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message from the president

Finding New Ways to Make a Positive Impact



Doug Davidson, President
New South Construction Co., Inc.
Atlanta, GA
2008-09 Georgia Branch, AGC
President



I am honored to serve as the chapter's new president installed with other officers and board members at the very enjoyable and well-attended Annual Convention in Destin this past June. We continue to set ambitious goals for the remainder of 2008 and into 2009, building on the many successes and accomplishments of the past few years. In particular, winning AGC of America's Chapter of the Year award in March recognized Georgia Branch, AGC's efforts to "enhance the quality of our members' experience" around the state. This honor is something members can be proud of and celebrate since it is your input and feedback that is guiding Chapter staff and board members in moving the association forward to create a richer experience for you. Thanks to each of you who helped Georgia Branch, AGC earn this national award!

The Chapter's strategic priorities and business goals continue to revolve around finding new ways to deliver greater value to our membership and the commercial construction industry as a whole. It is this type of thinking that guided Georgia Branch, AGC to launch its first Safety Stand Down on August 8 with a special industry-wide and state-wide focus on crane safety. (*See page 8 for more on the Safety Stand Down.*)

New South Construction proudly participated in AGC's Stand Down along with 64 other contractors. Each of our respective subcontractors on a total of 393 jobsites also participated by stopping work for one hour all at the same time. Company leaders at New South made a point to be out on jobsites during the Stand Down to reinforce to our workforce the importance of safety. It allowed us to set a good example for our people and, at the same time, demonstrate how much we care about those who work with us. At New South, we firmly believe visible and engaged management support for safe practices helps us to effectively fulfill our leadership role.

How we treat and care about others within our industry and in particular their safety and well-being can have an enormous positive impact on how we feel about ourselves personally. It also impacts how we are perceived by others outside our industry who we are trying to attract for our future workforce.

I am a firm believer that "random acts of respect, kindness and giving" are contagious and they have the power to transform who we are as an industry. These acts are at the core of the "servant leadership" philosophy that I have strongly advocated for many years. Placing a thoughtful birthday call to an employee or co-worker, keeping in touch with an injured employee until they are on their feet and back to work, taking the time to thank someone for working safely along side of you, or expressing concern to someone who is taking an unnecessary risk and practicing unsafe behaviors are all examples of treating others with respect, kindness and giving. To me, acting in this manner brings more dignity and pride into our workforce.

The lesson I have learned is we must become a role model for the kind of leadership we want to see practiced throughout our respective companies, whether it is in the field or office or in the industry as a whole. For example, when superintendents are treated with respect, they are more likely to treat subcontractors with respect, and then subcontractors are more likely to be considerate of and respectful to other subcontractors — the result is a positive cascading effect that improves the quality of relationships being formed within and outside of our industry.

I look forward to getting acquainted with you and other members around the state and hearing from you firsthand how the Chapter is doing in meeting your needs and expectations. Your ideas to help us make a positive impact and become a better industry are always welcome and encouraged. ■



Safety Stand Down

Georgia Branch, AGC Launches Successful Inaugural, Industry-Wide Safety Program



By Cherri Watson
Georgia Branch, AGC
Director of Safety, Education
and Workforce Development

Contractors across the state of Georgia on close to 400 jobsites agreed to stop work on their projects from 7:00-8:00 a.m. on August 8 to focus on safe practices. Over 26,000 individuals participated in the Chapter's inaugural Safety Stand Down, co-sponsored with the full support of OSHA and CompTrustAGC MCIC. While a few other AGC Chapters have held this type of "stand down" in years past and some national contractors include these in their safety program, this was the first Stand Down launched by Georgia Branch, AGC and its member firms. The positive response from our members was tremendous from start to finish.

According to Cindy Coe, OSHA's regional administrator, "Georgia Branch, AGC's initiative and leadership to organize and conduct this industry-wide Safety Stand Down in all areas of our state represents both a bold action and strong statement about the importance of safety to our construction community and workforce. It gives people in our industry an opportunity to come together with others grappling with the same issues to find solutions and take preventative action. The bottom line result is lives can be saved

and families can be spared the tragedy of losing a loved one."

Specifically, stand downs provide AGC Chapters, member firms and the entire construction industry with an opportunity to raise awareness of the need for increased vigilance toward the safety, health and well-being of our construction workforce. It is my belief that as an industry, we can never do enough to let our workforce know we care about their safety and must provide them with the education, tools and support they require to be safe. Chapter staff encouraged all contractors in the state to participate in our Stand Down regardless of their affiliation with AGC.

Since this was the Chapter's first Stand Down, it seemed obvious to us there was a strong need to focus on crane safety. It has received extra scrutiny and increased national media attention in recent months because of an alarming number of construction-related incidents and

fatalities occurring in several states. We wanted to do something positive and proactive that would help call attention to preventative crane safety measures. In addition to taking the necessary crane safety precautions for our workforce, we also want to do everything we can to reassure the public that contractors in Georgia are doing all they can to keep workers and the public safe. We want our communities throughout the state to have total confidence in our industry, we also want future workers who will help us address our labor shortages to know their safety is a primary concern to us.

To help prepare for our first Stand Down, we built on the results of a Crane Safety Taskforce. Under the direction of Mike Dunham, Georgia Branch, AGC convened this group in April. The taskforce produced some industry best practices for tower crane safety. These best practices were skillfully modified by AGC member safety directors and applied to all

Stand Down Defined: *Stand Down is based on a military concept that when a critical failure in safety leads to injury or death, the unit/division will stand down from active service to review how to ensure that such activities do not occur again.*

“Conducting a Safety Stand Down that reaches into all corners of our state and impacts thousands of construction personnel shows everyone Georgia Branch, AGC and its member firms are committed to the well-being of its workforce and workplace safety. Personally, the Stand Down helps me empower every worker on our jobs to understand they are our most valuable resource and their safety, health and well-being comes before everything else.”

– Chris R. Sheridan, President, Chris R. Sheridan & Company

“Crane accidents have been a recurring problem within our industry throughout the country. Convening this type of statewide Stand Down in Georgia creates a greater awareness of the problem and provides an opportunity for us to train on the issue of crane safety while other contractors are doing the same thing. We know the success of our efforts is dependent upon our ability to provide good training, positive reinforcement when crane safety is done right, and quick corrective action when crane safety is ignored.”

–Kevin Kuntz, Executive Vice President, McCarthy Building Companies

“Having the support of New South’s upper management for our safety program and this Safety Stand Down speaks volumes to what the industry stands for and the vital role safety professionals play to insure the well-being of our personnel. There is a fine line between safety directors and preachers – we both spread the gospel! It was exciting to be a part of this statewide initiative and feel like we can make a difference in peoples’ lives.”

–Chuck Mann, Safety Director, New South Construction Company, Inc.

types of cranes including crawlers, tower cranes, hoisting equipment, etc. These best practices (see sidebar on page 10) were the basis for the Toolbox Talk used during the Stand Down.

In addition to reviewing crane safety, those conducting the Stand Down on each jobsite engaged workers in informal discussions so new ideas for improving crane safety could surface and questions could be answered. We encouraged lots of participation, bringing about greater buy-in.

To make the most of their Stand Downs, several contractors hosted a breakfast for their workers and others handed out T-shirts and safety

hard hat decals to reinforce the safety message about cranes. Several Chapter members had their company owners and senior managers sitting in on their Safety Stand Downs to reinforce the importance of safety to their workforce. AGC staff, along with representatives of Affinity Service Group, the Chapter’s third party administrator and manager of our workers’ compensation program, CompTrust AGC MCIC attended several of the Stand Downs to observe first-hand how they were conducted and received.

In addition to a hard copy of PowerPoint slides covering best practices in crane safety, registered Stand Down participants each received a

Focus Four Hazards in Construction

OSHA reports the following four key areas in which fatalities occur. These are commonly referred to as the focus four hazards in construction.

1. Falls
2. Electrocutions
3. Struck By*
4. Caught In Between

*Crane safety is in the “struck by” category of accidents and fatalities.

In May 2008, Georgia Branch, AGC hosted AGC of America’s two-day complimentary Susan Harwood Grant Training on the Focus Four Hazards for all Georgia contractors regardless of their affiliation with AGC.

packet of information including “suggestions to prepare for a successful safety Stand Down,” a “crane inspection checklist,” and “talking points” for managers to use in conducting their meetings. Special thanks goes to Rob McKinney, safety director with J.M. Wilkerson Construction Company and chair of the Chapter’s Safety and Health Committee, who led the development of the Power-Point presentation containing the talking points for each Stand Down facilitator. Additional thanks goes to

Jorge Cisneros, corporate safety director with Holder Construction Company for volunteering to translate our handouts into Spanish.

I am very excited we were able to successfully conduct our first Stand Down with broad support. Initially, some AGC members indicated they weren’t using cranes and maybe wouldn’t participate in the Stand Down. I encouraged them to focus on the future and how this program could prepare their field employees for the day their jobsites will have

a crane. They decided to participate and found it to be an extremely worthwhile exercise. Many subcontractors who are not AGC members who were working on an AGC general contractor project were exposed to the Stand Down and our Chapter’s safety program for the first time. “It is all about opening up a conversation to keep our workers safe and thanks to Georgia Branch, AGC, great strides in safety are being made,” says Coe.

Based on member feedback, current plans are to conduct two Stand Downs every year focusing on best practices for different safety topics each time. With regard to crane safety, we are continuing to keep this topic front and center in our members’ minds and actions. Resources are being identified by AGC member safety directors to develop a comprehensive basic tower crane safety training program to offer members and the contractor community.

In the end, Georgia Branch, AGC’s goal is to improve safety on every jobsite in Georgia and instill a stronger safety culture at every company. The worker pouring concrete or working around crane activities on a competitor’s jobsite today may be doing that same job for your firm three months from now. It helps all general contractors if they can work together and not compete on safety so the industry has a consistently trained and safe workforce in all areas of the state. This is the mindset we are striving to cultivate, and with the support of our members, the Chapter’s first statewide Stand Down helped lay a strong foundation.

You and your firm are encouraged to participate in our next Stand Down on February 13, 2009 focusing on fall protection. In addition to myself, we have a dedicated team of safety professionals to answer your questions. Please call or contact me at 678-298-4104 or watson@agcga.org. ■

Top 10 Best Practices in Crane Safety

1. **Check for Solid Foundation** — verify soil type and make sure there is adequate ground compaction. Outriggers should be fully extended.
2. **Insure Swing Radius Protection** — make sure swing area is barricaded and use red danger tape.
3. **Conduct Boom Inspection** — lower the boom weekly, inspect tower and check bolts. Check cab for banned objects.
4. **Review Quality and Procedures of Annual Inspection** — ask for inspection paperwork or require certification that inspections have been properly conducted within last 12 months. Inspection results need to be written and not just a sticker. Note documentation of any broken items. Assess to what degree third-party sources are used for inspections.
5. **Check Daily Inspection Logs** — review the operator’s daily logs and make sure any broken items are repaired.
6. **Verify Operator Credentials** — verify operator’s formal training and ask for NCCCO card.
7. **Enhance Quality of Communication** — use radios instead of Nextels to avoid time delays and make sure each operator has a designated channel free of interruptions. Provide back up means of communication such as cell phone or CB radio. Make sure each rigger has a radio. Flagger should have radio contact with operator. General contractors need to have firsthand, up-to-date knowledge from subcontractors when cranes are going to be used.
8. **Use Qualified, Trained Rigger** — have a designated rigger for each operator and insure they are knowledgeable. Review standard crane hand signals in advance. Designate the rigger so they are easily identifiable to operator, ie. wear color coded hard hat, place red X on hard hat or wear orange vest.
9. **Review Coordination Procedures** — coordinate hook time between all contractors and set up schedule board for “hook time.” Determine swing path.
10. **Establish Guidelines for Erection and Dismantling** — provide clear, open area and keep other trades away to insure their safety. Or consider a possible work plan during times with less foot traffic.



Rogers Construction Company, Sunrise of Johns Creek.



RA-LIN and Associates, Inc., Carrollton.



Turner Construction Company, Barrow County Detention Center, Winder.



Heaton Erecting, Inc., Office Headquarters, Forest Park.

Over 26,000 people participated in the Georgia Branch, AGC Safety Stand Down on nearly 400 jobsites. Some programs hosted less than 10 employees, other hosted more than 500. Many offered morning refreshments and prizes during the Q & A portion of the program, and everyone was empowered with the basics of crane safety to begin their day on August 8, 2008!



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feature



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Advocacy on Your Behalf Contributed to Georgia's New Lien Law



By Michael T. Dunham
Georgia Branch, AGC
Executive Vice President

Many of you are probably familiar with the “legislative process” as it happens in the halls of the Georgia Capitol. It’s full of committee meetings, public hearings and debates on the chamber floors about bills introduced for consideration before the General Assembly. Often, many of these hearings and debates, and especially the contentious ones, are covered in the media. Certainly, Georgia Branch, AGC is active and visible during this part of the legislative process, advocating every step of the way what is in your best interest and that of the construction industry as a whole.

What I find most people are not aware of is what goes on behind-the-scenes to get to the point when a legislator is ready to introduce a new bill or propose new legislation. It is here where Georgia Branch, AGC often performs one of the Chapter’s most valuable yet less visible roles that typically is harder for our members to appreciate. While you are busy running your company, you can rest assured Georgia Branch, AGC is vigilant and making sure we have a voice in these early meetings when differing groups come together around a single issue to develop consensus positions. It is these positions which ultimately become formal legislative proposals.

Often many new pieces of legislation with an impact on our members and the construction industry are discussed or developed at the same time. Staying on top of everything so nothing slips through the cracks can be challenging to say the least. Certainly the quality of relationships our Chapter has built mostly under the direction of Mark Woodall, Director of Governmental Affairs, has provided us with a tremendous network of agencies, politicians, lobbyists, etc. that helps us stay connected and in the loop.

To better understand this “intangible” benefit of your membership and the advocacy role Georgia Branch, AGC provides, I’d like to share the story of what happened leading up to Georgia’s new lien law. Chapter staff and

several members recently completed a two-year journey to help develop new, and what we consider, improved language in Georgia’s lien statute. The story ends with Governor Perdue signing SB 374 into law on May 14, 2008, creating a new lien law for all Georgians to follow as of March 31, 2009. The bigger story from my perspective is the amount of time and dedication it took to bring a solution to just one problem across the “legislative finish line.”

The story starts in the summer of 2006 when Senator Mitch Seabaugh (R - Majority Whip, District 28 - Sharpsburg) contacted Georgia Branch, AGC to learn more about Georgia’s lien law from our members’ perspective. During a meeting with Chapter members and our association staff, he described several problems his constituents were having in settling lien disputes. One homeowner told him they had a lien placed on their home due to a contractor failing to pay for materials used during a project. Although the homeowner paid the contractor in full for the services rendered, they were still held responsible for the illegal actions of the contractor by the supply company.

As a direct result of this meeting and the Senator’s subsequent research, he introduced three bills, SB 63, 64 and 65, at the beginning of the 2007 Legislative Session. These pieces of legislation sought to basically turn the lien law upside down and catch everyone’s attention! While they were not the end result to improving Georgia’s lien law, they had far reaching implications. Dozens of representatives from all industries such as lawyers, contractors, owners and suppliers showed an interest in helping chart the course for amending this section of Georgia code.

After receiving input from all sides, it was decided the issue would be best addressed through the creation of a legislative study committee. The Senate passed legislation formalizing the Lien Law Study Committee and

Senator Seabaugh assured Georgia Branch, AGC a "seat at the table" on this committee's Industry Advisory Board. Shortly after the 2007 legislative session ended, the committee began to fulfill its charge of reviewing the lien statute and determining whether there were aspects of the current lien law that needed to be "fixed" or modified to make the lien process more clear and consistent, more functional, or more closely reflective of both the commercial and residential construction processes as they are carried out today.

Representatives from dozens of associations, including Georgia Branch, AGC, participated in the meetings throughout the remainder of 2007. (See sidebar on page 15 for list of participating associations.) While all representatives participated in the full Study Committee, only a few were asked to contribute to the work of sub-committees which drafted sections of the proposed changes presented to the Senator just prior to the 2008 Legislative Session. Georgia Branch, AGC was pleased to provide space for many of these meetings in our Chapter offices, which allowed us further access to information and individuals involved with this process.

In January 2008, SB 374 was introduced by Senator Dan Weber (R, District 40 - Dunwoody) and carried on the floor of the House of Representatives by Matt Ramsey (R, District 72 - Peachtree City) as a work product of the

Senate Study Committee and the Industry Advisory Committee. It represented the concerns of more than a dozen stakeholders and hundreds of hours of collaboration and legislative drafts.

Some may think once you get to this point in the process, "it's all down hill from here." Not so! While Senator Weber guided SB 374 through the legislative process, several amendments were offered. Ultimately, the bill passed the General Assembly in substantially the recommended form. The House of Representatives passed the bill on April 2 by a vote of 160 to 3 and the Senate overwhelming passed the bill on April 4 with a vote of 45 to 1. Governor Perdue signed it into law a month later.

From the outset of conversations starting in the summer of 2006, the primary goal of Senators Seabaugh and Weber and others involved was to create the fairest lien process for all parties with a stake in the outcome. Two years later, through a rigorous but collaborative effort, citizens and Georgia businesses will have an improved lien law for years to come that is less adversarial and more respectful of everyone's needs.

Georgia Branch, AGC's extensive involvement on this issue from the beginning all the way to the finish line demonstrates how our government works. It also underscores the critical role our Chapter fulfills as the voice, watchdog and advocate for the construction industry.

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This is just one of hundreds of examples in which our association works on a daily basis to better the business climate for Georgia contractors.

This piece of legislation is a major victory for Georgia Branch, AGC's 2008 pro-active agenda. The lien law affects everyone involved in a construction project. Owners, contractors, suppliers, and all other companies on the job need to educate themselves on the new changes, many of which are quite significant. ■

You can read more about the lien law changes and the impact it will have for you and your company at www.agcga.org. Click on News and then Useful Industry Articles.

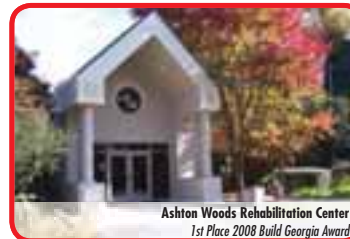
Participating Associations in Developing the New Lien Law

The interests of the stakeholders in this consensus process were extremely varied. Georgia Branch, AGC's input kept the well-being and best interests of contractors at the forefront of the discussion. Participants include the following:

- American Institute of Architects – Georgia Chapter
- American Subcontractors Association – Georgia Chapter
- Associated Builders and Contractors – Georgia Chapter
- Atlanta Apartment Association
- Atlanta Electrical Contractors Association
- Building Owners and Managers Association
- Construction Suppliers Association
- Council of Superior Court Clerks
- Georgia Association of Realtors
- Georgia Bankers Association
- Georgia Branch, AGC
- Georgia Concrete Aggregate Association
- Georgia Credit Union Affiliates
- Georgia Engineering Alliance
- Georgia Highway Contractors Association
- Georgia Lien Rights Coalition
- Georgia Manufactured Housing Association
- Georgia Real Estate Investors Association
- Georgia Trial Lawyers Association
- Georgia Utility Contractors Association
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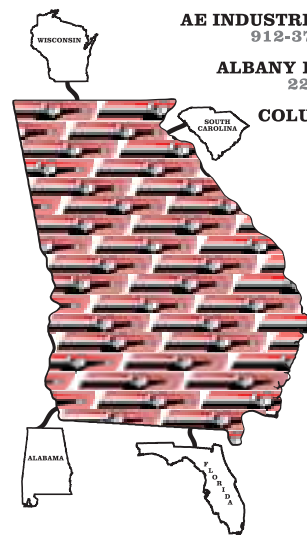
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Advantages in Using ConsensusDOCS Over AIA's A201-2007 Edition



By Philip E. Beck, Partner,
Smith, Currie & Hancock LLP

In late 2007, AGC of America and 22 other associations united for the first time in the history of the industry to publish a fresh set of new construction documents known as ConsensusDOCS. Upon the release of these documents, AGC and several other associations essentially folded their contract documents program into this consensus process. At the March 2008 AGC of America Annual Convention, the national membership voted not to endorse the AIA A201 Document.

Georgia Branch, AGC is pleased to reprint the following article by Mr. Beck to help contractors understand advantages in using ConsensusDOCS.

- The ConsensusDOCS are the result of a collaborative effort by all stakeholders (contractors, owners, designers, subcontractors and suppliers), and thus have “buy-in” from all participants; the AIA Documents are created by architects.
- The ConsensusDOCS allow the owner to establish a role for the architect during the construction phase that matches the owner’s needs and desires; the AIA Documents keep the architect in the center of everything during the construction phase – a role many owners no longer wish the design architect to play.
- The ConsensusDOCS more fairly allocate risks among the parties and match responsibility and authority; whereas the AIA Documents give the architect a lot of authority, with little responsibility or accountability.
- If there is a genuine dispute as to whether certain work the contractor is directed to perform constitutes a change to the contract, or as to the value of a change, the AIA Documents require the contractor to proceed with the work at its own expense (i.e., finance the work for the owner), in the hope that it may be reimbursed later; the ConsensusDOCS require the owner and the contractor to split the estimated cost of the work, with both parties reserving the right to determine ultimate responsibility later.
- In the case of a termination for convenience, the AIA A201 is probably overly generous to the contractor, providing that the owner must pay the contractor all of the



profit the contractor would have earned on the unperformed work. The ConsensusDOCS require the parties to negotiate an amount upfront that the owner would pay the contractor, in addition to the value of the work performed prior to termination. The AIA provision creates a strong incentive for the owner to terminate the contractor for default rather than for convenience.

- The ConsensusDOCS gives the contractor the right to require the owner to demonstrate its ability to fund the project. This benefits both the contractor and all of subcontractors, suppliers, etc. By contrast, the AIA has modified the A201 to limit the contractor’s right to request financial assurance to the following times and circumstances: (1) prior to the commencement of the work, or (2) after commencement of the work only if (a) the owner fails to make payments (plural), (b) the contract price materially changes as a result of changes in the work, or (c) the contractor “identifies in writing a reasonable concern regarding the owner’s ability to make payment when due.”
- The AIA Document A201 inhibits, and in fact prohibits, communication between the owner and contrac-

tor, stating that: "Except as otherwise provided in the contract documents or when direct communications have been specially authorized, the owner and contractor shall endeavor to communicate with each other through the architect about matters arising out of or relating to the contract." Lack of communication is, in my experience, the major cause of construction disputes and litigation.

- The A201 requires the contractor to name the owner and the architect as additional insureds on the contractor's general liability insurance policy. This requires the contractor to be the owner's *and the architect's* insurance provider, and costs the contractor money. It also requires the contractor to provide completed operations insurance coverage.
- Under the AIA family of documents, the A201 General Conditions are incorporated by reference into the contract itself. This can lead to confusion and inconsistencies between the contract and the general conditions. Also, many subcontractors never see the general conditions. This can become a real problem, especially if the owner modifies the A201. The ConsensusDOCS take the approach of including all of the basic general conditions into the body of the contract itself.
- While the A201 is intended to be a "one-size-fits-all" document, it really is written more from the perspective of a lump sum contract; as a result, some of the provisions are ambiguous when applied to a cost-reimbursable contract.
- Obviously, the AIA Documents have a long history and track record, and dominate the current market. However, the fact that the AIA Documents are written by architects (with limited input from other segments of the industry, who had no seat at the table), whereas the ConsensusDOCS are the product of a collaborative effort by all segments of the industry, positions the ConsensusDOCS well to be more universally received and to be perceived as more fair and balanced, in the long run.
- It is anticipated that the ConsensusDOCS will be revised on a much more frequent basis than the every-

10-year cycle followed by AIA, which will allow the ConsensusDOCS to continue to evolve and to better reflect current technology and best practices.

- Although the AIA Documents have now, in the 2007 edition, created a new entity called the "Initial Decision Maker" (IDM) who the parties can designate to be the initial decider of claims and disputes instead of the architect, the default if no IDM is designated, is still to the architect. With all due respect to architects, there is nothing in their training or background which particularly qualifies them to be a judge, jury or arbitrator of construction claims and disputes. Moreover, architects are often presumed to side with the owner, since it is the owner who pays them, creating an inherent conflict of interest.
- While the AIA Documents dispute resolution procedure has changed radically in the 2007 edition of the AIA Documents (e.g., the parties can now choose between arbitration and litigation when they sign the contract), the AIA Documents still create an adversarial system; the ConsensusDOCS encourage the parties to resolve disputes on their own, through direct negotiation, before involving any third parties (again supporting the goal of effective communication).
- The 2007 changes to the AIA Documents were designed, in part, to give the owner greater control of the subcontractor payment process; for example, it authorizes the issuance of joint checks in certain circumstances. While subcontractors certainly deserve to be paid for their work, it may be inappropriate for the owner to interfere with the relationship between the general contractor and its subcontractors, and many owners do not want that "right" because subcontractors will look to them to exercise it.
- The new 2007 A201 requires the contractor to submit, for the architect's approval, a submittal schedule. This is a good idea. However, the penalty for failing to do so is too severe: if the contractor fails to submit a submittal schedule, the contractor is not entitled to any additional compensation or a time extension based upon the owner's or the architect's slow processing of submittals, *regardless* of how long they take - in other words, the architect has a blank check to take as long as it wants to process submittals and the contractor has no right to complain. ■



About the author: Philip E. Beck, Esq. is a partner with Smith, Currie & Hancock LLP in Atlanta. He is a national authority on ConsensusDOCS and has led numerous seminars for AGC of America, Georgia Branch, AGC and other organizations to help industry professionals understand the benefits of these new construction contract documents. Phil can be reached at pebeck@smithcurrie.com.

An Employee Verification Tool to Meet Immigration Law Requirements

In the First Quarter 2008 issue of *Georgia Construction Today*, Mark Woodall, the Chapter's Director of Governmental Affairs, wrote an article titled "Complying with Immigration Reform Laws in Your Public Works Contracts." The topic of immigration reform and what employers must do to meet federal and state laws continues to be hotly debated and extremely relevant in today's political climate.

While the industry is awaiting rulings on a recent executive order issued by President Bush that states all federal contractors must use E-Verify for all employees, it is certain that public works contractors in Georgia with 100 or more employees are required to verify all **new hires**. Many of these businesses use E-Verify to complete this process. The following information provided to AGC by the Department of Homeland Security helps contractors understand how they can use E-Verify to comply with federal and state immigration laws.

To review the article referenced above, which includes sample contract language to incorporate into public works subcontracts, please visit Georgia Branch, AGC's website at www.agcga.org. Click on News, then on Chapter Magazine Archives.

What is E-Verify?

E-Verify is an Internet-based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), allowing participating employers to electronically

verify the employment eligibility of newly hired employees.

How does E-Verify Work?

E-Verify works by allowing participating employers to electronically compare employee information taken from the Form I-9 (the paper-based employment eligibility verification form used for all new hires) against more than 425 million records in SSA's database and more than 60 million records in DHS' immigration databases. Results are returned in seconds.

Why use E-Verify?

With virtually one click, E-Verify can match your new hire's Social Security number and other Form I-9 information.

E-Verify reduces unauthorized employment, minimizes verification-related discrimination, is quick and non-burdensome to employers and

protects civil liberties and employee privacy. Initial verification returns results in seconds.

What is the photo tool?

The photo screening tool feature allows an employer to check the photo on his or her new hire's Employment Authorization Document (EAD) or Permanent Resident Card (green card) against the 14.8 million images stored in DHS immigration databases.

What are my responsibilities?

- Employers must post a notice informing employees of their use of E-Verify as well as anti-discrimination posters.
- E-Verify must be used for new hires only. It cannot be used to verify the employment eligibility of current employees.
- E-Verify must be used for all new hires regardless of national origin or citizenship status.



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While the industry is awaiting rulings on a recent executive order issued by President Bush that states all federal contractors must use E-Verify for all employees, it is certain that public works contractors in Georgia with 100 or more employees are required to verify all **new hires**.

- E-Verify must be used only after hire and after completion of the Form I-9.
- Employers may not pre-screen applicants through E-Verify.

What type of response will I get?

The system generates one of three possible results:

- **Employment Authorized:** The employee is authorized to work.
- **SSA Tentative Nonconfirmation (TNC):** There is an information mismatch with SSA.
- **DHS Verification in Process:** DHS will usually respond within 24 hours with either an Employment Authorized or DHS Tentative Nonconfirmation.

What do I do if my employee receives a TNC?

- If an employee receives an information mismatch from their Form I-9 and SSA and DHS databases, the employer must promptly provide the employee with information about how to resolve the information mismatch, including a written notice generated by E-Verify.
- If an employee decides to resolve the information mismatch, the employer must provide the person with a referral letter issued by E-Verify that contains specific instructions and contact information.

Can an employee continue to work while they resolve a TNC?

- Employers may not take any adverse action against an employee because he/she contests the information mismatch. This includes firing, suspending, withholding pay or training, or otherwise infringing upon his/her employment.
- The employee must be given eight federal government work days to contact the appropriate federal agency to resolve the information mismatch.

How do I register?

Registration is completed online. Visit www.dhs.gov/E-Verify for more information. To participate, an employer must register online and accept the electronic Memorandum of Understanding (MOU) that sets forth the responsibilities of the DHS, SSA and the employer. ■



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Succession Planning for the Family-Held Business

By James M. Harris, III, CFP®, CIMA,
The Harris Group @ Merrill Lynch

Succession Planning: *The process of putting together a plan of identifying and preparing suitable personnel (family and/or staff), to replace key players within an organization as their terms expire. The purpose of succession planning is to continue harmony within the business and family, as well as ensuring the survival of the business through generations to come.*

How do successful businesses survive generation after generation? The key is having a solid plan in place to ensure the success and endurance of your business; 63 percent of family enterprises in North America have no written strategic transition plan. It is no wonder why less than one-third of family businesses survive into the second generation and only about 10 percent make it into the third generation. Please take the quiz on page 23 to assess your current need for succession planning. Following the quiz, each question is explained in greater detail, complete with steps to take to sustain a thriving business for years to come.



"A company leader is encouraged to write a business plan, an estate plan and a succession plan all at once since they are interdependent."

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Assessing Your Need for Succession Planning

1. Are methods being utilized to reduce or eliminate estate taxes? Y / N
2. Do you have techniques in place to avoid having to sell your business in haste? Y / N
For example, is there a “buy-sell” agreement in place? Y / N
3. In order to bolster your succession goals, have you considered options such as corporate structures or stock-transfer techniques? Y / N
4. Is your retirement cash flow security independent of your business? Y / N
5. Has your business been valued within the past five years? Y / N
6. Have you identified your successor? Are your goals and vision clearly defined in the event of a transfer of ownership and management? Y / N
7. Did (Are) you lay(ing) the groundwork for your children to take over the business? Y / N
8. Do you believe in the benefits of having your children work outside the family business immediately after graduation? Y / N
9. Is your children’s area of responsibility defined and are you aware of the importance of leadership/ownership roles for them? Y / N
10. Do you have a date set for your retirement? Y / N

A negative response to any of these questions indicates the need for succession planning.

Now, some answers.

1. First of all, never underestimate the value of a properly written will. Also, consider other methods, including: gifting, family limited partnerships and irrevocable life insurance trusts.
2. A “buy-sell” agreement is an agreement between co-owners of a closely held business that stipulates the sale of the business in the event a partner dies, is incapacitated, or retires. It guarantees the business has a buyer, creates liquidity, sets a fair selling price while all owners are well, and finally, fixes value.
3. Different types include: family limited partnerships, limited liability companies, ESOPs and M&A opportunities.
4. One of the central goals that you should have while writing your business plan is to create financial security that has no ties to the business. If you are financially independent, you have no need to rely on the financial support of the business after you have retired.
5. Ever changing tax laws, economic environments and family dynamics are the reasons it is important to have your business valued periodically.
6. Long before succession takes place, I encourage the founder to write a business plan, an estate plan and a succession plan all at once since they are interdependent. It is important to put together an advisory board which consists of your accountant, your attorney and an organizational development expert who meet three to six times per year. This is a long process that cannot be underestimated.
7. Begin laying the groundwork for your children when they are young by talking about the business at home. Be sure to make a concerted effort to present a balanced perspective on the family business. Don’t focus on only the bad aspects of the business. This will allow your children to better appreciate and understand the business. On the other hand, let your children be aware that joining the family business is a choice, not a requirement, and be supportive of their decision.

8. Many family business successors agree that there are benefits to their children getting outside experience for three to five years prior to joining the business. They can build

their own identities, get outside knowledge, increase their self-confidence, bring back knowledge to the family business, mature, make mistakes, understand the difficulties of

a job search, discover their market value and take criticism. But the No. 1 reason is they will learn that the grass isn't always greener on the other side of the street and may, in turn, take pride and realize the value of being a part of a family business.

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9. a. It is essential that when you bring your son or daughter into the family business, their positions are existing, meaningful and defined. You both should know how much the job will pay and what is expected. As your child gains experience and competency, increase the number of areas of responsibility. Also, the rest of the employees will know how your child fits into the business hierarchy. This will decrease the likelihood your child will be resented, and their position is one that their progress is measurable.

b. When a child enters the business, consider having a valuable, loyal and secure employee to act as their mentor. This mentor should possess complimentary skills to yours. Make a plan for how long the mentorship will last and what role your child will enter upon ending the mentoring agreement.

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10. It is vital when going through your planning process that you determine a realistic, financially feasible retirement date. When your plans are complete, involved parties should be aware of precisely when the leadership evolution process will be complete and when you will be handing your business to the next generation. It is difficult to let go of the responsibility, authority and control, but it is necessary that you are com-

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mitted to the date, your staff is aware of the plan and your successor can depend on you to follow through.

Conclusion

Successfully transferring your business to the next generation is the ultimate management challenge. You can increase your chances for success by believing that succession is a process that may take 15 to 20 years to complete. These strategies should only be used as a guideline. Seek advice from experts, as well. ■

About the author: James M. Harris, III, CFP®, CIMA (Jay) and The Harris Group @ Merrill Lynch are a boutique team that only work with private, family-held businesses. Their value lies in providing family wealth education, business succession planning and wealth management advice in a cohesive plan.



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