care

Not coordinated with other agreements

Cure the phobia!

You're the design expert.

The contract reflects your expertise.

You can also provide the expertise across the spectrum of the project.

The Contract – a primer

A contract is **the best risk management tool** you have.

How so?

- Sets the expectations
- Defines everyone's role
- It covers the “what-ifs”

Or in legal speak...



The Contract – a primer

“A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.”

Restatement (Second) of Contracts § 1.

Parties: You and the owner

Something: Scope of Services

Compensation: Type and Basis

Time: Schedule

The Contract – a primer

Terms and Conditions (the rules of the game)

- Payments
- Insurance
- Dispute resolution
- Copyrights and Ownership of the Instruments of Service
- Termination

The Contract – a primer

Scope

- What the project is
 - The owner's program
 - Where
 - When
 - Budget!
- What each party is going to do
 - The architect's responsibilities
 - The owner's responsibilities

The importance of coordinated documents

What do you mean “coordinated documents”?

All of the agreements related to a project work together – the roles, responsibilities and requirements are seamlessly integrated.

Owner-Architect / Owner-Contractor / Contractor-Sub-Contractor
Architect-Consultant / General Conditions

No gaps, no overlap. Consistent across the board.

Let me up, I've had enough, what's the AIA got for me?

Actually, quite a bit.

Let's start with the Owner-Architect Agreements.

Traditional arrangements:

B101: 32%; B104: 29%; B105: 86% (of survey respondents)

Architect Design/Build:

A145 (new document that is rapidly gaining usage)

Let's start small

B105

**Standard Short Form of Agreement
Between Owner and Architect**



B105 – for small projects

Short form for simple projects of **relatively low cost and brief duration**

Integrated General Conditions found in A105 O/C Agreement

Two pages, plus a cover page; **can easily be formatted as an attachment to a proposal letter**

Basic Services compressed into two phases: Design and Construction

A105 only for **stipulated sum payment method**

Architect

« **B105** »

Owner

« **A105** »

Contractor

Need more meat on the bone?

B104

Standard Abbreviated Form of Agreement Between Owner and Architect



B104 – for less complex projects

Abbreviated version of B101

Basic Services compressed into 3 Phases: Design, Construction Documents, and Construction

Coordinated for use with A104 Owner/Contractor Agreement with Integrated General Conditions

A104 payment methods: stipulated sum, cost plus with or without GMP

Ready to drink the Kool-Aid

B101

**Standard Form of Agreement Between
Owner and Architect**



B101 – flagship O/A agreement

Traditional 5 phases of services: Schematic Design Phase, Design Development Phase, Construction Documents Phase, Procurement Phase, and Construction Phase

Supplemental and Additional Services

A201 General Conditions and separate Owner/Contractor Agreement (A101, A102, A103)

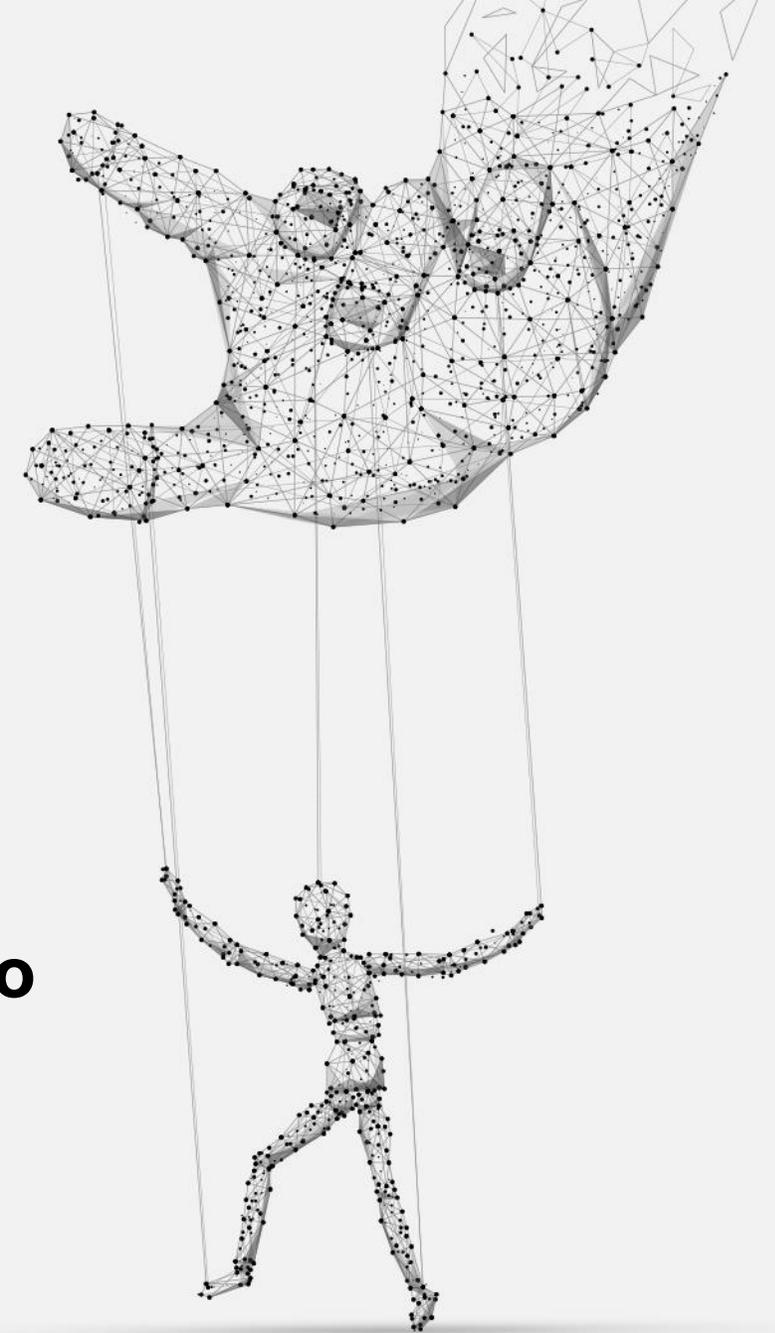
Architect provides basic cost estimating and scheduling

Want ultimate control?

A145

**Standard Form of Agreement Between
Owner and Design-Builder for a One or Two
Family Residential Project**

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A145 – residential Design-Build

Specifically developed for residential design-build

Short form (15 pages)

Single exhibit (Design-Build Amendment)

Owner

«

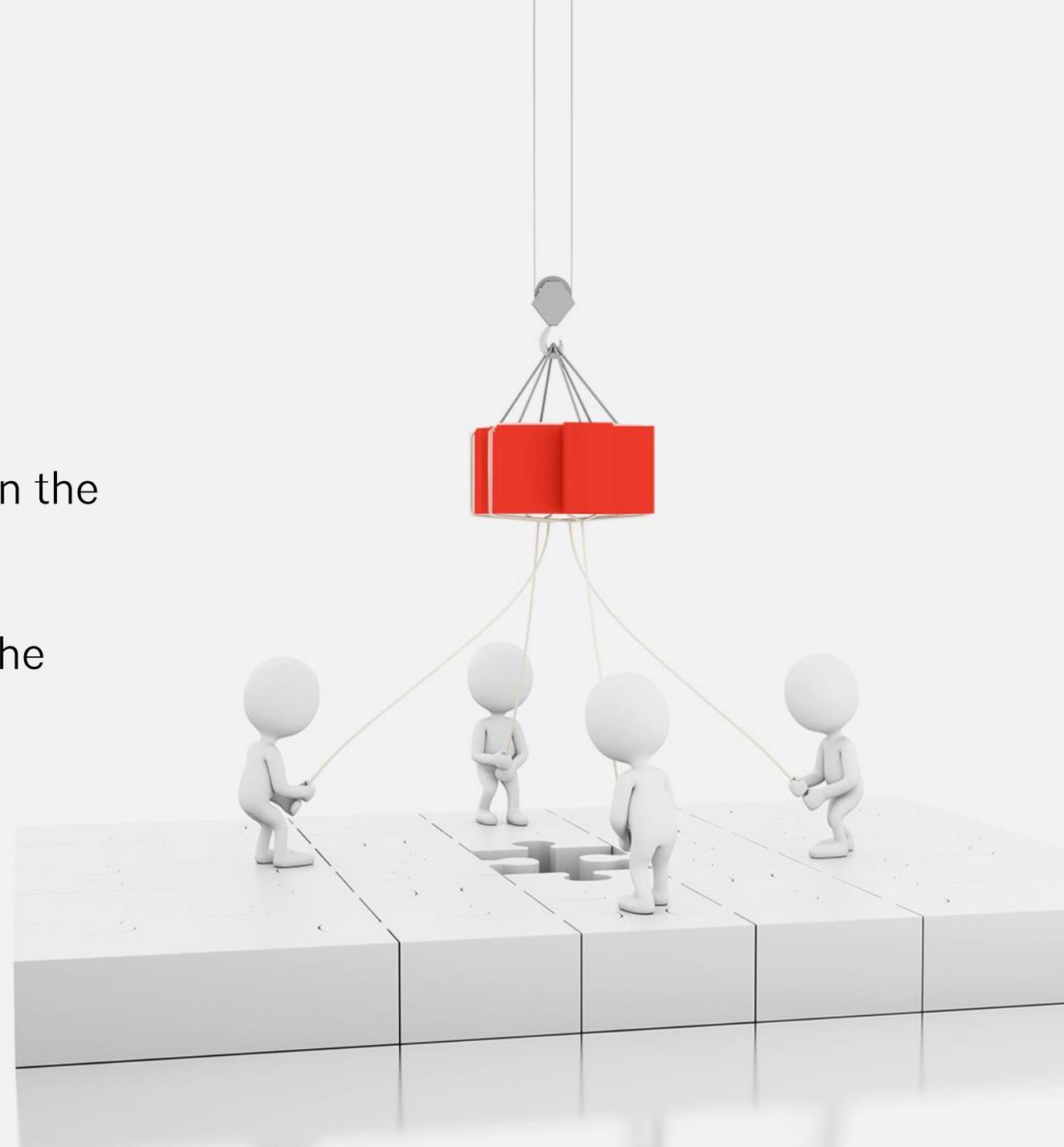
A145

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Design-Builder

Process

- Initial information set in the contract
- Owner and Design-Builder meet to develop the Owner's Criteria based on the Initial information
- Owner's Criteria is approved before the design phase begins
- Design-Build Amendment sets the Contract Sum



Caution

Residential construction may be highly regulated in your jurisdiction

- Specific contract language requirements
- Initial information has fill point prompts for jurisdictional requirements
 - Lien rights
 - Warranties

Insurance and bonding requirements

Licensing

Additional documents

B107-2010

Standard Form of Agreement Between Developer-Builder and Architect for Prototype(s) for Single Family Residential Project

B108-2009

Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project

Guide to AIA Contract Documents for Small Projects

That sounds good, but...

How can I get my client to feel good about an AIA document?

My letterhead looks friendly

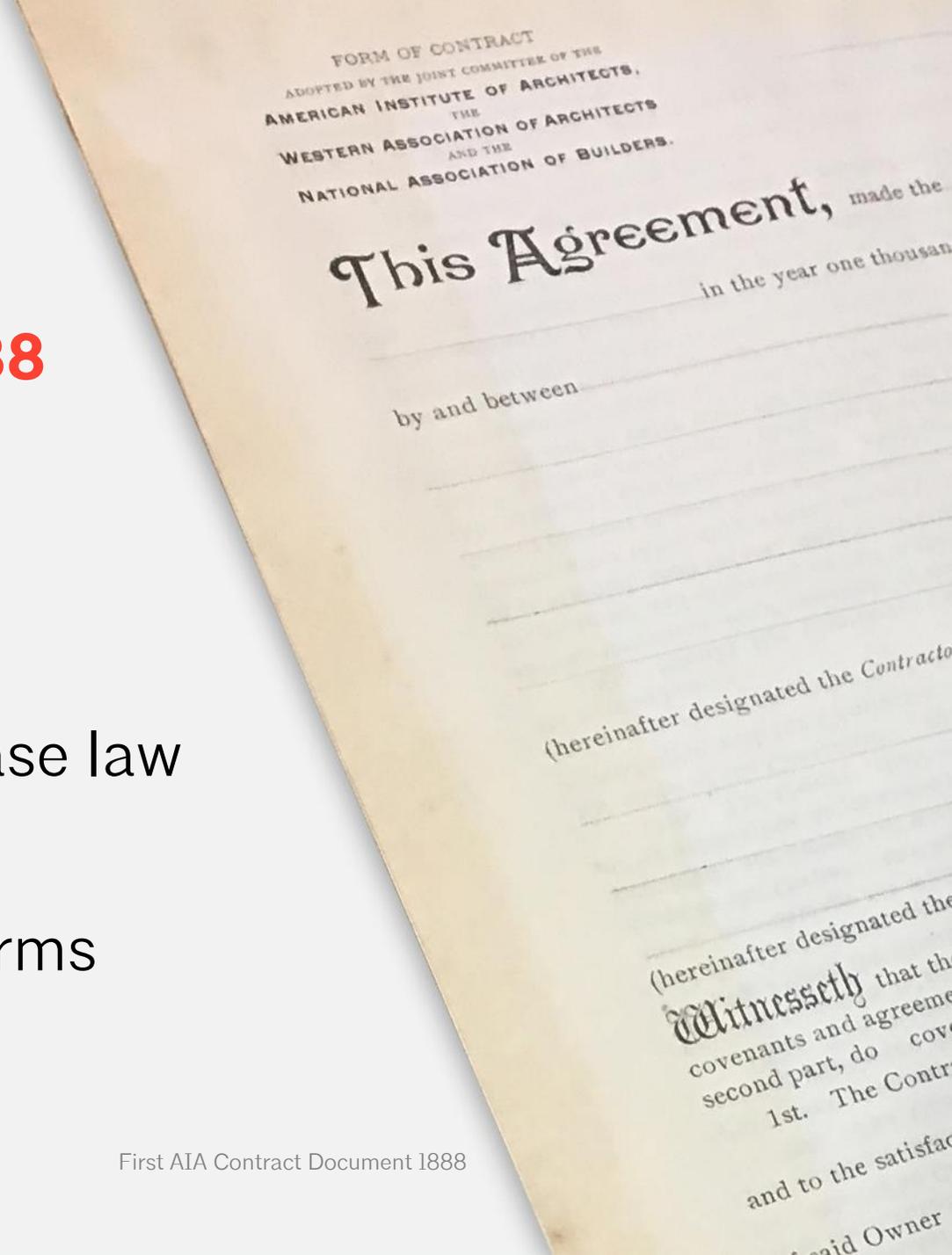
My clients won't like something that looks institutional

History

Standard form documents since 1888

(129 years)

- Evolved to reflect practices in the construction industry
- Substantial volume of interpretive case law (AIA Legal Citator)
- Now, nearly 200 agreements and forms



Objectives

The Industry Standard

- Fair & Balanced
- Balancing Competing Interests
- Put Risk where it is best managed



Drafting process



Feeling better?

- A good contract is your friend
- AIA Contract Documents work for you
- AIA has resources to help you

Guide to AIA Contract Documents for Small Projects

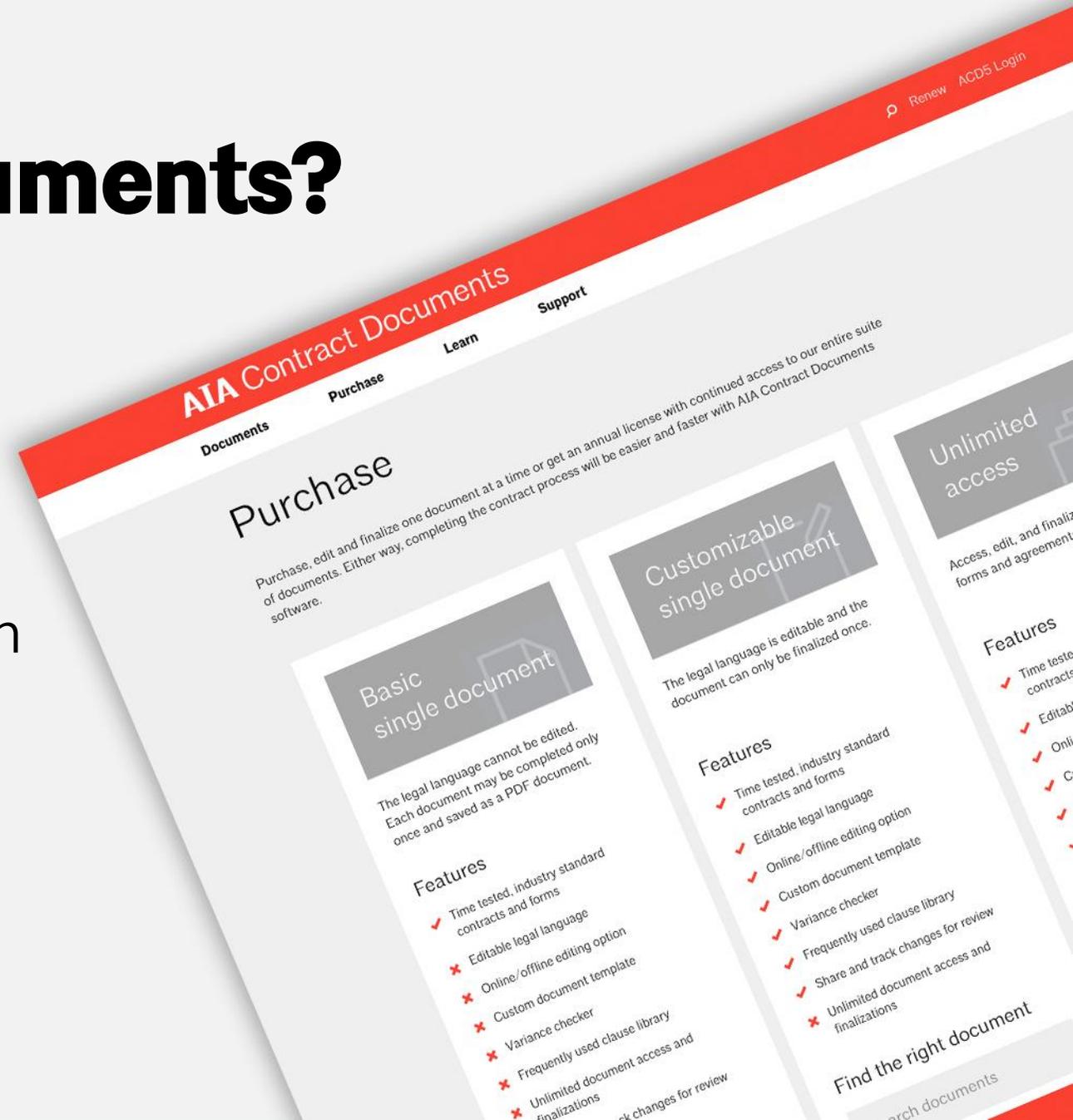
FREE

The purpose of this guide is to provide a comprehensive list of AIA resources for small project practitioners, including: small firms, sole practitioners and custom residential architects.

www.aiacontracts.org/resources/64076-guide-to-aia-contract-document-for-small-projects

How can I access AIA Contract Documents?

- Basic Single Document
- Custom Single Document
- Unlimited Annual Subscription



Contact & resources

AIA Contract Documents Learn page:

aiacontracts.org/learn

Questions about AIA document content:

Email: docinfo@aiacontracts.org

Tel.: (202) 626-7526

Questions about ACD5:

Email: docstechsupport@aiacontracts.org

Tel.: (800) 942-7732

Thank you!