

When Is a Project Substantially Complete?

by Pat Cook

Few items in a project schedule are as important as the date of substantial completion, which is often the trigger date for liquidated damages, reduction in retainage, warranties, and other factors. Most construction contracts follow the definition of substantial completion given in AIA A201 as that stage of progress when the work or designed portion thereof is sufficiently complete in accordance with the contract documents so that the owner can occupy the building or put the work to its intended use.

Whether the walk-through to determine substantial completion is made by a third party — typically an architect or engineer — or by the builder and the owner together, the potential for problems is the same. Generally, disputes center around the question of whether punch list work must be performed before a project is deemed substantially complete. Most construction agreements, including A201, do not identify punch list work as a factor in determining substantial completion, but they do look to whether an incomplete item significantly interferes with the intended use of the work.

As an example, a punch list item for the replacement of some trees at the back of the building might well affect the appearance of the building, but would not likely affect the ability of the owner to occupy the building for its intended use. However, a faulty hvac system might delay occupancy, pushing back the date of substantial completion.

In a recent case (*Bateson-Cook of Atlanta, Inc.*, ASBCA No. 44902, January 22, 1997), the court ruled that the

architect was correct in refusing to issue a certificate of substantial completion for a commercial building because fire-rated doors had not been installed in stairwells; wood doors also had not been installed in administrative offices. The lack of fire doors was a safety issue and the building could not be occupied. Once the fire doors were in place, however, the architect should have issued the certification because the missing office doors were a minor inconvenience.

Of course, there are many gray areas. Consider these two examples. In the first, the paint job is substandard in a

was designed for the specific purpose of entertaining clients, with other home-office related work relegated to existing spaces, since the aesthetic appearance of the new space is essential to its intended use.

The case of the malfunctioning plumbing fixtures is less clear-cut. Since there are two bathrooms, the house can be used as intended, although the owner may be inconvenienced. If the family is large, however, it could be argued that the delays in preparing for work, school, and other activities caused by the malfunctioning fixture preclude use of the house as intended.

The key is whether the incomplete work prevents the structure from being used as intended

home office addition in which the owner plans to entertain clients. In the second case, a toilet or shower in one of two full bathrooms in a newly built private residence is malfunctioning during the substantial completion walk-through. Is either of these conditions sufficient grounds for delaying substantial completion?

The answer lies in the phrase “for intended use.” If entertaining clients is not the primary function of the home office and the owner can otherwise use the space as intended, then the aesthetic shortcomings of the addition should not preclude its being declared substantially complete. This might not be the case, however, if the new space

Any two judges or juries might decide these cases differently. Regardless of any legal decision, if simple disagreements over substantial completion reach the litigation stage, it is usually a case of “nobody wins.” As is true in other areas of the construction process, legal definitions are not a substitute for good customer relations. To ensure a smooth job closeout, handle questions of substantial completion before they develop into a dispute.



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