

AIA Electronic Forms – “New” Version 3.0 – The Good, The Bad, and The Ugly

A Brief Review by Architects and Lawyers

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The American Institute of Architects ("AIA") recently introduced the latest version of the AIA industry contract forms available as “Version 3.0.”² This launch continues the AIA’s long tradition of providing high quality and well drafted forms available for use in the design and construction communities.

The AIA contract documents are consensus documents that are designed to balance the interests of all parties, so that no single interest, including that of architects, is unfairly represented. The forms facilitate expeditious drafting and execution of construction documents by providing a set of standard, reasonably neutral provisions from which to begin the negotiation process. Despite the growing number of competitors, when the production of a contract document or widely recognized industry form is necessary for day-to-day applications, the AIA forms remain the standard starting point for many industry professionals.

Our Firm’s Construction Practice Group has more than fifty regular design professional clients. For over twenty-five years, we have been involved in the negotiation and drafting of construction industry contracts, and we work extensively with the AIA forms on a daily basis. In conjunction with our architectural clients, we frequently produce several drafts of the AIA contracts during contract negotiations. The AIA forms are almost always modified to some extent during the process so that ease of modification is, in our opinion, essential.

Originally, an end user purchased the AIA contract documents from the AIA in printed form and manually edited them for each project. Some time ago, the AIA made electronic versions of its forms available. The introduction of the electronic forms met a specific market

need and was extremely well received. The original electronic version allowed certain portions of the forms to be modified and prevented other portions from being changed. When changes were made, the forms indicated where language has been added to or deleted from the original "master" document.

The AIA electronic forms remain a significant and important tool for the construction industry. They have the potential to provide increased efficiency by allowing the industry and its lawyers to quickly and clearly incorporate negotiated terms into the form documents, while ensuring that all changes from the standard forms are clearly marked.

The content of the most recent version of the forms, Version 3.0, was not changed from the previous electronic version. Apparently the intent of Version 3.0 was to provide the market with an updated and user-friendlier electronic form. Unfortunately, if "user friendliness" was the goal, in our opinion, Version 3.0 cannot be judged a success. The AIA missed a significant opportunity to increase the flexibility of the electronic version when it introduced Version 3.0. Frankly, it is our belief, and the belief of our clients,³ that significant improvements to Version 3.0 are necessary to allow the forms to live up to their full potential.

The Good

Electronic forms of the AIA contract documents greatly expedite the use of AIA forms by making use of the ease of computer editing and storage. The electronic forms provide quick document production and allow for quick review. As a result, turnaround times and costs associated with contract preparation are significantly reduced.

There are two primary uses for the AIA electronic forms. The first involves limited, generally non-substantive, changes to the existing forms. These changes are often done by the principals to the contracts and are made without legal review. The availability of standard

clauses and a software program that prevents unintentional changes to the substantive provisions of the forms allows for these types of modifications to be made quickly and inexpensively. Once users become familiar with the software and how it operates and then adjusts to the software's quirks (see *The Bad* and *The Ugly* below), users are generally satisfied with their ability to make quick, non-substantive changes to the form's contents.

The second major use of the electronic forms arises when the user wishes to make substantial changes to documents, particularly at the outset—which is generally the case for major projects. Where there are substantial changes to the form documents, the shortcomings of the software are often extensive.

The Bad

The software's tendency to limit the changes that can be made to a document is beneficial in some circumstances given that the carefully crafted language of the forms is sustained. However, this benefit quickly turns into a burden when it is the parties' intention to make substantive changes to a document. The limited and restrictive nature of the AIA software makes this process extremely cumbersome. Because of the proprietary character of the AIA software and the strong measures the AIA has taken to protect its intellectual property rights, the software is virtually incompatible with all other software programs—most notably word processing programs. As a result, these users do not enjoy the benefits the software should provide.

For example, users have noted that additions and deletions can be difficult to make, and there is no method by which to disable the strike-through and underlining features so that the final form is a clearer and cleaner document. Other users complain there is no easy way of producing marked or "redlined" versions of a document in order to show changes from previous

versions. Although changes from the standard forms can be shown, it is impossible to show subsequent changes to user-drafted portions. These users are forced to address this shortcoming by circulating multiple versions of drafts or by manually marking changes to documents.

Another criticism concerning the software is the lack of adequate instruction manuals and documentation that explains the ins and outs of the software. Given the proprietary nature of the software and its numerous quirks, this lack of instruction can cause great frustration, particularly among new users. Yet one more complaint concerns the continuity between versions of the AIA software. When the AIA updated its software and the underlying forms, it rendered previous versions of the software unusable. Older versions of the forms can be opened, but a user cannot print or "cut and paste," except for language added by the user. This deficiency proves to be a major inconvenience, particularly when an ongoing project requires an agreement that is substantially identical to an older, yet now obsolete, document.

The Ugly

Beyond the issues discussed in *The Bad* above, the AIA software has some unusual quirks that cause users significant and unnecessary headaches. A common mantra repeated by users of the AIA software is "to save the documents and save them often." Because of the software's quirks, some users have taken to saving the document after every single change. An additional criticism of the software is its failure to use standard Windows commands. One user complained of trying to use "Ctrl S" to save a document and later finding out that the AIA software uses "F3" to save documents.

Another serious complaint concerns the phenomena in which text that is added by the user will randomly and mysteriously become text that cannot be deleted, ever. If this result occurs and the text subsequently must be changed (even if it was correct when first input), the

user's only alternative is to leave the errant text in the document or begin again with an entirely new version of the form. Savvy users generally save their documents after each change and immediately exit a document once the dreaded red or blue "kiss of death" language appears.

The printing of the documents also proves to be problematic. Some documents print easily on a given printer, while others result in odd formatting. More significantly, attempts to print a single page of a document do not work—the document reformats and the pagination is usually different. Users are forced to print the entire document every time a minor change is made.

The lack of compatibility with text prepared using Microsoft Word 2000 is a common refrain of frustrated users. Many have complained that attempts to draft language in Word and then "cut and paste" such language into the electronic forms is impossible.

Finally, users complain that when an AIA document is saved, it appears as if it is a version of a Microsoft Word document, marked with the icon and extension for this program. Accidental attempts to open the document in Microsoft Word will then scramble the document, rendering it unusable even when opened using the AIA software.

Suggestions On How To Remove “The Bad And The Ugly” In Future Versions

Suggestions for future versions of the software include the following:

- Improve the user-friendliness of the software.
- Fix quirks in the software, particularly with respect to printing and the addition of text.
- Make the software more compatible with commonly used word processing software.
- Improve the instruction manual for the software.
- Allow prior versions of electronic forms to be used.

Conclusion

The most common complaint about the AIA software is its lack of user-friendliness. Putting the users first, even at the risk of giving up some control over its forms, should be the AIA's priority in future versions of its software. The industry, along with this author, understands the AIA contract documents serve a valuable purpose. Unfortunately, many aspects of the AIA software look more like 1980s technology than technology of the twenty-first century. The AIA must respond to the needs of the ultimate users of its software. If it does nothing, it risks having its software replaced by other, more modern and more responsive software.

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² This most recent version of the AIA electronic forms was released in January 2000.

³ As a key element of the preparation of this article, we consulted with three of our architectural clients to solicit their comments on Version 3.0.