

Assembly of Construction Contract Documents for Signature

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Summary

The prime purpose for the assembly of construction contract documents for signature by the parties is to form a legally binding and enforceable contract, which can be referred to in the future as the need arises.

Background

“A contract is simply an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.” (Black’s Law Dictionary, Seventh Edition.)

Notwithstanding that oral contracts are legal contracts at law, few would argue that oral contracts are preferable to written contracts. Written contracts confirm what has been agreed to by each of the parties and are easier to enforce and defend than oral contracts. It logically follows that written contracts should be made in at least as many copies as there are parties to the contract, and further, that they be identical copies.

Construction contract documents assembled in identical packages for signature by the parties would normally be sufficient and adequate. The Canadian Construction Documents Committee (CCDC) construction contracts provide space within the agreement portion of the contract where the individual documents forming the whole of the contract are listed by title and date. Signing in the space allocated on the agreement portion of the contract is sufficient to create a binding and enforceable contract, provided that any specific changes that are stricken or altered on the faces of the documents are initialed by the parties.

Some owners still require, and some architectural practices physically bind the documents into a single package using wire, ribbons, seals or other similar devices.

Others require that the parties initial every page of each document regardless of whether they are bound and sealed.

These procedures are somewhat ‘belt and suspenders’ insofar as creating a legally binding and enforceable contract which will occur upon signature of the parties in the appropriate spaces such as provided for in the agreement portion of CCDC contracts (provided that the principles, as stated earlier in this Practice Tip, have been satisfied.)

However, there are certain benefits to the additional procedure:

- The ceremony of signing and initialing pages, as well as the ribbons and sealing procedures emphasizes the seriousness of entering into a legally binding contract;
- The formality of the occasion of signing such documents is an opportunity for marketing the project and the parties as well as other participants such as architects, the public and potential users of the project; and
- People are less apt to disassemble a wired and sealed contract.

A construction contract typically consists of:

- The Agreement;
- Amendments to the Agreement

- Definitions;
- Amendments to the Definitions
- General Conditions;
- Supplementary Conditions;
- Specifications;
- Material and Finishing Schedules;
- Drawings; and
- Addenda (if not incorporated into the appropriate documents above.)

The list of documents should be prepared for inclusion in the agreement and should identify all documents comprising the contract. Specifications should be listed by a list of contents with section numbers, titles, number of pages, and date. Drawings should be identified by drawing number, title, date and revision date or mark. Addenda, if any and if not incorporated into the drawings, specifications, amendments to agreement, amendments to definitions or supplementary conditions, should be identified by title, number and date.

Suggested Procedure

1. Discuss with your client the optional forms of assembly of the construction contract, i.e. loose documents or bound and sealed. Invite client to seek legal advice.
2. Assemble the documents into identical packages. Prepare one more than the number of parties to a contract – one for each of the parties and one for your records.
3. Label these “contract sets”.
4. Have the parties sign all copies in the appropriate places and initial at minimum, all changes.
5. Store your copy for future reference in a safe place. It could be called upon if there is an alleged discrepancy between the other sets.
6. It would be prudent of you to instruct the parties to the contract, in writing, to store their contract sets and not to disassemble them or modify them for any purpose.
7. The preceding procedure is considered good practice in the assembly of construction contract sets. If your client insists on a higher level of assemblage (e.g. seals, wire ties, ribbons etc.), you may consider these as your client’s instruction to you over and above the need for the fundamentals of signatures, initialed changes and identification of the documents comprising the complete set.

Definitions

Contract Documents: “The *Contract Documents* consist of those documents listed in Article A.3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.” (CCDC 2 Stipulated Price Contract, 2020)

References

Goldsmith on Canadian Building Contracts, Fourth Edition. Carswell, 1988

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.
