

Construction Cicerone Major Repairs at Your Common Interest Association Orientation-Legal Issues

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Big Picture View of Issues

- Construction and Risk Management
- Communications
- Phasing
- Relocation
- Change Orders
- Supervision
- Payment Control/Mechanics Liens

Reduce and Manage Risk

- Association legal risks arise during construction
- The Association/and its legal/design/team should:
 - Identify risk/problem areas & events and;
 - Draft solutions in the contract *before the work starts*

Reduce and Manage Risk

- What is a Contract?
- Consider potential problem areas/events that can cause legal risk during the repair process.
- A reference for checklist of potential “events” - AIA 201 General Conditions for Construction - A “*what-if*” index.

Reduce and Manage Risk

- A contract should:
 - Record the terms of the agreement
 - Define scope and price

But most importantly:

 - Allocate the risks between owner and contractor

If drafted well:

 - Give parties a reasonable level of prediction of events when issues identified in the contract occur.
- Really then, a contract should:
Define the results when certain “*what if*” events occur.

Communications

Why an important contract issue?

- Many events occur daily during repairs
- Decisions are required among:
 - OWNER / Architect / General Contractor / Subs
- Those required to make decisions should be kept informed as job progresses
 - Risk of a potential dispute increases when parties are not kept “in the loop”
- Communication is key element for resolution

Communications

Contract Issues:

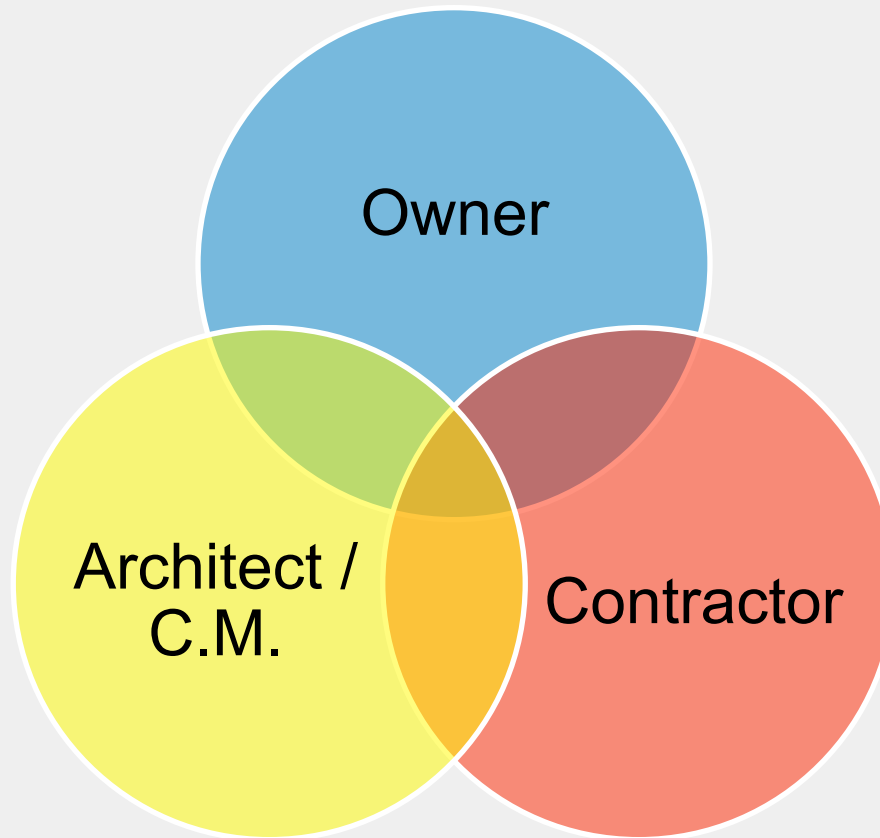
- Define the following:
- Methods of Communication
 - Phone / Fax / Email / Mail
- Parties for Communication
 - OWNER / Architect / Contractor / Subs
 - Representative of each Party
 - Contact Information
- Chain of Communication
 - For Approvals and Decisions
 - To Direct the Work / Through the Contracted Parties

Communications

Methods:

- What type of information goes out: eg: provide project schedules
- What type of notifications are provided
 - Email, door-hangers, phone calls
- Weekly Meetings
- 24 hour emergency response

Communications



Planning & Prioritization

by David Kuivenan AIA

	Identify the Problem	Definition of the Project	Value Engineering	Coordinating Owner's Issues	Verification of Funding	Planning Owner Impact	Plans and Specifications	Bidding and Contractor Selection	Sequencing of the Work	Scheduling and Home Access	Notices	Troubleshooting	Verification of Work in Progress	Verification of Completion	Approval of Payments	Project Close-Out	Owner's Manuals/Warranties
The Board																	
Owner's Representative																	
Association Manager																	
Construction Manager																	
Architect																	
Contractor																	
Contractor's Representative																	

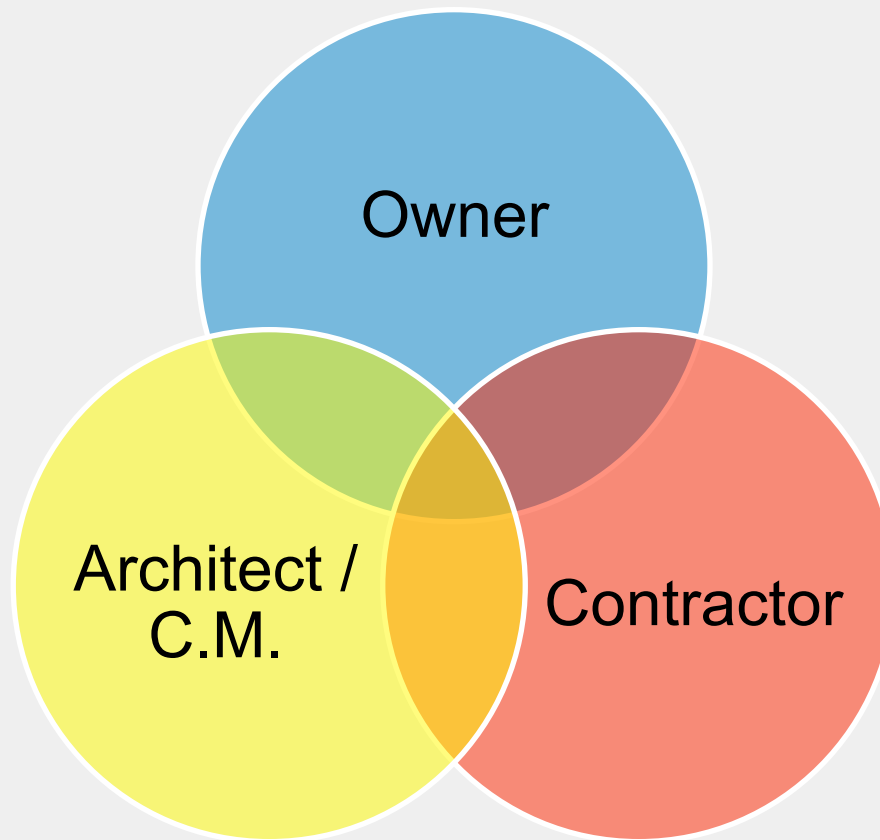
Phasing / Planning and Prioritization

- Prototyping to Refine Repair Scope and \$
- Phasing can spread out \$ needed
 - Over Seasons or Years
 - Delay work until funds avail.
- Phase by Building or Location
- Phase by Scope or Trade
- Phase by Conditions/Problems/Related Issues / Postpone less urgent issues

Relocation

- Consider options to minimize relocation
 - Phasing or Design Solutions can reduce need
- If needed:
 - Who will coordinate the moving of personal property?
 - Lodging of members of Association?
 - Funding for relocation?

Planning and Prioritization



Change Orders

Are:

- A different or changed condition the contractor could not have anticipated at the bid stage or;
- An agreement by the parties to change scope or contract time

Change Orders

- Risk management strategy to minimize Changes
- Require contractor to *review all available as built documents* on the project
 - Defect reports from a litigation
 - Original design documents
 - Testing photos, results etc
 - Conditions revealed from pre/bid site inspections
- Track change orders that modify scope as job proceeds (Payment Control)

Change Orders

Can:

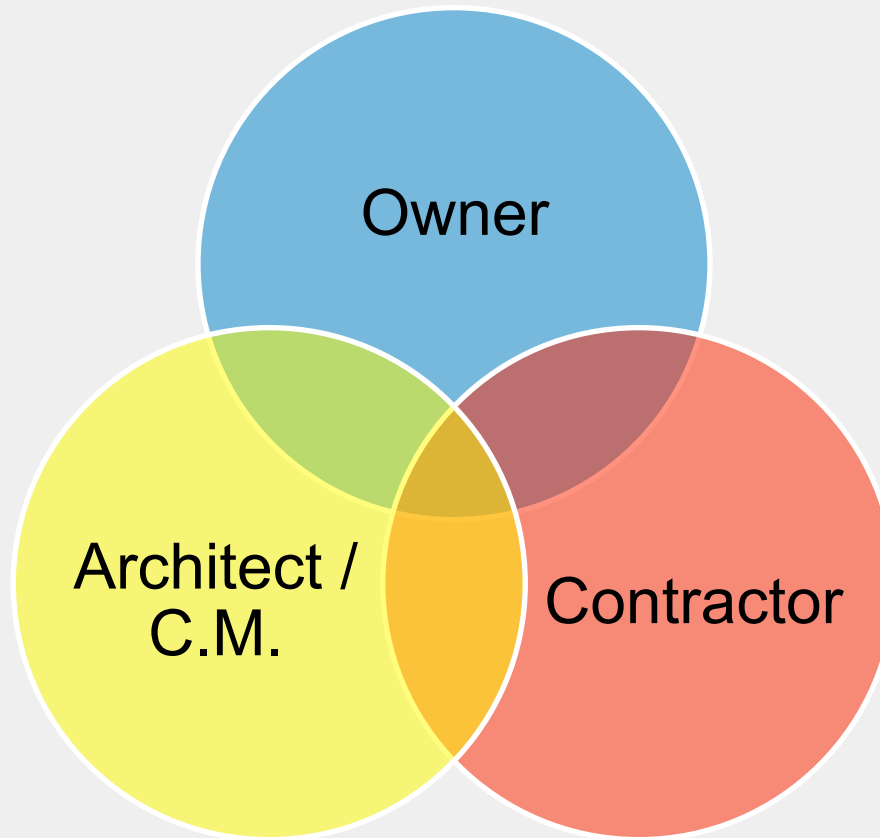
- Slow production & progress of the job
- Change the direction or expectations
- Alter project schedules via time extensions
- Be offered as a no-cost change for rain days and general conditions
- Be created or result from surprises
- Lead to a special assessment

Change Orders

Keys to Change Orders:

- Determine Unit Costs prior to signature of contract
- Contractor to not perform any work prior to authorization
- *Timely* Communication required to transmit, review and approve changes
- *Timely* Communication required to review affect on Contract *Time* and *Budget*

Change Orders



Supervision & Management

by David Kuivenan AIA

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The Board	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Owner's Representative	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Association Manager	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Construction Manager	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Architect	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Contractor	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active
Contractor's Representative	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active	Active



Contractor Supervision

- Superintendent / key person employed by the General Contractor
 - Person must be identified/cannot be changed without approval of Owner
- Means / Methods / Procedures
 - Construction Details
 - Communication
 - Schedule
 - Project Driver
- Responsibility includes checking work of Subs

Contractor Supervision

General Superintendent

- Production Manager - oversee all aspects of construction from contract completion.

Project Manager

- Project Manager - communication, quality control, scheduling of work and manpower.

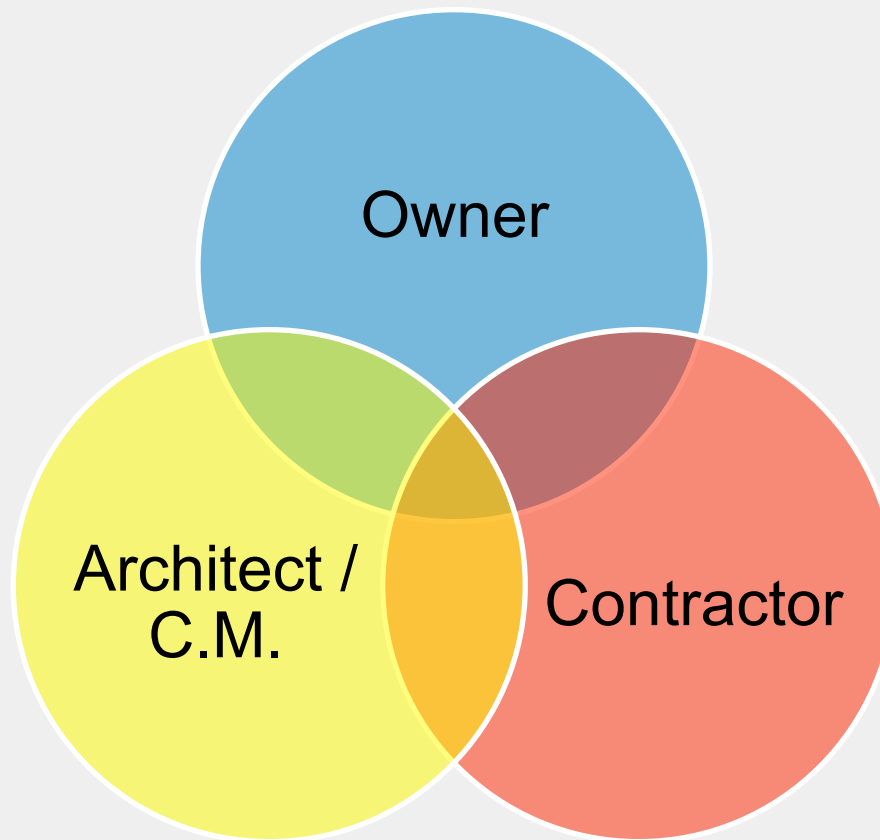
On-Site Assistant Project Manager

- On-Site Assistant Project Manager - communication with all subcontractors and employees, direct supervisor on project, quality control.

Architect / C.M. Supervision

- Hire an Architect / Construction Manager to observe the work of the Contractors
 - Does not direct the work
 - Is not responsible for Means & Methods
 - (Included in the design team contracts?)
- Field Observations
 - Key tool for verification of progress/quality of the work
 - Periodic Observation
 - Continuous Inspection
 - Special Inspection

Supervision & Management



Payment Control –by David Kuivanen AIA

	Identify the Problem	Definition of the Project	Value Engineering	Coordinating Owner's Issues	Verification of Funding	Planning Owner Impact	Plans and Specifications	Bidding and Contractor Selection	Sequencing of the Work	Scheduling and Home Access	Notices	Troubleshooting	Verification of Work in Progress	Verification of Completion	Approval of Payments	Project Close-Out	Owner's Manuals/Warranties	
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Contractor's Representative	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue	Light Blue

Payment Control

- Owner's main responsibility/make decisions/decide scope/make payments
- Owner controls payments when a process for approval is spelled out in the contract and Owner follows it
 - Contractor applies for payment
 - Architect/Construction Mgr. reviews progress & quality of work/certifies payment
 - AIA/standard approach/calendar day/5/20/25

Payment Control

Different Payment Plans

All Terms can be negotiated.

AIA Contract - Net 30 Days.

- Payment submitted on X date of month and owner makes payment no later than X date of the following month
- No billing for mobilization

Payment Control

Different Payment Plans

All Terms can be negotiated.

Other Contract Schedules - Net 14 Days

- Payment submitted two weeks prior to BOD meeting.
- Payment is processed and submitted to BOD for payment signature at BOD meeting

Payment Control

Different Payment Plans

All Terms can be negotiated.

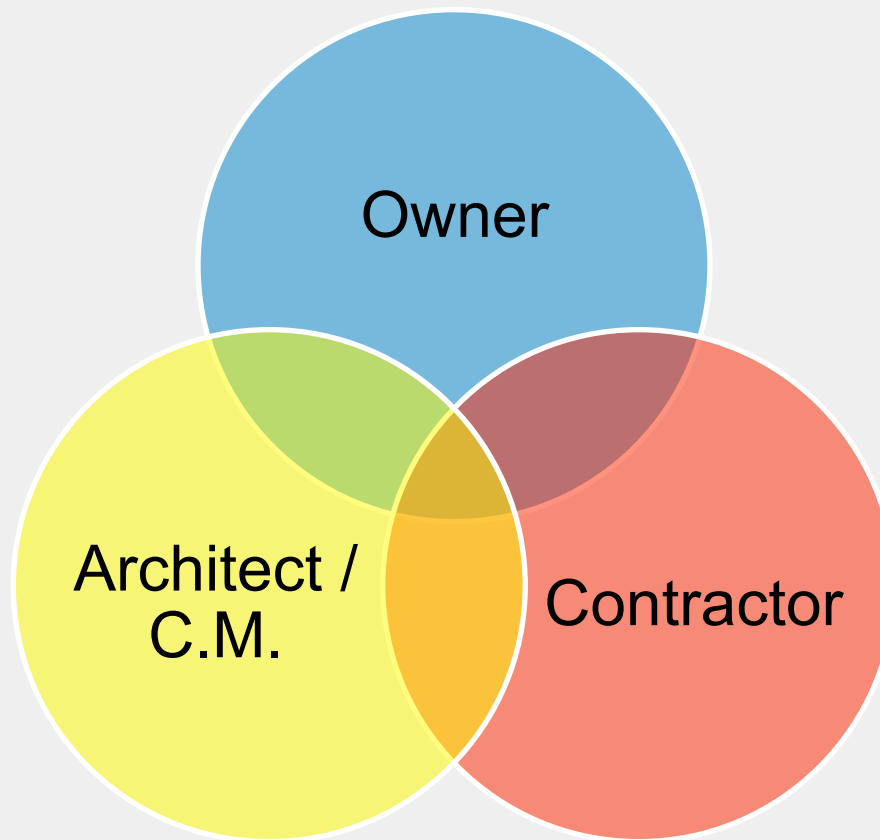
Other payment schedules – Net 5 Days

- Payments submitted on agreed upon date
- Payment is processed and submitted for BOD approval and signature

The Hammers of Payment Control

- If possible, negotiate flexibility in payment requirement for Board convenience/corresponds to Board meetings/communications process established
- Joint checks
- Conditional/Final Lien Releases
- Final Payment/Warranty Binder

Payment Control



Payment Control

- What is a Mechanic's Lien?
 - A recorded “claim” by a contractor who performs work or supplies materials to a job site
 - Preceded by a *Pre-Lien Notice*

Payment Control Mechanics Liens

- How does Association protect itself?
 - Contract provisions
 - List of subs & suppliers given to owner
 - Payment control
 - Lien releases
 - Indemnity clause offered by general contractor (Negotiated)
 - Keep track of pre-lien notices
 - Never pay cash
 - Checks reference invoices
 - Use joint checks
 - Consider a payment of performance bond
- What should Association do when confronted with a filed lien?

Project Completion

- “Substantial Completion” triggered
 - Usually starts insurance/warranty period
- Final Completion
 - Delivery of Warranties, Manuals, Instructions
 - Approval of Final Payments
 - Payment of Retention

 - End of Presentation/ Robert P. Hall, Jr., Esq.