

# BUILDING BLOCKS

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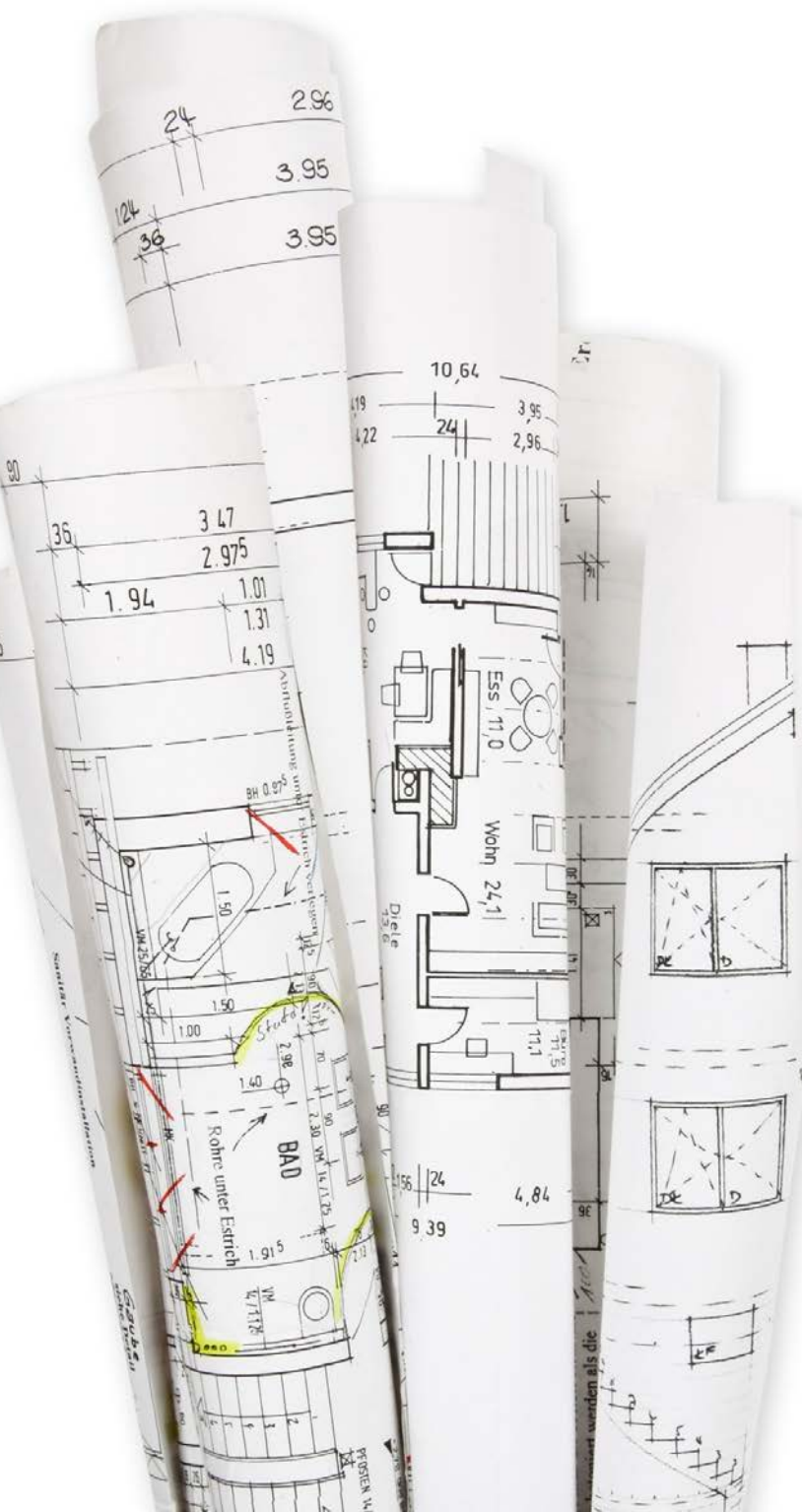
## UTILIZING A CERTIFICATE OF SUBSTANTIAL COMPLETION: #9 OF THE TOP 10 RISK MANAGEMENT PRINCIPLES FOR DESIGN PROFESSIONALS

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In the October 2019 issue of Building Blocks, we outlined the top 10 risk management principles regarding design professionals for the next 10 months, one principle at a time, focusing on one each month.<sup>1</sup> Consequently, in the ninth of the top 10 principles, the July 2020 issue of Building Blocks is focusing on **“Utilizing a Certificate of Substantial Completion.”** The top 10 principles are based, in part, upon the Council of American Structural Engineers’ (CASE) “Ten Foundations for Risk Management,” and the National Council of Architectural Boards’ (NCARB) two of the six educational modules titled “Practice Management” (PcM) and “Project Management” (PjM) of the Architectural Registration Examination (ARE). The first five risk management principles related to practice management, and last five risk management principles relate to project management.

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## THE ALL-IMPORTANT DATE OF SUBSTANTIAL COMPLETION

In our June 2020 issue of Building Blocks we addressed the proper use of construction phase services as a risk management tool. Arguably we could have included Substantial Completion as part of that discussion. However, we felt that this management tool deserved its own discussion, and was reserved for this July 2020 issue of Building Blocks, focusing on “Utilizing a Certificate of Substantial Completion.”

This risk management tool in a professional practice plan involves determining the date of “Substantial Completion” of a project—it is a date, when established by the prime professional on a project that carries with it immense importance. And is distinct from “final completion” of a project. Note the use of the first letter of capitalization for the term’s two words. Highlighting the capitalization of Substantial Completion is intentional due to the date’s importance. On the other-hand “final completion” has less importance.

The start of a project is fairly easy to determine as it is measured objectively, such as with:



- fill in the blank in the Owner-Agreement B101 (2017) § 1.1.4.2 Construction Commencement Date),
- a Notice to Proceed,
- a Notice of Commencement, or
- a ceremonial ground breaking



[https://www.nasa.gov/mission\\_pages/constellation/multimedia/groundbreaking.html](https://www.nasa.gov/mission_pages/constellation/multimedia/groundbreaking.html)

## DEFINING THE TERM “SUBSTANTIAL COMPLETION”

However, the end of a project may be more elusive. In order to better define the end of a construction project, the Engineers Joint Contract Documents Committee (EJCDC) *Standard General Conditions of the Construction Contract* EJCDC C-700, Article 14.04 *Substantial Completion* states:

When Contractor considers the entire Work ready for its intended use, Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

Substantial Completion is defined, according to the American Institute of Architects (AIA), as:

The stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. (*AIA Certificate of Substantial Completion G704-2017 and also in the AIA 201 General Condition of the Contract for Construction (2017) § 9.8*)

But before we discuss what is sufficiently complete (that cannot be measured objectively), let’s first dissect the AIA definition above, and examine its content. We need keep in mind that the “Work” is what the contractor does (labor, materials, means and methods on construction). The prime professional’s services are apart from a construction contractor’s duties and responsibilities, and may even go beyond the date of Substantial Completion (such as reviewing completion of corrective work under a warranty or a “punch list”).



The Work is sufficiently complete when a subjective professional opinion is rendered by the prime professional, that the Owner can occupy or utilize the Work for its intended use. That occupation or utilization of the project can be measured by a Certificate of Occupancy issued by a governing authority, but that is not always the case with Substantial Completion. There is no equal sign (=) between Substantial Completion and a Certificate of Occupancy (C-of-O). Thus, a C-of-O may be an indicator of Substantial Completion, but there again that is where the subjective professional opinion that a project can be occupied or utilized for its intended purpose comes into play.

## A MILESTONE IN A PROJECT'S HISTORY

This milestone in a project's history has lasting importance. In construction law, the following must be considered.

- A fully executed and dated Certificate of Substantial Completion triggers warranties and guaranties on a project. The clock starts to tick on the length of time on parts of the project that have assurances (warranties or guarantees) that the project will be built in accordance with the Contract Documents. As an example, a roof warranty for 10 years starts at the date of Substantial Completion, and ends on the 10<sup>th</sup> anniversary of the start of the warranty.
- And the Certificate of Substantial Completion also triggers timelines for statutes of limitations and statutes of repose applicable to the project. Most if not all states have enacted these statutes.
- Lastly, the assessment of liquidated damages may become an issue at the end of a project. A court of law or arbitrator may not always allow the assessment of liquidated damages beyond the project's Substantial Completion date. Thus, the assessment of liquidated damages may largely depend upon the determination on that date. As an alternative, some construction contracts may have a two-tier liquidated damages clause—one amount for the date of substantial completion, a different amount calculated at final completion.

## IN CONCLUSION

Utilizing a Certificate of Substantial Completion, or a written notice such as a letter to the project owner, is the best way to close-out a project in a professional manner. The objectively determined date of the start of a project can be overshadowed by the subjective professional determination of the end of a project. Without such tools as Substantial Completion, the difficulty in determination of the end may result in a dispute between all of the parties to a construction project.

<sup>1</sup> The above risk management principles have been adapted, in part, from an article that originally appeared in the June 2012 issue of *STRUCTURE* magazine, published by the National Council of Structural Engineers Associations (NCSEA), and is **reprinted with permission**. The top 10 principles of risk management for design professional are 1) A Firm's Culture & Ethical Practices, 2) Mentoring And Education, 3) Communication Skills, 4) "Go/No Go" Policy, 5) Contracts & Ownership Of The Firm's Documents, 6) Develop A Scope Of Services With Appropriate Compensation, 7) Producing Quality Contract Documents, 8) Construction Phase Services, **9) Utilize A Certificate Of Substantial Completion**, and 10) Dispute And Claim Handling. <https://csengineeromag.com/article/principles-and-tools-for-risk-management/>

## **About the Author**

*Eric O. Pempus, FAIA, Esq., NCARB has been a risk manager for the last 15 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 years of experience in the practice of architecture, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 33 years. As a Fellow of the American Institute of Architects and a member of the AIA National Ethics Council, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.*

*The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities, and should not be construed to represent a determination of legal issues, but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.*

***Disclaimer:*** *The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individual, group, or institution. This article is an expression by the author(s) to generate discussion and interest in this topic.*

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## Webinar Programs:



### ***“Handling Ethical Issues in Professional Engineering Practice”***

National Program  
Half Moon Seminars  
July 17, 2020



### ***“The Good, Bad & Ugly in Construction Administration-Shop Drawings, RFIs & Change Orders in the Various Project Delivery Methods”***

AIA Columbus  
July 23, 2020



### ***“Complying with Rules of Professional Conduct”***

National Program  
Half Moon Seminars  
July 31, 2020

## Speaking Engagements:



### ***“World Around Us Panel Discussion on the Environment”***

Nashville, TN  
Rescheduled to spring 2021



### ***“Ethically Looking Outward – Architecture/Interior Design Perspectives”***

The Alberta Association of Architects, Banff  
Alberta, Canada  
April 24, 2021

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