



## Better Contracts, Better Projects: The ConsensusDocs Solution



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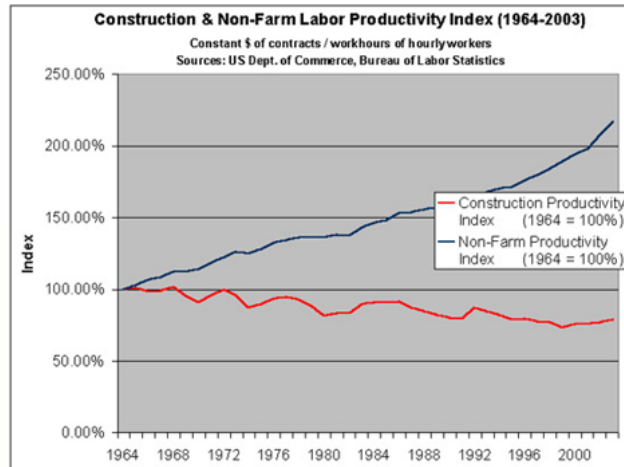
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# Inefficiency Struggles for Construction



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## Bad Contracts = Bad Results

- Canadian study  
Exculpatory Clauses  
Increases Price 8-20%
  - Site conditions
  - Delays
  - Liquidated damages
  - Indemnification
  - Sufficiency of contract docs
- CII Study on Contracts
  - Risk Contingencies inflate prices
  - Best Contractors & Subs Seek the Best Owners
  - Worst contracts get worse results.

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## Typical Construction Contracts

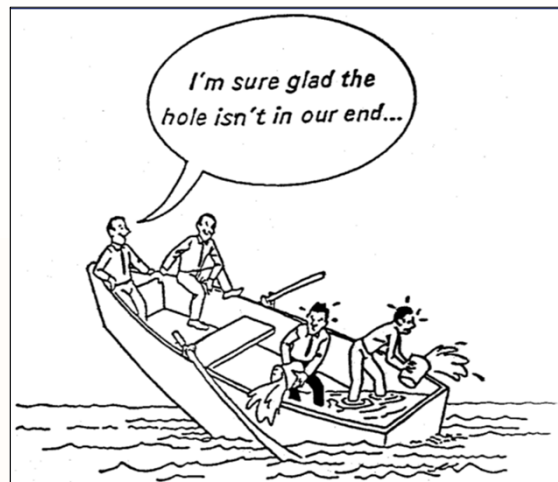
- Biased – typically favor the drafting association
- Modifications exceed the original “standard form”
- Parties try to push risk away rather manage it
- Industry trending towards collaboration.

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## Avoiding Bad Contract Clauses

- Contracts should memorialize a business relationship (not declare war)
- Project success is a win for all
- A bad project is a failure for all



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# Standardized Contracts Can Better Streamline Projects

- Contracts set the foundation of every project
- Avoiding contractual silos creates greater efficiency and profit
- [Click here to download white paper](#)



# The ConsensusDocs Coalition 40 Construction Industry Associations



## Consensus Drafting Principles

- Reduce transactional costs & inefficiencies
- Empower Owners.
- Best Practices + Fair Risk = Better Projects
- Change Zero-Sum to Win-Win
- Written in plain English.



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## 100+ Contracts



- **200 Series** – General Contracting
- **300 Series** – Collaborative
- **400 Series** – Design-Build
- **500 Series** – Construction Management
- **700 Series** – Subcontracting
- **800 Series** – Program Management
- **900 Series** – Public-Private-Partnerships

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## Why ConsensusDocs? Because it is fair to Sub and GCs (and endorsed by both)

**Fair Allocation of Risk.** ConsensusDocs documents offer a fair and reasoned allocation of the rights, responsibilities, risks and rewards in the relationships among the members of the construction team.

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## Why ConsensusDocs? Better Payment Terms

- **Prompt Pay:** Subs paid w/i 7 Days of Owner payment
- **Pay-When-Paid (Not Pay-if-Paid Clause).**
  - Prime contractor must pay the subcontractor for properly performed work, even if owner doesn't pay the Prime
- **Right to Suspend Work for Nonpayment.** Sub may suspend work payment isn't received timely.

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## Why ConsensusDocs? Better Payment Terms

### Retainage

- ConsensusDocs prime agreement provides no further retainage once the project is 50%
- ConsensusDocs subcontract flows equal retainage percentage down to the Sub
- ConsensusDocs allows for release of retainage to early finishing Subcontractors if provided for in the Prime agreement.

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## Why ConsensusDocs? Better Change Order Management

- Prime agreements require the Owner to pay 50% of the amount in dispute for changes that are not agreed to (interim directive or construction change directive)
- These terms flow to the Subcontracts if in the prime agreement.

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## Why ConsensusDocs? Better Financial Info

### **Access to Project Financial Information**

Subcontractor can easily obtain copies of the prime contractor's payment bond, insurance policies and other documents a subcontractor needs to exercise its rights. May request owner financial info from GC and if not provided may contact the owner directly.

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## Why ConsensusDocs? Better Protection of Lien Rights

### **Explicit Prohibition on Unconditional Lien waivers**

“In no event shall Subcontractor be required to provide an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.” CD 750 8.8.

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## Why ConsensusDocs? Better Communications, Less Disputes

### **Dispute Mitigation & Resolution**

- Parties must actually talk to one another before dispute become intractable
- Timely and direct communication has been shown to be effective at resolving disputes instead of letting them escalate.

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## Why ConsensusDocs? Because it makes it harder for Construction Litigation Attorneys to Make a Living

- Over 10 years of usage
- Billions of construction in place has lead to significantly fewer disputes and NO caselaw
- A successfully completed project becomes a successful project for all participants.

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## How Can You Advocate for Fair and Balanced Contracts?

- Engage the project owner and General Contractor before the project is put out for bid
- Condition bids on the ConsensusDocs form 750 - *Standard Agreement Between Constructor and Subcontractor*
- *You don't get, what you don't ask for: request your most important reasonable changes using ConsensusDocs lang.*
- Manage all Pre-Qualifications in form 721 - *Statement of Qualifications (which are free, along with subcontract bond and payment application forms)*

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## Standardized Contracts Help Streamline Projects

- Contracts set the foundation of every project
- Better predictability, efficiency, and profit
- [Click here to download white paper](#)



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## Questions?

For more Information:  
[www.ConsensusDocs.org](http://www.ConsensusDocs.org)  
(866) 925-DOCS (3627)  
[support@consensusdocs.org](mailto:support@consensusdocs.org)

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