

## 231 CMR: BOARD OF REGISTRATION OF ARCHITECTS

### 231 CMR 4.00: RULES OF PROFESSIONAL CONDUCT

#### Section

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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 examination 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

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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)(c) 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.
- (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.
- (5) Professional Conduct.
- (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 architect who is duly registered in Massachusetts, or by another 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. the phrase "another design professional" means a person who is duly registered or licensed in the Commonwealth of Massachusetts as a professional engineer, registered land surveyor, 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, 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) 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), reasonable expenditures for entertainment or hospitality shall be considered gifts of nominal value.
  - (f) An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

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(g) 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.

(6) An architect may advertise so long as the advertisement is not false, deceptive or misleading.

4.02: Design and Use of Architect's Seal

(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 registration number and the name of the city or town from which he 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.



(2) The architect's official seal of registration is intended for his personal use in connection with plans, specifications and other instruments of architectural service prepared under his responsible control for which he will be responsible, and is not transferable.

(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, or under his responsible control. He shall not permit or suffer his official seal to be affixed to any plans, specifications or drawings not prepared by him or under his responsible control, except as permitted by 231 CMR 4.01(5).

4.03: Restricted and Prohibited Uses of Professional Titles

(1) 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 231 CMR 4.03 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).

(2) (a) Any person engaging in the practice of architecture in the Commonwealth under any business title other than the real name or real names of a registered architect or registered architects, whether individually, or as an association, partnership, or corporation, shall file in the office of the Board a certificate stating the full name and residence of each person engaging in such practice, the place, including street and number, where, and title under which it is conducted. A person who has filed such a certificate shall, upon his discontinuing, retiring or withdrawing from such practice, or in the case of a change of residence of such person or of the location where the practice is conducted, file in the office

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of the Board a notarized statement under oath that he has discontinued, retired or withdrawn from such practice or of such change of his residence or the location of such practice. In the case of the death of such person, such statement may be filed by the executor or administrator of his estate.

(b) The Board shall keep a suitable index of all certificates so filed with it, setting forth the pertinent facts, including a reference to any statement of discontinuance, retirement or withdrawal from, or the change of location of such practice, or the change of residence of such person.

4.04: Practice in Corporations, Partnerships, Limited Liability Companies and Limited Liability Partnerships

(1) Definitions. As used in 231 CMR 4.04, 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, § 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, § 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, § 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, § 60A.

(2) Practice of Architecture by Corporations. A corporation 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 corporation 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) All contracts or agreements by that corporation to perform architectural services in Massachusetts are executed on behalf of that corporation by the officer of the corporation who is duly registered as an architect in Massachusetts; and
- (c) All architectural services performed by that corporation are 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 executed on behalf of that partnership by the partner who is duly registered as an architect in Massachusetts; and

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(c) All architectural services performed by that 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.

(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 an individual who works 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, § 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) 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).

(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, errors and omissions;
  - 2. The insurance shall insure the limited liability company and its members, as required by M.G.L. c. 156C, § 65, or the limited liability partnership and its partners as required by M.G.L. c. 108A, § 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;

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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
    - c. Injury to or destruction of any tangible property, including the loss of use thereof; or
    - d. Such other exclusions as are customarily inserted in professional liability insurance contracts for architects; and
  6. Such insurance policies may contain reasonable provisions with respect to policy periods, territory, claims, deductibles, conditions and other usual matters.
- (b) A limited liability company or limited liability partnership which performs or offers to perform architectural services in Massachusetts is not required to maintain the insurance required by 231 CMR 4.04(7)(a) if:
1. That limited liability company or limited liability partnership maintains a designated and segregated capital fund equal to the amount of insurance required by 231 CMR 4.04(7)(a)3. or 231 CMR 4.04(7)(a)4.; and
  2. Such funds are specifically designated and segregated for the satisfaction of judgments against the limited liability company or its members, or the limited liability partnership or its partners, based on negligence, wrongful acts, or errors or omissions, by means of:
    - a. Deposit in trust, or in bank escrow, of such funds in the form of cash, bank certificates of deposit, or United States Treasury obligations; or
    - b. A bank letter of credit or insurance company bond.
- (c) Upon any cancellation or other interruption in the insurance coverage required by 231 CMR 4.04(7)(a), or any failure to maintain the designated and segregated capital fund required by 231 CMR 4.04(7)(b), a limited liability company or limited liability partnership shall immediately cease and desist from performing, offering to perform, or holding itself out as able to perform, architectural services in Massachusetts until such time as that limited liability company or limited liability partnership is once again in compliance with 231 CMR 4.04(7). Failure to comply with 231 CMR 4.04(7)(c) shall constitute grounds for disciplinary action by the Board against any and all registered architects who are members, partners, managers or employees of that limited liability company or limited liability partnership.

4.05: Grounds for Disciplinary Action

The Board may, by majority vote after a hearing conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00 *et. seq.*, take disciplinary action against any architect who holds a certificate of registration issued pursuant to M.G.L. c. 112, §§ 60A through 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, § 60G or any provision of 231 CMR 4.01 through 231 CMR 4.04;
- (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);

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- (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.

For purposes of 231 CMR 4.05, 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.

REGULATORY AUTHORITY

231 CMR 4.00: M.G.L. c. 13, §§ 44A and 44D; c. 112, §§ 60A through 60O.

NON-TEXT PAGE