



## Terminating a Contractor for Cause Under the AIA A201-2017

Deciding whether to terminate a construction contract is one of the most difficult decisions owners may face on a project. Terminating the contract is usually an option of last resort and is coupled with the risk that the termination could later be deemed wrongful by a court or arbitration panel. If this happens, the owner terminating the contract could end up paying twice (e.g., the cost to complete the work and the original contractor who was terminated) and facing other substantial damages, such as consequential damages (unless waived), attorneys' fees (if provided for in contract or law) and bond claim costs. Common examples of facts giving rise to a wrongful termination claim include terminating a contract after failing to follow procedural requirements, such as not issuing proper notice, and affording the requisite opportunity to cure the defective work.

Standard contracts like those drafted by the American Institute of Architects (AIA) are utilized across the construction industry and many AIA contracts incorporate the A201-2017 General Conditions of the Contract for Construction. The provisions of the A201 govern the parties' obligations and should be closely examined before proceeding down the path of terminating a contract for default. Section 14.2 of the A201 outlines the conditions and procedures for the termination of a contractor by an owner for cause. Specifically, section 14.2.1 provides that the Owner may terminate the Contractor for cause if the Contractor:

- Fails to supply skilled workers or proper materials;
- Fails to pay subcontractors or suppliers;
- Disregards laws, codes, or public authority orders; or
- Commits a substantial breach of the contract.

To terminate, the Owner must provide seven days' notice and obtain certification from the Architect that sufficient cause exists. Once notice has been given and certification from the Architect obtained, the Owner can exclude the contractor from the site, take possession of materials and equipment, accept assignment of subcontracts, and finish the work by reasonable methods. The Contractor is not entitled to further payment until the work is finished. If the unpaid balance exceeds the cost of finishing the work, the excess is paid to the Contractor. If costs exceed the unpaid balance (which is, practically, the likely scenario), the Contractor must pay the difference.

The provisions aim to balance the rights and responsibilities of both the contractor and the owner, ensuring that both parties have clear grounds and procedures for termination. In addition, the provisions ensure both parties are protected financially, with mechanisms in place to ensure fair compensation for the work performed and costs incurred. These provisions also help manage risks associated with project delays, financial instability, and non-performance, providing a structured approach to resolving such issues.

Familiarity with the entire contract is critical, particularly the provisions relating to both termination and the dispute underlying the default when exploring the option of default and termination. There are legal, factual, economic and practical considerations to be assessed as a part of that decision. A full understanding of the legal principles and critical facts of each case can assist in navigating the complicated default and termination process in the construction industry.

**For more information, please contact [Daniel Manning](#).**