

# PROFESSIONAL PRACTICE 544

LICENSING OF ARCHITECTS – AGENCY – FORMS OF ASSOCIATION

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# LICENSING OF ARCHITECTS

# Licensing of Architects

- ▶ **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
  - ▶ Look to the Hierarchy of the Law

# Licensing of Architects

- ▶ **Sanctions for Violating License Statutes**
  - ▶ Fines or penalties
  - ▶ Denial of license upon subsequent application
  - ▶ Inability to sue for fees of 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)
- ▶ What is “practicing” architecture? Who decides?

# Licensing of Architects

## ▶ Practicing Architecture without a License

### ▶ Under the supervision of a licensed architect

- ▶ Content/participation versus the “fly-by” review

### ▶ Reciprocity for out-of-state architect

- ▶ National Council of the Architectural Registration Boards (NCARB)
- ▶ Exams – ARE Series

Construction Documents and Services (CDS); Practice, Planning and Programming (PPP); Site Planning and Design (SPD); Schematic Design (SD); Structural Systems (SS); Building Design and Construction System (BDCS); Building Systems (BS)

- ▶ “Warm” versus “Cold” states

### ▶ Reciprocity for out-of-state architect

- ▶ Firm or Individual
- ▶ Firm and Individual

# Licensing of Architects

## ▶ Questions on 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, or contractors for design services?
- ▶ 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

## **Agent, Principal, 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 (to a limited extent)

# 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 an agreement/contract
- ▶ Knowledge of the agent is attributed to the principal – even if the principal does not have such knowledge
- ▶ The agent's acts (and/or 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 the agent is 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 termination may be a breach if the agency relationship is created by contract and/or with a specific period/scope)
- ▶ 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 but is 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 other, as well as 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 (closely held) corporations
- ▶ **Rights of the owners of the corporation (i.e., shareholders)**
  - ▶ 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 are treated similar to a partnership
- ▶ Enjoys the liability protections of a corporation

## **Also governed by state law**

- ▶ Illinois Limited Liability Company Act
- ▶ Not as much of court-created law as is 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
- ▶ LLCs 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