

PROFESSIONAL PRACTICE 544

LICENSING OF ARCHITECTS – FORMS OF ASSOCIATION

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LICENSING OF ARCHITECTS

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Purpose of Licensing Architects

- Public interest – to protect the public from incompetent design
- Business interest – to regulate competition

Illinois Department of Financial & Professional Regulation (IDFPR)

- Administrative agency over the profession
- Regulations – still has the force of law
- More specific than legislature

LICENSING OF ARCHITECTS

Sanctions for Violation of License Statutes

- Fines or penalties
- Denial of license upon subsequent application
- Inability to sue for fees or forfeiture of all fees
 - Issues/cases arise mostly in this area
 - Should the client avoid paying for fees simply because of no license?
 - Sole proprietor – individual architect example

LICENSING OF ARCHITECTS

Types of Licensing Statutes

- “Holding Out” Statutes
 - Simply requires the design professional to use a particular label
 - Does not regulate the work
 - Allows the public to know a licensed architect is competent, but nothing for the unlicensed
- “Practice” Statutes
 - Prohibits practice without a license
 - But what then is the definition of architectural services?
 - You simply cannot contract with an unlicensed architect (fees +/-)
- Illinois has a hybrid statute (both are required)
- Who should be able to decide about contracting parties?

LICENSING OF ARCHITECTS

Practicing Architecture without a Licensing

- Under a licensed architect's supervision
 - Content/participation versus the "fly-by" review
- Reciprocity for out-of-state architect
 - National Council of the Architectural Registration Boards (NCARB)
 - The rules and regulations still vary from state to state, and what is actually recognized
 - "Hot" versus "Cold" states

LICENSING OF ARCHITECTS

Questions re: Licensing and Registration

- If an architect can pass a competency exam (i.e., the AREs), why should the degree or experience matter?
- Does having a license prevent incompetence?
- What about licensing interior architects, landscape architects, contractors for design?
- What about insurance for licensed v. unlicensed architect?
- Why prohibit the recovery of fees for “practicing” without a license, especially if licensed elsewhere?



FORMS OF AGENCY

THE LAW OF AGENCY

Principal, Agent, and Third Party

- Agent – a person acting on behalf of another
 - Principal is the party for whom the agent is acting
 - The third party is the person with whom the agent is interacting on behalf of the principal

Examples of Common Agency Relationships

- Employer/employee
- Actor or athlete/agent
- Real estate broker/property owner
- Owner/architect

THE LAW OF AGENCY

Purpose and Theory – Why have an agent?

- Agents may have greater expertise than their principals
- Principals may need to delegate tasks
- Certain legal entities can only operate through agents

Effects of an Agency Relationship

- The agent may bind the principal to a contract
- Knowledge of the agent is attributed to the principal – even if the principal does not have such knowledge
- The agent's acts (and omissions) are attributable to the principal

THE LAW OF AGENCY

The Agent's Duties to the Principal (Fiduciary Duties)

- Loyalty
- Care (not being negligent)
- Obedience
- Notification (forwarding information)

THE LAW OF AGENCY

Source of the Agent's Authority

- Actual authority
 - Explicitly granted – communication from principal to agent
 - Written, oral, or implied
- Apparent authority
 - Authority the principal leads third parties to believe is granted to agent
 - Must be principal who creates – not the agent
- Ratification by the principal
 - Not all actions by agent are binding on principal
 - Principal may adopt/accept/ratify an act after-the-fact – even if unauthorized
 - May be express or implied

THE LAW OF AGENCY

Undisclosed principal

- An agent pretends to be acting on her own behalf, but really acting on behalf of an undisclosed principal
- An agent indicates there is a principal but fails/refuses to provide the identity of the principal
 - Third party may have a claim against both the agent and the principal
 - Third party has right to know with whom it is dealing

THE LAW OF AGENCY

Termination of the Agency Relationship

- Express or implied termination
- At the end of a given period of time, or when the purpose has been accomplished
- By principal at any time (but may be a breach if agency relationship results from a contract and specific period)
- The principal should advise all third parties of the termination (to avoid apparent authority)



FORMS OF ASSOCIATION

SOLE PROPRIETORSHIPS

Any individual who conducts business

No legal distinction between the business and the individual

- Income treated as personal income
- No special liability protections

May use an assumed name (d/b/a)

May have employees

- Employees can be agents within scope of their employment

PARTNERSHIPS

Similar to a sole proprietorship owned jointly by two or more people – combined into one partnership

Governed by state law

- Uniform Partnership Act (default agreements)
- Court created law
- Partnership agreement (contract between partners)

Debts and Taxes

- Individual partner are responsible for the debts of the entire partnership.
- Profits and losses are taxed pro rata to the partners' interests

PARTNERSHIPS (cont.)

Ownership division between partners

- Rights and duties may be divided in any agreed percentage
- One partner may have 75% of the profits and only 33% of the losses
- Partners are not guaranteed a salary; they share profits

Each partner is the agent of the others and of the partnership

- Full authority to act or bind the partnership
- All knowledge fully attributable to the partnership
- Partnership duties are similar to agency duties, but operate in a two-way direction

PARTNERSHIPS (cont.)

Effect of a partnership

- Income is treated as personal income
- No special liability protections

“Limited” partnership distinguished

- Primarily a financing mechanism
- Role of general partner – same as with a regular partnership
- Role of “limited” partners
 - No authority to manage or bind the partnership (not an agent)
 - Only liable to the extent of individual financial contribution

CORPORATIONS

Corporations are legal entities – just like people

Governed by state law

- Illinois Business Corporation Act
- Articles of Incorporation, by-laws
- Shareholder agreements in close corporations

Rights of the owners (shareholders) of the corporation

- Voting for directors
- Receiving dividends
- Liquidation rights upon corporate dissolution

CORPORATIONS (cont.)

The Corporate Hierarchy

- Shareholders (not agents)
- Directors (agents and owe fiduciary duties)
- Officers (agents and owe fiduciary duties)
- Employees (limited agents – depends on the scope of employment)

CORPORATIONS (cont.)

No personal liability for corporate malfeasance

- Shareholders, officers, directors, and employees are not liable for corporate acts
- Complex, restrictive tax, and accounting treatments (double taxation of dividends)
- Piercing the corporate veil – if sham, shell corp., not true

Professional corporations

- Set up to practice a particular licensed profession (law, architecture, etc.)
- Laws vary from state to state
- Generally obsolete in Illinois

LIMITED LIABILITY COMPANIES (LLC)

A hybrid between a corporation and a partnership

- A separate legal entity, like a corporation
- Tax and accounting treatment of a partnership
- Liability protections of a corporation

Also governed by state law

- Illinois Limited Liability Company Act
- Not as much court-created law as traditional corporation law
- Operating Agreement acts like corporate by-laws

LIMITED LIABILITY COMPANIES (“LLC”) (cont.)

Hierarchy similar to a corporation

- “Members” are owners/unit holders (like shareholders)
- “Managers” are like officers and directors
- May have employees just like any corporation

LLCs are usually the best vehicle for complex organizations

- Often seen as single-purpose entities in the construction world
- Good for joining unique business partners

SUMMARY OF RISKS

Type of Entity	Flexible Taxation and Accounting	Liability Shield (Separate Legal Entity)
Sole Proprietorship	✓	
Partnership	✓	
Corporation		✓
LLC	✓	✓



QUESTIONS