



# AIA Northern Virginia News

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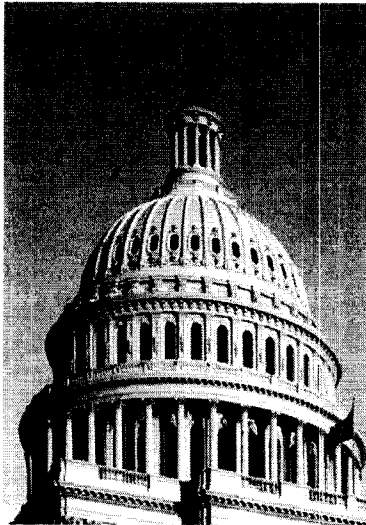
## Rebuild + Renew : Your Voice Makes a Difference

As the new administration plans an economic recovery package that focuses heavily on infrastructure building, architects can play a critical role in ensuring the proposals have a wide impact and provide long-term benefits for our nation.

To help you play an active role in guiding President-elect Obama and his new administration, the AIA has launched Rebuild & Renew, a bold agenda to offer the skills and experience of America's architects to the next administration. The initiatives supported by the AIA include:



Historic American Buildings Survey; Jack Butcher, Photographer



- Funding the modernization and rehabilitation of our nation's schools
- Increasing incentives for green commercial, residential and government building construction
- Providing funding for ready-to-go transit and missed-use development projects
- Preserving America's historic buildings by financing projects already in the pipeline

Your help is needed to get the message before the new Congress and President. These four easy steps will help you get started:

1. Learn more about the AIA agenda on the Rebuild & Renew website at <http://www.aia.org/rebuildandrenew>.

2. Contact your members of Congress to urge them to support our initiatives. You can easily do this by visiting the AIA website at [http://www.aia.org/advocacy\\_center.cfm?pagename=advocacycenter&vocusgr=cymoc](http://www.aia.org/advocacy_center.cfm?pagename=advocacycenter&vocusgr=cymoc). Log in using your AIA member log-in information. Your e-mail address acts as the username and the default password is your last name.

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### Save Paper : Read Online

AIA Northern Virginia News is now available digitally.

We will continue to have a printed newsletter as well. If you wish to receive the newsletter digitally, just e-mail the request to [aianova@aianova.org](mailto:aianova@aianova.org). You can always switch back later. If you wish to continue to receive the printed version, you do not need to do anything. As always, the full newsletter can be viewed at [www.aianova.org](http://www.aianova.org)

Thank you for considering the Chapter's commitment to green practices.

*Please note, that due to our e-mail software, we can only send the digital newsletter to the primary e-mail address listed for you in the AIA database. You may submit an e-mail change to us at [aianova@aianova.org](mailto:aianova@aianova.org).*

### Celebrate Mardi Gras at the Annual Open House

Enjoy Hurricanes, jazz and New Orleans treats.

Tuesday, February 24, 6:00-8:00p

At the AIA Northern Virginia Chapter House  
205 South Patrick Street, Alexandria, VA 22314



The Open House is free and reservations are not necessary.

Street parking is available. The Chapter House is also accessible by metro, using the King Street Station. You can walk down King Street to Patrick, about an 8-block walk, or hop on the free King Street Trolley which runs, about every 15 minutes, down King Street connecting the metro station to the waterfront.

## What Is Betterment?

by Tim Hughes and Alison Mullins  
AIA Northern Virginia Legal Columnists

Betterment is a term often used as shorthand for describing damages claims in construction cases. The concept is often misunderstood and misapplied by lawyers, courts, and juries. An understanding of betterment is critical to properly presenting and evaluating your exposure to damages claims.

### Contract Damages Generally

In order to understand betterment provisions, you must first comprehend the basic theory of contract damages. In a typical breach of contract case, the court defines recoverable damages as those which will place the non-breaching party in the same position they would have occupied upon contract performance. Courts often define contract damages as making "the plaintiff whole." In typical contract claims, the court is not trying, nor is it permitted, to try to make the plaintiff better off than they would have been if their contract was performed and there was no litigation.

### Betterment Defined

Not surprisingly, construction claims often involve a plaintiff asserting very broad requests for recovery. Many of these requests in essence involve a plaintiff asking to receive installation of furniture, fixtures, equipment, or specific elements of construction for free. While the burden is technically on the plaintiff to prove its damages in court, often the defendant is forced to pick apart specific damage claims and articulate why they are not recoverable.

One way of attacking such claims is to argue that if the court awards the damages sought, the plaintiff will in fact be better off than they would have been upon full and proper contract performance. In claims against design professionals, the basic idea is that a loss caused by an architect's negligence or error should not include the owner receiving free construction components they would have paid for upon proper design services.

Omissions from designs offer perhaps the clearest example of betterment. Consider an example where an architect designed openings for interior doors inside a structure but failed to include a specified door for the opening. The contractor, not seeing any doors, does not include a number in its bid for installing doors. During construction, the contractor frames the openings but does not install doors. The owner later requests the doors and the contractor presents a change order.

While the architect may have egg on their face, it is questionable whether there are any damages. Installing the doors may involve little or no additional expense because the opening is already framed appropriately. While the price tag has gone up, the owner would have paid for the doors if they were included in the bid. The parties then have a potential dispute over whether there are actually resulting damages.

### Complications with Betterment

The timing of discoveries of errors or omissions naturally has a major impact on the viability of a betterment argument. Problems

discovered prior to construction naturally stand a much better chance of presenting a betterment argument. Even problems discovered involving substantial re-work efforts may present a better situation.

The timing of discovery and collection can lead to extremely complex damages calculations. The actual pricing for installation compared to a hypothetical estimate of costs if the full complement of the correct design was included is generally the measure, but that measure can be easier defined than quantified. In addition, many parties argue that there is always an inherent cost increase when something is priced as a change order as opposed to competitively bid. Owners often argue that pricing via change orders can result in price increases in the 15-25% range, or even higher depending on the item, the current bidding environment, and the aggressiveness of the claimant, the lawyer, and the expert witness.

### Conclusion

Betterment is an extremely important concept for all design professionals to understand. Betterment is a critical component of evaluating the actual damages associated with errors and omissions claims against design professionals. A healthy understanding of these important concepts can help you manage and reduce your risk.

Alison R. Mullins, Esq., was an associate with Hughes & Associates, PLLC at the time she wrote this article. She is now an associate with Rees Broome, PC.

*This article is not intended to provide specific legal advice, but instead as general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice you may receive will depend upon your facts and the laws of your jurisdiction.*

## President's Letter : Making Lemonade

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receive your newsletter electronically. We also saved \$600 and a few trees by using electronic letterhead now instead of having it reprinted every year. Speaking of the environment, we are organizing workshops to help members pass their LEED® accreditation.

Now is the time for additional training to broaden your skills. The Chapter continues to offer a wide range of free or inexpensive educational seminars. We are making a special effort this year to offer seminars in convenient geographic areas outside of Old Town. Read your BLAST e-mail and take advantage of your membership benefits.

Finally, fellowship with your colleagues is just as important as marketing. Please join us during a Chapter Open House or for a tour and refreshments following one of our traveling Board meetings. These are hosted by member firms in the region and are a great way to see what other architects are doing, what their work environment is like and hear how they are organized. It really is quite interesting, and it is FREE.