

CRCA 2014 Trade Show & Seminars

“Decoding Roofing & Waterproofing Today”



CRCA 2014 Roofing Industry Breakfast Details

- Bill McHugh – CRCA Executive Director
 - **Emergency Exits**
 - Crystal Room Left and Right
 - Exhibit Hall - Entry, by Bars, North Walls
- Mobile Phones - BZZZZ
- **CRCA Trade Show Exhibit Hall Open**
 - **Exit out restroom doors**



CRCA 2014 Trade Show & Seminars AGENDA

– *Thursday PM Seminars – 1-2pm; 3-4:30pm*

- Stephen Phillips - Legal
- M. Vaughan, M. Newman, & Guests State of IL Roofing Contractor Licensing Laws

– *Friday AM Seminars – 3 sessions - 7:45a– 12:15p*

- Ventilation – Bill Rose
- Research Air Barrier, etc. – Andre Desjarlais
- Codes, LTTR – Mark Graham, NRCA

– **1 Hour Breaks..Visit Exhibits!**





Attendance / CE Certificates

Certificates for Self Report
Questions? Jeanne@crca.org



Association of
Licensed Architects



Chicago Roofing Contractors Association

31st Annual Trade Show & Seminars

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by

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Liability for Code Compliance

Building Code Compliance

- Who's Liable: Architect or Contractor?
- Was failure to comply with code a function of design or construction?
- Is design liability imposed on contractor by contract, his own actions or by operation of law (statute, case precedent)?

Normal Liability of Roofing Contractor

- Breach of contract: perform the work in a good and workmanlike manner and satisfy the obligations stated in the contract
- Negligence: meet the standard of care expected of roofing contractors in similar circumstances
- Breach of warranty: comply with the warranty terms and obligations

Spearin Doctrine

The Spearin doctrine is based on a principle set forth in a 1918 U.S. Supreme Court decision in United States v. Spearin. The principle, in practice long before the 1918 ruling, is that an owner warrants the sufficiency of the plans and specifications that a contractor is obliged to follow; therefore, a contractor who complies with plans and specifications will not be liable for the consequences of defects in the plans and specifications or an unsatisfactory end result.

Spearin Doctrine

Prescriptive Specifications
(Spearin Doctrine applies)

vs.

Performance Specifications
(Spearin Doctrine does not apply)

Building Code Liability – Starting Point

What Does The Contract Say?

- Architect's Contract (AIA B Series)
- Contractor's Contract (AIA A Series)
- General Contractor Drafted Subcontracts

AIA Documents – Architect's Responsibilities

American Institute of Architects (AIA)

AIA Document B141 - 1997

Article 1.2.3.6 states:

The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

AIA Documents – Architect’s Responsibilities

AIA Document B101 – 2007 – Standard Form of Agreement Between Owner and Architect

Article 3 – Scope of Architect’s Basic Services

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

AIA Documents – Architect’s Responsibilities
AIA Document B101 – 2007 – Standard Form of
Agreement Between Owner and Architect

Article 3.4 - Construction Documents Phase
Services

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of government authorities having jurisdiction over the Project.

AIA Documents – Architect's Responsibilities
AIA Document B132 – 2009

AIA Document B-132 – 2009 – Standard
Form of Agreement Between Owner and
Architect, Construction Manager as
Adviser Edition

AIA Document B201 – 2007 Standard Form of Architect's Services: Design and Construction Contract Administration

§ 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 2.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

AIA Documents – Contractor's Responsibilities

AIA Document A201 – 2007

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

AIA Documents – Contractor's Responsibilities

AIA Document A201 – 2007

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

AIA Documents – Contractor's Responsibilities

AIA Document A201 - 2007

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

AIA Documents – Contractor's Responsibilities

AIA Document A201 - 2007

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

AIA Documents - A201 - 2007 General Conditions - Contractor's Responsibilities

§ 3.7 Permits, Fees, Notice and Compliance With Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

AIA Documents - A201 - 2007 General Conditions -- Contractor's Responsibilities

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

AIA Documents - A201 - 2007 General Conditions -- Contractor's Responsibilities

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

Liability Posed By Building Codes

If there is a building code violation pertaining to the roof, the roofing contractor may face a claim based on:

- Breach of contract
- Negligence *per se*
- Evidence of negligence

Design Liability of Roofing Contractor

- Is there design/code liability embedded in the contract?
- Did the contractor volunteer to accept a design liability by performing design functions or giving the appearance or impression of performing design services?
- Did the contractor act negligently (i.e. deviate from the standard of care expected of roofing contractors in similar circumstances)?

To Reduce Liability Arising from Building Code Issues:

Whenever you see language in the contract stating that the contractor shall comply with all laws, statutes, ordinances and codes, add:

“ provided the plans, specifications and contract documents Contractor is to follow are in compliance therewith.”

To Reduce Liability Arising from Building Code Issues:

- Know applicable codes yourself
- Designate a person within your organization to stay abreast of all code requirements
- Check your proposals for code compliance
- Check code requirements in the jurisdiction where you are considering working prior to bidding a job

To Reduce Liability Arising from Building Code Issues:

- Notify architect, general contractor, consultant and/or owner when you suspect there may be a code issue
- Follow the code requirements during construction
- Define your role: to be the installer of the roofing materials, not the designer
- Disclaim code design liability

Re-roofing Poses Unique Risks: Manage Risk

- Know and follow code requirements applicable to re-roofing
- Communicate with client regarding code issues
- Submit a proposal for the owner's consideration as a roofing contractor, not as a designer

Potential Language to Include in Proposals / Contract

Nature of Work — Re-Roofing

Contractor shall furnish the labor and material necessary to perform the work described herein or in the referenced contract documents. Contractor does not provide design, engineering or architectural services. It is the Owner's responsibility to retain a licensed architect or engineer to determine proper design and code compliance. Contractor does not warrant code compliance. If plans, specifications or other design documents have been furnished to Contractor, Customer warrants that they are sufficient and conform to all applicable laws and building codes.

Potential Language to Include in Proposals / Contract

Nature of Work - New Construction

Contractor is not responsible for any loss, damage or expense due to defects in plans or specifications or building code violations unless such damage results from a deviation by Contractor from the contract documents. Contractor is not responsible for location of roof drains, adequacy of drainage, ponding on the roof or structural conditions.