

## 231 CMR 4.00: Rules of Professional Conduct

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### 4.01: Rules of Professional Conduct

An architect shall conform to the rules set forth in 231 CMR 4.00 and with the laws governing the practice of architecture. Departure therefrom by act or omission shall be deemed to constitute misconduct warranting disciplinary action by the Board. Such disciplinary actions shall be reported to NCARB for publication to other jurisdictions.

- (1) Competence.
  - (a) In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.
  - (b) In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.
  - (c) An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.
  - (d) No person shall be permitted to practice architecture if, in the Board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.
- (2) Conflict of Interest.
  - (a) An architect shall not accept compensation for his or her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.
  - (b) If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with

his or her performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

- (c) An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.
- (d) When acting as the interpreter of building contract documents and judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

(3) Full Disclosure.

- (a) An architect, making public statements on architectural questions, shall disclose when he or she is being compensated for making such statement.
- (b) An architect shall accurately represent to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with work for which he or she is claiming credit.
- (c) If, in the course of his or her work on a project, an architect becomes aware of a decision taken by his or her employer or client, against the architect's advice, which violates applicable state or municipal building laws or regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall:
  - 1. report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations,
  - 2. refuse to consent to the decision, and
  - 3. in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his or her objection, terminate his or her services with reference to the project.

In the case of a termination in accordance with ~~231-CMR-4.01(3)(e)~~this section the architect shall have no liability to his or her client or employer on account of such termination.

- (d) An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his or her application for registration or renewal.

- (e) An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.
- (f) An architect possessing knowledge of a violation of 231 CMR 4.00 by another architect shall report such knowledge to the Board.

(4) Compliance ~~With Laws~~ with laws, regulations, and Board requirements.

- (a) An architect shall not, in the conduct of his or her architectural practice, knowingly violate any state or federal law.
- (b) An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.
- (c) An architect shall comply with the registration laws and regulations governing his or her professional practice in any United States or Canadian jurisdiction.
- (d) An architect shall provide the Board with written notification of any disciplinary action or restriction on practice imposed against any professional license, registration, certificate, or permit held by the architect by the applicable governmental authority of any state, territory or political subdivision of the United States or any foreign jurisdiction. Such notice must be received by the Board within 30 days of the effective date of said discipline or restriction.
- (e) An architect shall provide the Board with written notification of the architect's conviction of any crime, including any misdemeanor or felony; as well as any other adverse action by any state or federal agency other than a civil traffic violation. Such notice must be received by the Board within 30 days of said conviction or adverse action.

(5) ~~Professional Conduct~~ Responsible Control.

- (a) A registered architect may sign and seal technical submissions only if:
  - 1. The technical submissions in question were personally prepared by the signing and sealing architect himself or herself; ~~or~~
  - 2. The technical submissions in question were prepared by another person under the responsible control of the signing and sealing architect; or
  - 3. The technical submissions in question were prepared by another architect who is duly registered in Massachusetts, or by ~~another~~ a registered design professional duly licensed or registered as such in Massachusetts, and the

signing and sealing architect has reviewed the work and either coordinated the preparation of that work or integrated that work into his or her own technical submissions; ~~or,~~

~~3. The technical submissions in question were prepared by another person under the responsible control of the signing and sealing architect.~~

For purposes of ~~231 CMR 4.01(5)(a)2.~~ above this section, the phrase "~~another~~ registered design professional" means a person who is duly registered or licensed in the Commonwealth of Massachusetts as a professional engineer, registered land surveyor, or registered landscape architect, ~~licensed plumber, or licensed electrician.~~

(b) A registered architect shall be deemed to have exercised responsible control over the preparation of technical submissions ~~for purposes of 231 CMR 4.01(5)(a)3. if:~~

~~1. The technical submissions in question were prepared in the office where the signing and sealing architect is regularly employed; or~~

~~2. The technical submissions in question were prepared at a location other than the office where the signing and sealing architect is regularly employed, but the signing and sealing architect maintains adequate and complete written records which demonstrate that he or she possesses detailed knowledge of the content of those technical submissions and exercised sufficient control over those submissions throughout their preparation.~~

(c) A registered architect may also sign and seal drawings, specifications or other work which is not required by law to be prepared by ~~an architect,~~ a registered design professional if the signing and sealing architect has reviewed such work and has integrated it into his or her own technical submissions.

(d) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others shall not be sufficient, in and of itself, to constitute the exercise of responsible control over the preparation of those technical submissions.

~~(e)(6)~~ Professional Conduct

(a) An architect shall neither offer nor make any gifts, other than gifts of nominal value, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested. For purposes of ~~231 CMR 4.01(5)(e);~~ this section, reasonable expenditures for entertainment or hospitality shall be considered gifts of nominal value.

- (~~fb~~) An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.
- (~~gc~~) Suspension, revocation or cancellation of an architect's certification by the National Council of Architectural Registration Boards shall, in and of itself, constitute sufficient grounds for disciplinary action by the Board.
- (~~6d~~) Advertising. An architect may advertise so long as the advertisement is not false, deceptive or misleading.

4.02: ~~Design(7)~~ Professional Liability Insurance and ~~Use~~Disclosures

Professional Liability Insurance is not required.

Professional liability insurance is not mandatory in order to obtain and maintain a license to practice architecture in Massachusetts. To the extent M.G.L. c. 156C, s. 65 and M.G.L. c. 108A, s. 45(8)(a), require the Board to set a minimum amount of insurance, that amount shall be considered none.

4.02: Architect's Seal and Electronic Signatures

- (1) Each person registered to practice architecture in the Commonwealth shall procure and use a rubber seal the design, arrangement, ~~size~~ and working of which shall conform exactly with the figure below except for insertion of the registrant's own name, his/~~her~~ registration number and the name of the city or town from which he/~~she~~ is registered, and excepting further that the seal of an out-of-state registrant shall also show the name of his ~~state, province or territory~~/~~her state, province or territory~~. The seal shall be a minimum of one and one half inches in diameter. In lieu of a physical seal, a registered architect may also use a digitized/electronic seal (computer generated image).





- (2) ~~The architect's official seal of registration is intended for his personal use in connection with plans, specifications and other instruments only to technical submissions of architectural service prepared by the architect personally or under his responsible control for which he will be responsible, and is not transferable per 231 CMR 4.02(5).~~ A licensed architect shall affix his or her seal of registration intended for his personal use in connection with plans, specifications and other instruments only to technical submissions of architectural service prepared by the architect personally or under his the architect's responsible control for which he will be responsible, and is not transferable per 231 CMR 4.02(5).
- (3) ~~An architect shall use the official seal entrusted to him as prima facie evidence that the plans and other instruments of his service upon which it appears were produced by him that architect, or under his or her responsible control. He The architect shall not permit or suffer his or her official seal to be affixed to any other plans, specifications or drawings not prepared by him or under his responsible.~~ An architect shall use the official seal entrusted to him as prima facie evidence that the plans and other instruments of his service upon which it appears were produced by him that architect, or under his or her responsible control. He The architect shall not permit or suffer his or her official seal to be affixed to any other plans, specifications or drawings not prepared by him or under his responsible.
- (4) ~~Any document bearing the registered architect's seal must also be appropriately dated and signed with either a legible hand written signature adjacent to (not obscuring) the seal or a properly encrypted digital signature, in compliance with 231 CMR 4.02.~~ Any document bearing the registered architect's seal must also be appropriately dated and signed with either a legible hand written signature adjacent to (not obscuring) the seal or a properly encrypted digital signature, in compliance with 231 CMR 4.02.
- (5) ~~The registered architect must take reasonable steps to prevent his or her seal or digital signature encryption key from being lost, stolen or otherwise out of his or her personal possession or control, except as permitted.~~ The registered architect must take reasonable steps to prevent his or her seal or digital signature encryption key from being lost, stolen or otherwise out of his or her personal possession or control, except as permitted.
- (6) ~~The registered architect shall not allow another person to use his or her or digital signature encryption key.~~ The registered architect shall not allow another person to use his or her or digital signature encryption key.
- (7) ~~A registered architect whose license has lapsed shall not use his or her professional seal.~~ A registered architect whose license has lapsed shall not use his or her professional seal.
- (8) ~~When a digital signature is applied, it must have an electronic authentication process attached to it that is uniquely associated with the registered architect, can be authenticated by 231 CMR 4.01(5) the recipient, and is uniquely linked to the underlying documents in a manner that will invalidate the digital signature if any part of the document is changed.~~ When a digital signature is applied, it must have an electronic authentication process attached to it that is uniquely associated with the registered architect, can be authenticated by 231 CMR 4.01(5) the recipient, and is uniquely linked to the underlying documents in a manner that will invalidate the digital signature if any part of the document is changed.

#### 4.03: Restricted and Prohibited Uses of Professional Titles

Neither the title "Architect" or any modification of said title shall be affixed or otherwise used in conjunction with any surname, word or business title when such use would imply that an

individual, associate, partner or corporate officer is an architect when, in fact, such individual, associate, partner, or corporate officer is not a registered architect. An individual shall not be deemed to have violated this section if he or she uses the title "Intern-Architect", as long as he or she is enrolled, active and in good standing in, the NCARB Intern-Architect Development Program (IDP).

4.04: Practice in Corporations, Partnerships, Limited Liability Companies and Limited Liability Partnerships by Business Enterprises and Joint Ventures

(1) Definitions

As used in this section, the following terms shall have the following meanings unless the context otherwise requires:

~~Corporation~~—means any business or professional corporation established and organized under M.G.L. c. 156, M.G.L. c. 156A or M.G.L. c. 156B, or any "foreign corporation", as defined in M.G.L. c. 181, s. 1.

~~Licensee~~—means a person duly licensed as an architect by the Board to engage in the practice of architecture.

~~Limited Liability Company or LLC~~—means any "limited liability company" or "foreign limited liability company", as defined in M.G.L. c. 156C, s. 2, which performs or offers to perform architectural services in Massachusetts.

~~Limited Liability Partnership or LLP~~—means any "registered limited liability partnership" or "foreign registered limited liability partnership", as defined in M.G.L. c. 108A, s. 2, which performs or offers to perform architectural services in Massachusetts.

~~Partnership~~—means any partnership organized and/or established under the laws of Massachusetts or any other jurisdiction, other than a limited liability partnership as defined in 231 CMR 4.04.

~~Practice of Architecture~~—means the "practice of architecture" as defined in M.G.L. c. 112, s. 60A.

(2) Practice of Architecture by Corporations

(a) Basic Requirements for Business Enterprises

A corporation Business Enterprise may hold itself as being able to perform, may enter into agreements to perform, or hold itself out as able to and may perform; any of the services involved in the practice of architecture only if that corporation the Business Enterprise meets all of the following conditions:

- ~~(a) — At least one officer of the corporation, whose status as an officer is established by the articles of organization or by laws of that corporation, is duly registered as an architect in Massachusetts;~~
- ~~(b) 1. The Business Enterprise must have an Architect Officer;~~
- ~~2. All contracts or agreements by that corporation to perform the Business Enterprise for the performance of architectural services in Massachusetts are executed on its behalf of that corporation by the officer of the corporation who is duly registered as an architect in Massachusetts; and by an Architect Officer;~~
- ~~(c) 3. All architectural services performed by that corporation are the Business Enterprise must be performed either by the officer of the corporation who is duly registered as an architect in Massachusetts, or by other individuals who perform such work under the responsible control of the officer of the corporation who is duly registered as an architect in Massachusetts.~~
- ~~(3) — Practice of Architecture by Partnerships — A partnership may enter into agreements to perform, or hold itself out as able to perform, any of the services involved in the practice of architecture only if that partnership meets all of the following conditions:~~
- ~~(a) — At least one partner in that partnership is duly registered as an architect in Massachusetts;~~
- ~~(b) — All contracts or agreements by that partnership to perform architectural services in Massachusetts are same Architect Officer who executed on behalf of that partnership by the partner who is duly registered as an architect in Massachusetts; and the agreement. For purposes of this requirement, an Architect Officer may delegate the performance of architectural services, including the signing and sealing of technical submissions, to another Registered Architect so long as:~~
- ~~(c) a. All technical submissions are prepared in compliance with 231 CMR 4.01(5); and~~
- ~~b. The Architect Officer who executed the agreement retains professional and supervisory control over the Registered Architect performing the services.~~
- ~~4. Once an agreement to perform architectural services has been executed by an Architect Officer, a Business Enterprise may not change the Architect Officer who is in responsible control of those services unless that change is first approved by the Board;~~

5. The Business Enterprise timely files all required reports with the Board; and
6. The Business Enterprise acknowledges and agrees that it shall be subject to the sanctions outlined in these regulations if it fails to meet the Board's requirements.

(b) Required Annual Reporting for Business Enterprises

Every Business Enterprise seeking to engage in the practice of architecture in Massachusetts shall file with the Board, before the last day of January in each year, the following information (which must be accurate and complete up to the first day of January):

1. The address of the primary office of the Business Enterprise from which architectural services are provided in Massachusetts, or, if the Business Enterprise does not have such a Massachusetts office, the address of its primary office outside the state. The address of a registered agent does not qualify as the primary office;
2. The names of all its Architect Officers;
3. The names and license numbers of all architects performing services for the Business Enterprise in Massachusetts;
4. A certification from the chief executive officer or the equivalent highest ranking corporate officer or administrator in charge of total management of the Business Enterprise that he or she understands that an Architect Officer must execute all architectural contracts and exercise responsible control over all architectural services provided by that Business Enterprise in Massachusetts; and
5. Such other information as the Board may require.

(c) Business Enterprise Additional Recordkeeping

If the Board, in its discretion, determines that the responsible control burden undertaken by an Architect Officer may exceed his or her capacity (when other responsibilities of the Architect Officer are taken into account), the Board may direct the Business Enterprise to provide additional records, which may include the following:

1. With respect to every project in Massachusetts for which the Business Enterprise is currently engaged to provide architectural services:

- a. A description of the project identifying the project owner and the location and scope of the project;
  - b. The name of the Architect Officer who signed the agreement by the terms of which architectural services are being performed by that partnership are performed either by the partner who is duly registered as ;
  - c. The date of the agreement; and
  - d. The name of the Architect Officer who has the project in his or her responsible control.
2. A log maintained by the Architect Officer which indicates the nature and extent of the Architect Officer's control, time dedicated, and detailed knowledge of the technical submissions prepared for each of his or her projects. A copy of the log shall be submitted to the Board quarterly.

(d) Effect of disciplinary action on Business Enterprise

If an architect in Massachusetts, or by other individuals who perform those services under the responsible control of the partner who is duly registered as an employed by a Business Enterprise engages in conduct which constitutes grounds for disciplinary action, in addition to taking action against the architect in Massachusetts., the Board may direct the Business Enterprise to remedy the conditions that gave rise to the conduct so as to reasonably ensure that such conduct is not thereafter likely to recur.

~~(4) Practice of Architecture by Limited Liability Companies – A limited liability company may enter into agreements to perform, or hold itself out as able to perform, any of the services involved in the practice of architecture only if that limited liability company meets all of the following conditions:~~

- ~~(a) – At least one manager of the limited liability company (or at least one member in the case of a limited liability company in which management of the business is vested in one or more members) is duly registered as an architect in Massachusetts;~~
- ~~(b) – All contracts or agreements by that limited liability company to perform architectural services in Massachusetts are executed on behalf of that limited liability company by a manager or member who is duly registered as an architect in Massachusetts;~~
- ~~(c) – All architectural services performed by that limited liability company are performed either by a manager or member who is duly registered as an architect in Massachusetts, or by individuals who perform those services under the~~

~~responsible control of a member or manager of that limited liability company who is duly registered as an architect in Massachusetts; and~~

~~(d) That limited liability company maintains the level of professional liability insurance required by 231 CMR 4.04(7).~~

~~(5) Practice by Limited Liability Partnerships—A limited liability partnership, as defined in M.G.L. c. 108A, s. 2, may enter into agreements to perform, or hold itself out as able to perform, any of the services involved in the practice of architecture only if that limited liability partnership meets all of the following conditions:~~

~~(a) At least one partner in that limited liability partnership is duly registered as an architect in Massachusetts;~~

~~(b) All contracts or agreements by that limited liability partnership to perform architectural services in Massachusetts are executed on behalf of that limited liability partnership by the partner who is duly registered as an architect in Massachusetts;~~

~~(c) All architectural services performed by that limited liability partnership are performed either by the partner who is duly registered as an architect in Massachusetts, or by other individuals who perform those services under the responsible control of the partner who is duly registered as an architect in Massachusetts; and~~

~~(d) That limited liability partnership maintains the level of professional liability insurance required by 231 CMR 4.04(7).~~

~~(6)~~  
(e) Effect of Noncompliance on Business Enterprises

If the Business Enterprise fails to timely submit filings or otherwise meet directives of the Board pursuant to 231 CMR 4.04(1) through (4), the Board may prohibit the Business Enterprise from undertaking any new projects in Massachusetts until the Board is convinced that the failure has been remedied by the Business Enterprise and will not recur.

(f) Duty of the Architect Officer

1. It shall be the duty of every Architect Officer to ensure that his or her practice within a Business Enterprise complies with the provisions of 231 CMR 2.00 to 4.00. It shall further be the duty of each Architect Officer affiliated with a Business Enterprise to notify the chief executive officer or the equivalent highest ranking corporate officer or administrator in charge of total management of the Business Enterprise that an Architect Officer must execute all architectural contracts and exercise responsible control

over all architectural services provided by that Business Enterprise in Massachusetts.

(2) Practice by Joint Ventures

A joint venture may enter into agreements to perform, or hold itself out as able to perform, any of the services involved in the practice of architecture, as long as at least one member of the joint venture is either an individual who is duly registered as an architect in Massachusetts, or a business organization which meets all of the applicable requirements ~~of 231 CMR 4.04(2), 231 CMR 4.04(3), 231 CMR 4.04(4) or 231 CMR 4.04(5) above~~ for a Business Enterprise.

~~(7) Required Insurance and Capital Program for LLCs and LLPs~~

~~(a) A limited liability company or limited liability partnership which performs or offers to perform architectural services in Massachusetts shall maintain in good standing professional liability insurance which meets the following minimum standards:~~

- ~~1. The insurance shall cover negligent acts, and errors and omissions;~~
- ~~2. The insurance shall insure the limited liability company and its members, as required by M.G.L. c. 156C, s. 65, or the limited liability partnership and its partners as required by M.G.L. c. 108A, s. 45(8)(a);~~
- ~~3. The insurance shall be in an amount of at least \$50,000, plus the product of \$25,000 multiplied by the number of members or partners and the number of other employees of the limited liability company or limited liability partnership who are registered architects, but not in excess of \$500,000 in the aggregate;~~
- ~~4. The requirements of 231 CMR 4.04(7)(a)3. shall be considered satisfied if the limited liability company or limited liability partnership maintains insurance sufficient to provide coverage at a level of at least \$300,000 for each claim with an aggregate top limit of liability for all claims during any one year of at least \$1,000,000;~~
- ~~5. The insurance required by 231 CMR 4.04(7)(a) may provide that it does not apply to:
  - ~~a. Any dishonest, fraudulent, criminal or malicious act or omission of the insured limited liability company or limited liability partnership, or any partner, member or employee thereof; or~~
  - ~~b. Bodily injury to, or sickness, disease or death of, any person; or~~~~



of registration issued pursuant to M.G.L. c. 112, §§ 60A – 60O and 231 CMR 3.00. Grounds for such disciplinary action shall include, but shall not be limited to:

- a. Engaging in, authorizing, or aiding or abetting fraud, deceit, misrepresentation of material facts, the provision of false or forged evidence, or bribery in connection with any application for a certificate of registration;
- b. Engaging in cheating on the A.R.E., engaging in any conduct which is prohibited by the rules governing the administration of the A.R.E., or engaging in any conduct which otherwise compromises the integrity or security of all or any portion of the A.R.E.;
- c. Engaging in, authorizing, or aiding or abetting fraud, deceit, misrepresentation of material facts, the provision of false or forged evidence, or bribery in connection with his or her practice of architecture or performance of architectural services;
- d. Violating any provision of any state or federal law or regulation relating to the practice of architecture, including but not limited to any provision of M.G.L. c. 112, s. 60G or any provision of 231 CMR ~~4.01~~2.00 through 231 CMR ~~4.04~~4.00;
- e. Engaging in gross misconduct in the practice of his or her profession as an architect;
- f. Practicing with gross incompetence or gross negligence on a particular occasion, or engaging in a pattern of repeated negligent practice;
- g. Knowingly permitting, allowing or aiding or abetting the placement of his or her professional seal or signature on any plans, specifications, drawings or other technical submissions which have not been prepared in accordance with the requirements of 231 CMR 4.01(5);
- h. Practicing while his or her ability to practice is impaired by alcohol, drugs, physical disability or mental illness;
- i. Knowingly permitting, or aiding or abetting, an unlicensed person to perform architectural services which require a license for purposes of fraud, deception or personal gain;
- j. Having been convicted of any criminal offense which reasonably calls into question his or her fitness or ability to practice as an architect; ~~or~~
- k. Engaging in any conduct which results in suspension, revocation or other loss of his or her NCARB registration-; or
- l. Failing to cooperate with a request from the Board or its agents relating to the practice of architecture, including but not limited to any provision of M.G.L. c. 112, s. 60G or any provision of 231 CMR 2.00 through 231 CMR 4.00.

For purposes of ~~231 CMR 4.05~~this section, the term "disciplinary action" shall include, but shall not be limited to: denial, revocation or suspension of a certificate of registration; refusal to renew a certificate of registration; issuance of a letter of censure; issuance of a formal written reprimand; or placement of a registered architect on probation.

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