

The Pro-Active Approach

A Design Professional's Resource



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New Employee?

Hardly! You know her voice, but have never *really* been formally introduced. Patty Purcell has been our office manager for almost 3 years, after 28+ years in banking. Below, she celebrates her daughter Sarah's graduation (May '04) from James Madison University in Harrisonburg, VA. (Patty has the *gray* hair!)

Now you can put a face with that voice on the phone!



Proper "Practice of Architecture"

Every state regulates the practice of architecture. Generally, the laws are either 1) "practice" laws, which state that specific activities constitute the practice of architecture and may only be performed by state licensed architects or 2) "title" laws, which state that only people licensed in the state may call themselves "architects." Many states have laws that combine the two aspects.

These laws are derived from the so-called "police power" of the state to protect the health, safety and welfare of the public. Since the public health, safety and welfare is involved, only those who have demonstrated a certain level of competence and become licensed can properly be in control of architectural services offered to the public. The intent of the law is circumvented if someone who is not licensed has the power to control the architectural services offered and performed.

While it is true that most states allow for the "corporate" practice of architecture and we all know that no corporation has ever taken the ARE, the rules require that *at least* a majority of the stockholders and/or directors are licensed so that control remains in the hands of licensed individuals.

Sometimes we see violation of the "title" rules where an unlicensed person presents himself as an "architect" or a close derivative thereof, like

"architectural designer." I am not going to dwell on those cases.

More difficult are the "practice" cases. I frequently see firms that have no licensed architects as shareholders, but who have a licensed architect as an employee, offering architectural services to the public with the employee stamping the drawings. Or, an architect will be approached by a friend who is unlicensed and asked to review and stamp the friend's drawings after it is determined that the building department requires a stamped permit set. Both of these circumstances are improper.

In the first instance, the firm does not qualify to practice because the majority control is not in the hands of licensed architects. The employee may be ordered by his employers to act in ways not protective of the public health, safety and welfare and he or she would not be in control. In the second instance, the licensed architect has no relation to the client and is, again, under the control of the unlicensed "friend" who could overrule the architect's decisions.

In short, one cannot qualify to offer architectural services to the public by subcontracting with a licensed architect.

Well, what about design-build? That is an exception of sorts because of the

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SCHEDULE OF SEMINARS
Presented by Charles R. Heuer

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BSA Residential Design Conference

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*Using AIA Documents for Small
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June 21-22, 2005

EcoBuild National Specifiers Conf..

Computer-Assisted Specifications

& Liability

Orlando, FL

October 18, 2005

AIA Rochester

How to Avoid Getting Sued

Rochester, NY

November 15-17, 2005

BUILD BOSTON '05

Copy-Catting

Using AIA Documents for Small

Projects and Residential

Design

How to Avoid Getting Sued

Boston, MA

Residential Design by Unlicensed "Designers"

Most states exempt the design of single family residences from the definition of the "practice of architecture." Thus, anyone can offer design services for single family residences as long as they do not improperly present themselves as licensed architects.

We have seen a number of instances, however, where the designer has been drawn into a dispute with the client, as follows:

The first contact between potential client and designer is often based on a referral from a mutual acquaintance. Such acquaintance often, innocently, refers to the designer as an "architect." When potential client and designer meet, there is often no discussion about "are you an architect?" "how long have you been licensed?" "are you insured?" The designer generally does not misrepresent himself, the topic is just not discussed. So, the parties get together and work proceeds. If all goes well, fine. However, if there are problems it is not uncommon at that point for the client to allege "Gee, you aren't an architect? If I had known that I would never have hired you. Misleading me on that is an unfair and deceptive practice and I want triple damages plus attorneys' fees under the law."

Whether or not there is any truth to the allegations, you can see that the tone and intensity of the dispute has spiraled up, making it harder to come to a fair resolution of the matter.

My advice, if you are unlicensed and doing residential design, is affirmatively to tell the potential client, in writing, that you have an architectural education and experience (if true) but that you are not licensed and that you are not required to be licensed to offer services on their project. If that is a deal breaker, it's better to find that out sooner than later.

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nature of the deal. The design-builder is contracting with the owner, in essence, to provide a completed building. The design-builder is not offering professional services to the owner. Instead, the design-builder is the consumer of the professional services provided by the licensed architect. Those services are subsumed into the building provided to the owner, and the relationship between design-builder and architect is, in

essence, a traditional one.

Going back to our two scenarios from above. In both cases, the firms improperly practicing architecture are clearly in trouble. Maybe surprisingly, so may the licensed architects be in trouble.

One could argue that both are improperly aiding and abetting the improper practice of architecture.

Further, in the second case, the architect is probably in violation of the rules on application of one's seal. Generally, the law says that

you are only allowed to stamp drawings prepared under your direct, responsible supervision. Taking a look at drawings prepared by others over whom you have no control and then stamping them is not proper.

Hopefully, a word to the wise will suffice. Is it worth losing your license for the few bucks that you will get from your "friend?"