

PRACTICAL COMPLETION

This term is often mistaken to be the point at which a Construction Contract has been completed. In actuality it defines a point in time when a contract passes from the stage of active construction to a period of Maintenance or Defects Liability on the part of the Contractor.

This is not to say that construction work does not continue beyond Practical Completion, it can, and I submit, it almost always does.

Practical Completion, a term that we have inherited as part of our Colonial heritage (from the Royal Institute of British Architects), is used in the Standard Form of Contract prepared by the Construction Industry Council in Jamaica to define a stage in that Contract. Elsewhere it may also be known as Substantial Completion, a term used in the FIDIC (International Federation of Consulting Engineers) form of contract and also in the American Institute of Architects (AIA) form of contract.

A point to be noted is the fact that both Practical and Substantial are not absolutes and are therefore subject to interpretation by the Architect, Supervising Officer or Contract Administrator as designated in the particular form of contract used. This is an important point that I will soon return to.

In an ideal world construction would cease on or before the date stated in the Appendix of a construction contract as the Date of Completion but invariably things happen and a Contractor may be forced to claim for an extension of time for one reason or another before the Date of Completion is reached. If, in the opinion of the Architect or Supervising Officer, the reasons claimed are contractually valid then an extension of time to the contract period and by extension the Date of Completion may be granted.

When the Contractor is of the opinion that he has completed the work under the contract then he will call for an Inspection and request a Certificate of Practical Completion or, a Taking-Over Certificate (under the FIDIC form of contract) by the Architect or Supervising Officer.

You will note that I have again referred to the Architect or Supervising Officer and this is because they, as the person named in the Contract, are the only ones who can issue this certification. A Practical Completion Certificate can not be issued by the Owner for a number of good reasons which I will now elaborate on.

This might be a good time to actually define Practical Completion.

DEFINITION: The Date of Practical Completion of the Work or designated portion thereof is the Date certified by the Architect when in his/her opinion, the construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the Work or designated portion thereof for the use for which it is intended.

Again, please note the use of the terms “in his/her opinion” and “sufficiently complete” which are both subjective and not absolute.

The certifying of a date is important for a number of reasons:

1. Once Practical Completion is certified the Contractor becomes eligible for the partial release of Retention monies (usually a half) which have been deducted from payment certificates (up to an agreed limit stated in the Appendix of the Contract).
2. The date of Practical Completion marks the start of the Defects Liability Period.
3. The date established will determine how much (if any) additional compensation the Contractor may be entitled to or, if no extension of time has been granted, be held liable for Liquidated or Ascertained Damages as defined in the Appendix of the Contract.
4. This is the point in time when the Owner/Client should take over the building and release the Contractor from the requirement to maintain insurance on the property.

It may happen that a Client/Owner is not in agreement with the Architect or Supervising Officer that a project has attained Practical Completion for a number of reasons.

Sometimes a client who is unfamiliar with the process of a Construction contract may have the mistaken expectation that, before Practical Completion can be certified all defects of materials and/or workmanship will have been made good and that no work left should be left outstanding for completion. Extending the construction contract in this way could create undue hardship for the Contractor and, if certification is viewed to have been vexatiously withheld this might be deemed a breach of contract in litigation.

On the other side of the coin, agreeing to accept a building with numerous defects or work remaining to be completed even if observed and duly noted for the Contractor's attention can be a risky undertaking. This is why the part of the definition of Practical completion that states that the "the Owner may occupy the Work or designated portion thereof for the use for which it is intended" is a good measure when applied to an otherwise subjective definition.

There is clearly a fine line that an Architect must walk when issuing a Certificate of Practical Completion not being swayed by undue influence from the Contractor or even the Owner (who pays him/her) in making an impartial assessment.

In point of fact, certification for Practical Completion is a process which begins once the Contractor gives the Architect notice that he/she will be ready for inspection on a particular date. This notice should be shared with all members of the construction team as well as the Client/Owner so that they may be in attendance. At the end of the inspection (which can conceivably be held over several days if the project is large and/or complicated) a detailed list of defects and notes of work outstanding is produced, not just by the Architect for fit and finish or materials and workmanship not in accordance with the contract but also with the input of Engineers, electrical, mechanical, structural and civil as well as the project's Quantity Surveyor. This list, once compiled by the Architect, is appended to the Certificate of Practical Completion.

A properly worded Certificate of Practical Completion will contain a signed undertaking from the Contractor to make good defects noted and complete all outstanding items of work in a specified time. This time period will generally not be as generous as the period for Defects Liability stated in the contract Appendix and would typically be stated in days or weeks rather than months.

I submit that the form of Certificate of Practical Completion published by the Jamaican Institute of Architects is an excellent one (one I have used personally for over forty years). Beyond the signature of the Architect, certifying the Date for Practical Completion it must also be signed by the Contractor, agreeing to complete or correct the work on the appended list in a specified period of time. There is also a place for the Owner to sign agreeing a date on which he/she will assume full possession.



A J.I.A. Publication

CERTIFICATE OF PRACTICAL COMPLETION

OWNER	<input type="checkbox"/>	QUANTITY SURVEYOR	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>	CONSULTANT	<input type="checkbox"/>
CONTRACTOR	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

PROJECT:
(name, address)

ARCHITECT'S PROJECT NO.:

ISSUE DATE:

TO (Owner)

CONTRACTOR:

┌

┌ CONTRACT FOR:

└

└ CONTRACT DATE:

PROJECT OR DESIGNATED AREA SHALL INCLUDE:

We certify that the Work performed under this Contract has been reviewed and found to be substantially complete. The Date of Practical Completion is hereby established as which is also the date of commencement of all warranties and guarantees required by the Contract Documents.

DEFINITION OF DATE OF PRACTICAL COMPLETION

The Date of Practical Completion of the Work or designated portion thereof is the Date certified by the Architect when in his/her opinion, the construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the Work or designated portion thereof for the use for which it is intended.

A list of items to be completed or corrected, prepared by the Architect, is appended hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

ARCHITECT BY DATE

The Contractor will complete or correct the Work on the list of items appended hereto within _____ days from the above Date of Practical Completion.

CONTRACTOR BY DATE

The Owner accepts the Work or designated portion thereof as practically complete and will assume full possession thereof at _____ (time) on _____ (date).

OWNER BY DATE

The responsibilities of the Owner and the Contractor for maintenance, utilities and insurance shall be as described overleaf:

(NOTE) — Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage)

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It would be unreasonable to assume that all defects can be noted at the time of inspection and it is precisely for this reason why all construction contracts call for a Defects Liability Period (also known as the Maintenance Period)

During the Defects Liability/Maintenance Period (which generally lasts six months) the Architect, his/her fellow consultants and, the Contractor are essentially on call to the Owner. The owner will doubtless find other defects to be made good before Final Inspection is held and would want to bring these to the attention of the Architect and through him/her have them rectified by the contractor.

It is generally assumed that after the Owner has had the use of his/her building for six months any defects that were not evident at the time of Practical Completion will have become noticeable and can be brought to the attention of the Contractor who can either make them good or have the cost of making them good by others quantified and deducted from the sums owed to the Contractor in the Final Account and/or from the final portion of Retention money held.

Beyond the Defects Liability/Maintenance Period and the Final Inspection there is no legal means for the Architect to have a Contractor make good any defect that might become evident but it might suit him/her well to act as an intermediary nonetheless, between the Owner and the Contractor to seek to have the defect rectified. There will always be a recourse for the Owner to go to the courts to seek compensation for defective workmanship or Latent Defects on the part of the Contractor. Interestingly, if it is thought that the Architect knowingly and willfully omitted to list the said defect during the course of the contract and his/her inspections then the Architect might also be held liable for the cost of repairs.

In closing I would like to mention two other forms of Practical Completion, one is Sectional Completion and the other I would refer to as Owner Certified Completion.

The first term is self-explanatory as any project may be divided in portions or stages and, before Practical Completion of the entire Contract, the Owner may take possession of a portion of the work with the consent of the Contractor. The Architect shall then provide an estimate for the value of this portion of the work so that retention payments or damages that may come due can be adjusted accordingly by a ratio of the value to the total contract sum. Interestingly, and this leads directly into my next definition, Practical Completion of the relevant part occupied shall be deemed to have occurred.

The latter term, Owner Certified Completion, is not one that appears in any textbook on construction contracts but, despite my emphasis on the sole authority of the Architect there is a way in which the Owner can overrule the Architect. If (and this is highly inadvisable) the Owner decides to move in on the Contractor and occupy the entire work site prematurely what happens? This is one for the lawyers to answer but I have had occasion to advise clients that such an action would, given the stated definition of Practical Completion being that the “the Owner may occupy the Work or designated portion thereof for the use for which it is intended” a Contractor would have a strong case if they were to suggest that the Owner has, by their actions in taking over and occupying the building, certified Practical Completion.