

# Legislative Guidelines and Model Law/Model Regulations

**National Council of Architectural Registration Boards**

Customer Service: 202-879-0520 | Main: 202-783-6500

[www.ncarb.org](http://www.ncarb.org)

## **NCARB MISSION**

NCARB, in collaboration with licensing boards, facilitates the licensure and credentialing of architects to protect the health, safety, and welfare of the public.

## **CORE VALUES**

The National Council of Architectural Registration Boards believes in being:

### **OPEN**

Our success depends upon working together. We earn the respect of others by actively partnering, engaging, and collaborating with them. By being transparent and sharing our expertise, approaches, and knowledge, we help create dynamic partnerships that achieve more.

### **RESPONSIVE**

By being receptive and quick to react, we demonstrate our natural human desire to be helpful. Our dedication and determination to be straightforward and deliver outstanding service experiences give our customers confidence and drive satisfaction levels upward.

### **RESTLESS**

We are sensitive to the diverse and changing needs of our stakeholders. By being proactively curious about new possibilities and the world around us, we advance our knowledge, simplify our processes, and refine our thinking for the benefit of all.

NCARB is a nonprofit corporation comprising the legally constituted architectural registration boards of the 50 states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands as its members.

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# LEGISLATIVE GUIDELINES AND MODEL LAW

## MODEL REGULATIONS

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# LEGISLATIVE GUIDELINES

## HISTORICAL NOTE

At the June 1970 Annual Meeting, NCARB adopted five guidelines for legislation governing the registration of architects. A minor amendment was adopted the following year, and the guidelines were further amended at the Annual Meetings in 1976 and 1977. At the 1982 Annual Meeting, substantial changes to Guideline III were adopted to permit states to use the new NCARB Architect Registration Examination format (i.e., a single examination for all candidates), and, in response to the requests of a number of NCARB Member Boards, the Council added Guideline VI: "Classes and Characteristics of Structures with Respect to Which Persons Performing Building Design May Be Exempt from Registration Requirements," following extensive study of the question by NCARB's Committee on Procedures and Documents. At the 1985 Annual Meeting, Guideline VIII respecting "Regulation of Unregistered Persons Practicing Architecture" was adopted with corresponding minor adjustments in Guideline II and Guideline VI.

At the 1988 Annual Meeting, the Council amended Guideline I to recognize the conditions under which a design/build practice could be carried on. Substantial changes were made at the Annual Meeting in 1989, including Guideline VII, which required that an architect be engaged to furnish construction contract administration services.

Over the ensuing years, the guidelines have been modified from time-to-time. In 1999, the Council added Guideline IX, which describes a way in which foreign architects whose national registration standards vary from those in the United States may participate in U.S. architectural commissions. Also in 1999, the Council amended Guideline II by making specific reference to the Rule of Conduct (5.2) which requires that an architect have responsible control over all technical submissions not otherwise exempt.

## INTRODUCTION

The NCARB *Legislative Guidelines* sets forth provisions adopted by the Member Boards of NCARB on nine significant areas of state regulation. Early in its consideration of state laws regulating the practice of architecture, NCARB reached the conclusion that guidelines were appropriate, rather than draft statutory language.

Guidelines were recommended because each of the existing state laws contained unique language, organization, and ancillary provisions; it might be disruptive and confusing to attempt to introduce, on a national basis, exact statutory language into existing state statutes. Nonetheless, in response to the requests of a number of state registration boards, NCARB has added to these guidelines a Model Law for the purpose of illustrating the way in which the guideline principles would fit into a statutory framework. The Model Law does not purport to cover all matters appropriate to a statute governing the registration of architects. Matters with respect to the appointment of board members, their relationship to umbrella state agencies, the compensation of board members, procedural issues, and the like are not included in the Model Law. In many states these largely administrative provisions are found in a section of the law

preceding the laws specifically applicable to each registration board. In other states these administrative provisions are found in the architectural registration statute itself. The most important of the administrative provisions not found in the Model Law is the power to adopt rules and regulations. Once again it is typical to find that power in the general portions of the law applying to all registration boards. A draftsman who is revising the state law and using the Model Law should carefully examine the statutory framework to be sure that the power to adopt rules and regulations exists somewhere.

To round out the matter of legislative guidelines, NCARB has also added to this document Model Regulations to illustrate how the Model Law interfaces with a set of board Rules and Regulations. The Model Regulations build upon the Model Law, the *Model Rules of Conduct* recommended by the Council, and the standards adopted by the Council for certification. They recommend that states have analogous standards for registration and provide details on definitions, fees, applications, registration standards, examination, registration, rules of professional conduct, and practice by firms.

NCARB also reached the conclusion that the guidelines should be limited in scope; such subjects as the organization and incorporation of a regulatory board, procedures to be followed by the board, penalties for violation of the board rules, and the like are not treated in these *Legislative Guidelines*. Rather than attempt to provide guidelines to the states on matters which they are clearly better able to decide than any national organization, NCARB has limited its concern to nine major areas, all of which have implications beyond the boundaries of an individual state.

In the development of these guidelines, NCARB has been concerned with the respective roles of statutory enactment on the one hand and board rules or regulations on the other. Through a statute granting the power to adopt rules and regulations, the legislature permits a regulatory agency to elucidate and define further its statutory authority by establishing regulations. Regulations cannot contradict the statute. Practically, statutory change requires time, the mobilization of professional bodies to seek legislative support, and often considerable frustration when for one reason or another, the legislature postpones enacting the proposed reform. Regulations, on the other hand, may typically be adopted by the state board after notice and appropriate hearings. Thus, insofar as the regulation of the profession involves likely future changes in professional practice, the rules should be found in the regulations rather than the statute. The decision entails a reasonable calculation as to what matters a state legislature will permit a regulatory board to decide and what matters, as a question of public policy, should be decided by the legislature.

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The nature of sanctions which may be imposed (fines, probation, suspension, revocation, and the like) is a matter customarily left to the legislature itself, while the question of educational and experience qualifications, a matter subject to changing concepts, might well be left to the registration board.

A connected question is the degree to which boards may rely on national standards as the standards to be used in their states. These guidelines refer specifically to the National Council of Architectural Registration Boards at various points and suggest that these references to NCARB be found in the statute. This decision is based on a legal judgment made from a survey of a variety of cases in various states that a board's reliance on NCARB procedures may be put in doubt in a court challenge if there is no legislative expression on the board's right so to rely. On the other hand, the reliance on these standards is permissive but not mandatory and is, in all cases, to be decided by the board in the board's regulations. Here it was the view of NCARB that legislators would be reluctant to fix in a statute the mandatory requirement that a national organization set the standards for the state, subject only to legislative amendment.

In sum, the *Legislative Guidelines* leaves to the boards flexibility and discretion to bring their states in line with the developing national standards for architectural registration and regulation. Such flexibility is ensured by leaving much of the detail to regulations to be promulgated by the board, while the enabling statute contains the general policy of the legislature.

## LEGISLATIVE GUIDELINES

### I DEFINITION

**A** The practice of architecture, for purposes of the registration statute, should be defined as consisting of providing or offering to provide certain services hereafter described, in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space within and the site surrounding such buildings, which have as their principal purpose human occupancy or habitation. The services referred to include pre-design; programming; planning; providing designs, drawings, specifications and other technical submissions; the administration of construction contracts; and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects. The practice of architecture shall not include the practice of engineering, but an architect may perform such engineering work as is incidental to the practice of architecture. No person not registered nor otherwise permitted to practice under the registration statute should be permitted to engage in the practice of architecture.

Except as provided in IV B and C, no person not registered should be permitted to acknowledge himself/herself as authorized to practice architecture or to use the title "architect" when offering to perform any of the

services which the practice of architecture comprises or in circumstances which could lead a reasonable person to believe that such services were being offered; except that a person registered in another jurisdiction may use the title "architect" when identifying his/her profession in circumstances which would not lead a reasonable person to believe that the person using the title "architect" is offering to perform any of the services which the practice of architecture comprises.

A person currently employed under the responsible control of an architect and who maintains in good standing a National Council of Architectural Registration Boards Record may use the title "intern architect" or "architectural intern" in conjunction with his/her current employment, but may not engage in the practice of architecture except to the extent that such practice is excepted from the requirement of registration.

- B** A partnership or corporation offering a combination of architectural services together with construction services may offer to render architectural services only if (1) an architect registered in this state or otherwise permitted to offer architectural services participates substantially in all material aspects of the offering; (2) there is written disclosure at the time of the offering that such architect is engaged by and contractually responsible to such partnership or corporation; (3) such partnership or corporation agrees that such architect will have responsible control of the architectural work and that such architect's services will not be terminated prior to the completion of the project without the consent of the person engaging the partnership or corporation; and (4) the rendering of architectural services by such architect will conform to the provisions of the architectural registration law and the rules adopted thereunder.
- C** State statutes will continue to exempt various structures and special categories of persons from the purview of the statutes. Planning activities by planners and construction contracts by persons customarily engaged in contracting work are examples of activities which should be specifically exempted.

### COMMENTARY

The guideline adopts a definition of the practice of architecture that covers the wide variety of services that architects currently furnish and that architects are specifically trained to provide and on which applicants for registration are examined. Architects are properly concerned with the design, construction and modification of buildings, and the space within and the site surrounding such buildings. The services that an architect may be expected to perform include pre-design services, programming, planning, preparing various technical submissions, administering construction contracts, and coordinating the work produced by other design professionals working on the project, including work designed by engineers, landscape architects, and other specialty

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consultants. The prohibition in the statute is against a person, “not registered or otherwise permitted to practice,” rendering or offering to render the services described. No person is permitted to use the title “architect” unless he/she is registered, or unless the circumstances would not lead a reasonable person to believe that architectural services are being offered.

It is contemplated that state statutes will continue to exempt various categories of related design professions from the purview of this statute to the extent that the exercise of their profession may incidentally involve them in the practice of architecture. The importance of these exemptions should not be minimized. They should be carefully thought out to serve as a means for setting off legitimate activities of other registered design professionals from the practice of architecture.

Both architects and engineers are permitted to design structures under their respective registration statutes, but by emphasizing “human occupancy or habitation,” this guideline makes a sensible distinction between the practice of architecture and the practice of engineering.

Paragraph B allows design/build firms to offer to perform architectural services only under the condition that an architect is involved during the design and construction of the project. The requirement under Clause (2) of the written disclosure is to avoid any misapprehension by the client that the architect is in a fiduciary relationship to the client.

## II REGULATION OF CONDUCT OF REGISTRANTS

- A** The state board should be authorized by statute to promulgate, as part of its regulatory function, rules of conduct governing the practice of registered architects. The statute should contain standards for the scope and content of such rules.
- B** The statute should include, as one of the enumerated grounds for revocation or suspension of registration or for the imposition of a civil fine, violation of rules of conduct promulgated by the board.
- C** The state board should review and adopt insofar as practicable the *Model Rules of Conduct* published by NCARB or equivalent rules. Some of those Rules serve as well as the foundation for regulatory legislation. For example, the Rule of Conduct (5.2) which restricts an architect’s right to sign or seal technical submissions prepared by others and which sets out the requirements for “responsible control” should be part of the statutory framework of each state’s regulation of practice.

## COMMENTARY

Substantially all states, explicitly or by clear inference, authorize their registration boards to adopt rules or regulations governing the conduct of architects. States whose statutes provide a “clear inference” are typically those giving the board authority to adopt all regulations necessary to carry out the registration law

and subsequently empowering the board to revoke or suspend registration for misconduct. (A board’s rule-making power coupled with the power of revocation or suspension based on misconduct implicitly requires further description by the rule-making process of what will constitute misconduct.)

Because a matter as serious as revocation of registration may turn on a violation of board regulations, it is improper to adopt regulations governing conduct unless the power to do so is clear in the statute. This guideline urges that all states set out that clear authority.

The statute should also contain specific standards for the scope and content of such regulations in order to protect them from attack on the grounds that they are the results of an over-broad delegation of legislative authority. For example, the statute could explicitly empower the board to adopt regulations concerning “misrepresentations, conflicts of interest, disability, violations of law, or other unprofessional conduct.”

Once the statute properly empowers a board to adopt such rules, the board should proceed in accordance with its local regulations (often found in the state administrative procedure act) governing the adoption of rules by the board. Once adopted, the rules will have the force of law in most states.

Obviously, the promulgation of rules of professional conduct will be ineffective, unless a violation of the rules results in a penalty. Accordingly, the guideline advises that a statute should explicitly make a violation of the rules of conduct a ground for suspension, revocation of registration, or civil fine.

In general, such rules of conduct should be in the regulations where they can be reviewed from time to time by the board to make sure that they are compatible with architecture as it is currently being practiced by competent and ethical professionals.

NCARB publishes, and revises from time to time, recommended *Model Rules of Conduct*. A majority of the state boards have adopted these Rules as their own *Model Rules of Conduct*.

## III QUALIFICATION FOR REGISTRATION UNDER STATE PROCEDURE

### INTRODUCTION

In 1982, this guideline was rewritten to afford state boards greater flexibility in dealing with changing national standards for education and examination. At the same time, NCARB decided to eliminate the minimum age requirement of 21, as it had earlier eliminated the citizenship or residency requirement. A short explanation is in order. In 1971, the 26th Amendment to the U.S. Constitution was ratified, extending the right to vote to 18 year olds. Many states responded by reducing the age of competency, for all purposes, to 18. In such states a minimum age requirement of 21 would run contrary to the prevailing law. Since it is inconceivable that a candidate could meet the requirements

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of education and training at 21 (let alone 18), retaining a minimum age in the registration statute was meaningless.

As to the elimination, some years earlier, of a citizenship or residency requirement, court decisions have left no doubt that a citizenship requirement for entry into a profession is unconstitutional. While a requirement of actual residence may be acceptable, related court decisions established that it is unconstitutional to require a certain duration of residence as a condition of registration. NCARB considers that when educational and employment opportunities encourage young architects to move from state to state, it is no longer reasonable to insist that an applicant be a resident of the state administering the examination.

**A** An applicant for registration should be required to hold a professional degree in architecture from an NAAB-accredited program and to have had such practical training as the state board, by regulations, shall deem appropriate. In lieu of the requirement of an NAAB-accredited degree, the state board may register an applicant who demonstrates, in accordance with such standards and requirements as the state board adopts by regulation, that he/she has such other educational experience as the state board deems equivalent to a professional degree in architecture from an NAAB-accredited program. The statute should permit the state board to adopt, as its own regulations relating to practical training and education, those guidelines published from time to time by the National Council of Architectural Registration Boards, and should permit the state board to adopt the accreditation decisions of the National Architectural Accrediting Board.

**B** To be registered, the applicant should be required to pass examinations covering such subjects and graded on such basis as the state board shall, by regulations, decide. The statute should permit the state board to adopt the examinations and grading procedures of the National Council of Architectural Registration Boards.

## COMMENTARY

In A and B, flexible standards for education and training are set out. It is assumed and strongly encouraged that jurisdictions will, by regulation, bring themselves in line with national standards as they are being developed. As was discussed in the introduction, this guideline (and Guideline IV) recommends that the statute contain language authorizing the use of NCARB and the National Architecture Accrediting Board (NAAB) standards for regulatory purposes in order to avoid any challenge to that procedure.

It is important that the details of the examination not be found in the statute. It would be a great setback to the regulatory system if states were inhibited by their statute from adopting changes in the examination which are expected to occur from time to time in the future. The same is true with respect to educational and training requirements. The recommended language permits boards to adopt the NCARB-recommended education, training,

and examination standards. The reference to a degree in architecture from an accredited program or similar language is already found in most state statutes.

- C** If the state wishes to invest its state board with discretion to reject or take disciplinary action against an applicant who is not of “good moral character,” the statute should specify only the aspects of the applicant’s background germane to the inquiry, such as
- (i) conviction for commission of a felony;
  - (ii) misstatement or misrepresentation of fact or other misconduct in connection with seeking registration, including without limitation misconduct involving violation of applicable rules protecting the integrity of the architect licensing process such as the Architect Registration Examination or the Architectural Experience Program (AXP), formerly known as the Intern Development Program (IDP);
  - (iii) violation of any of the rules of conduct required of registrants and set forth in the statutes or regulations (See Guideline II); and
  - (iv) practicing architecture without being registered in violation of registration laws of the jurisdiction in which the practice took place.

If the applicant’s background includes any of the foregoing, the state board should be allowed, notwithstanding, to register the applicant on the basis of suitable evidence of reform.

## COMMENTARY

Paragraph C sets out the NCARB recommendations in the event that the statute invests its board with discretion to consider “good moral character.” These standards make clear that this test is not to be applied arbitrarily to keep out an applicant whose political views, for example, are distasteful to the board.

## IV QUALIFICATION FOR REGISTRATION UNDER RECIPROCITY PROCEDURE

- A** Every person seeking to practice architecture in a state should be registered, if
- 1 the person holds a current and valid registration issued by a registration authority recognized by the state board; and
  - 2 the person holds a current and valid National Council of Architectural Registration Boards Certificate; and
  - 3 the person files his/her application with the state board, upon a form prescribed by the board, containing such information satisfactory to the board, concerning the person, as the board considers pertinent.
- B** A person seeking an architectural commission in a jurisdiction in which he/she is not registered should be admitted to the jurisdiction for the purpose of offering to provide architectural services, and for that purpose only, without having first been registered by the jurisdiction, if



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- 1 the person holds a current and valid registration issued by a registration authority recognized by the state board; and
- 2 the person holds a current and valid National Council of Architectural Registration Boards Certificate; and
- 3 the person notifies the board of the jurisdiction in writing that (a) he/she holds an NCARB Certificate and is not currently registered in the jurisdiction, but will be present in the jurisdiction for the purpose of offering to provide architectural services and (b) he/she will deliver a copy of the notice referred to in (a) to every potential client to whom the person offers to provide architectural services; and
- 4 the person provides the board of the jurisdiction with a statement of intent that he/she will apply immediately to the board for registration, if selected as the architect for a project in the jurisdiction.

The person should be prohibited from actually providing architectural services until he/she has been registered.

- C** A person seeking an architectural commission by participating in an architectural design competition for a project in a jurisdiction in which he/she is not registered should be permitted to participate in the competition, if
- 1 the person holds a current and valid registration issued by a registration authority recognized by the state board; and
  - 2 the person holds a current and valid National Council of Architectural Registration Boards Certificate; and
  - 3 the person notifies the board of the jurisdiction in writing that he/she is participating in the competition and holds an NCARB Certificate; and
  - 4 the person provides the board of the jurisdiction with a statement of intent that he/she will apply immediately to the board for registration, if selected as the architect for the project.
- D** The foregoing provisions for registration under the reciprocity procedure are to be in addition to the provisions found in the statute for registering applicants under the examination procedure (see Guideline III) and to any provisions in the statute providing other forms of reciprocity.

## COMMENTARY

State statutes should acknowledge the procedure for interstate practice which is being followed throughout the United States; i.e., the registration of a non-resident holding the NCARB Certificate. This section of the guideline provides the mechanics by which the state board registers the Certificate holder. While this generally follows the practice of most states, to avoid any question as to the power of the board to honor the NCARB Certificate, it is advisable to set forth the procedure explicitly in the statute.

Even with the NCARB procedure accepted by most jurisdictions, the out-of-state architect has often faced a dilemma when he/she offers to render services in an initial interview with a prospective client or by entry in an architectural design competition. Technically, that interview or that entry in a design competition may violate the provisions of the local state law, in that the out-of-state architect is holding himself/herself out to be an architect (offering to render architectural services), in attempting to get the commission, without first having been registered in the jurisdiction.

Despite streamlining of the processing at NCARB Headquarters in Washington, a delay is inevitable between the time that an architect is first invited to be interviewed or is first notified of the design competition and the time that his/her Council Certificate can be forwarded to the local state board, be reviewed, and have the registration issued. To solve these problems, the guidelines adopt procedures whereby a qualified architect holding the NCARB certificate is admitted for the purpose of offering to render architectural services or for the purpose of participating in an architectural design competition without first having been registered. These procedures have worked well in the jurisdictions that have adopted them and have proved of great convenience to the architectural profession.

## V FIRM PRACTICE

- A** A partnership (including a registered limited liability partnership), a limited liability company or a corporation should be admitted to practice architecture in a state if (1) two-thirds (2/3) of the general partners (if a partnership), two-thirds (2/3) of the managers (if a limited liability company), or two-thirds (2/3) of the directors (if a corporation) are registered under the laws of any state to practice architecture or engineering; (2) one-third (1/3) of the general partners (if a partnership), one-third (1/3) of the managers (if a limited liability company), or one-third (1/3) of the directors (if a corporation) are registered under the laws of any state to practice architecture; and (3) the person having the practice of architecture in his/her charge is himself/herself a general partner (if a partnership), or a manager (if a limited liability company), or a director (if a corporation) and is registered to practice architecture in that state. The board should be empowered to require by regulation any partnership, limited liability company, or corporation practicing architecture in that state to file information concerning its officers, directors, managers, beneficial owners, and other aspects of its business organization, upon such forms as the board prescribes.

## COMMENTARY

While a majority of states now permit the practice of architecture in the conventional corporate and partnership forms, and in the newer limited liability company form, the restrictions placed on corporate practice and limited liability company practice (and to a lesser degree on partnership practice) are often



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onerous. Worse still, these restrictions are so varied among the several states as to require an architectural firm organized as a corporation or limited liability company to consult with legal counsel in all cases before accepting work in another state. The guidelines seek a reasonable, nationwide provision respecting firm practice.

The requirements are that two-thirds of the directors or managers be registered to practice architecture or engineering under the laws of any state; that one-third of the directors or managers (in other words, at least one-half of the architect and engineer directors or managers) be registered to practice architecture under the laws of any state; and that the person having the practice of architecture in his/her charge be a director or manager, and that such person be registered to practice architecture in the state of the project. (In the case of a limited liability company in which management of its business is vested in the members, the requirement is intended to apply to the members.) This guideline does not require that all the directors or managers be architects; there may be engineers sitting on the board of directors. Moreover, up to one-third of the total number of directors or managers may be laymen. For example, most states require that corporations have a minimum of three directors. Accordingly, the small closely-held corporation, having only the minimum number of directors, may have a business advisor, accountant, or other person sitting on the board with two design professionals. Larger firms may wish to have a banker, lawyer, accountant, business advisor, or real estate consultant, or several of the foregoing, sitting on the board. The guideline allows this flexibility.

The utility of a provision of the kind proposed by the guidelines is emphasized by the fact that present restrictions on firm practice have had the effect of promoting techniques for circumventing laws restricting firm practice which can be used equally by responsible and irresponsible firms. For example, it has become common for an architect associated with a corporate firm to take a contract in a restrictive state in his/her individual name, thus technically complying with the law although the work is being done by an out-of-state corporate entity. Under this practice, a construction company employing a single architect is as able to evade the restrictions as a reputable architectural firm whose entire board comprises architects. Strict enforcement to prevent such practices in order to ban the company not in control of design professionals proves impossible as a practical matter, because such enforcement would result in wholesale barring of responsible corporate architectural firms in many states. The type of rule set forth in Guideline V-A, in contrast, could be used successfully to bar entry to corporate or limited liability company firms not controlled by professionals while not forbidding practice by the vast majority of legitimate corporate or limited liability company firms that should be able to meet the requirements.

There is no requirement concerning the ownership of a firm (e.g., the stockholders of a corporation). This matter was carefully considered in drafting the guideline. There are a number of

good reasons for not requiring that ownership be exclusively in the hands of design professionals. These range from a frequent situation in the small corporation where the principal of the firm wishes to bequeath his/her stock to his/her spouse or children, to the possibility of larger firms seeking public ownership in order to capitalize adequately their practice. Since there are strong reasons for not restricting ownership, these must be weighed in the balance against the reasons for imposing restrictions.

The principal, if not sole, argument for restricting ownership is that it ensures ultimate control of the firm in the hands of design professionals. But this argument is illusory. For example, a corporation, by statute, is managed by its board of directors. The role of stockholders is limited to electing and removing the directors in whom management is vested. While it is therefore true that laymen owning a majority of the shares may change the persons who constitute the board of directors, the laymen can never substitute laymen on the board of directors for professionals. Thus, the argument is reduced to the proposition that the laymen can find compliant architects more likely to do their bidding on the board of directors than the stubborn architect whom they discharged, a situation analogous to that currently existing between the owner and the architect. The architect has control over the design of a project only for so long as the owner keeps him/her under contract. If the owner is displeased with the architect or if the owner wants the architect to take action which the architect feels is unprofessional, the owner can discharge the architect and seek a more compliant architect to do his/her bidding.

Since much was to be gained by leaving the question of ownership to the discretion of the firm practitioners and very little was to be gained by imposing restrictions, it was decided that this guideline should confine itself to the composition of the firm's management.

It should be noted that the guidelines require merely that the design professionals be registered in any state and not necessarily in the state of the practice. One of the great problems confronting large firms practicing architecture is that several of the states require all directors (in the case of a corporation), all managers (in the case of a limited liability company [or all of the members in the case of a limited liability company in which management of its business is vested in the members]), and all partners (in the case of a partnership) to be registered in that state. Expense and unnecessary processing to achieve that goal is out of proportion to any useful purpose it serves.

The real protection for the public is that the person who has the project in his/her charge is a person who has qualified to practice architecture in the state. This guideline makes certain that will always be the case. In order to make clear that the architect is to be a principal of the firm, this guideline requires that he/she also be a director (if a corporation), a manager (if a limited liability company), or a general partner (if a partnership). (In the case of a limited liability company in which management of its business is vested in the members, the guideline is intended to require

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that he/she also be a member.) In the case of a corporation, it should be emphasized that the officers are mere employees of the corporation subject at all times to the direction of the board of directors. Thus, those present state laws requiring the architect practicing through the corporate firm to be an officer of the corporation too often find themselves dealing with a third vice president, who, except for that title, holds no position of importance in the corporate firm.

It is not the intent that a firm be registered, but only that a firm, complying with this guideline, may be a vehicle by which a registered architect may legally practice architecture.

The guidelines suggest that a state board may wish to have a special filing for firm practice so that the state will know at all times who the officers, directors, managers, and beneficial owners of the firm are. Many states have adopted such a practice.

**B** A firm otherwise qualified to practice in a state should be permitted to practice in that state under a name which does not include the names of every director (if a corporation), every manager (if a limited liability company), or every general partner (if a partnership) registered in any state to practice architecture, provided the firm complies with reasonable regulations of the state board requiring the firm to file the names, addresses, and other pertinent information concerning the directors (if a corporation), managers (if a limited liability company), or general partners (if a partnership) of the firm.

## COMMENTARY

A handful of states still proscribe use of any firm name other than a name which includes the surnames of principals. This has yielded a curious anomaly. These names and those firms gained considerable reputations; but when they went into a state that proscribed generic names, they discarded the name under which they have developed a reputation and practiced as John C. Smith or Peter Jones. In such circumstances, the use of the surname is more misleading than the use of the assumed name under which the firm has developed its practice.

Again, the guidelines encourage the local state board to require the filing of a statement by firms operating under an assumed name so that the real names of principals will at all times be available.

## VI CLASSES AND CHARACTERISTICS OF STRUCTURES WITH RESPECT TO WHICH PERSONS PERFORMING BUILDING DESIGN MAY BE EXEMPT FROM REGISTRATION REQUIREMENTS

### INTRODUCTION

Most architectural registration statutes specify various kinds of structures which may, under special conditions, be designed by unregistered persons. In an effort to provide a basis for more uniformity among jurisdictions in establishing reasonable exemptions, NCARB, through its Committee on Procedures and

Documents (P&D), in 1979 initiated a study of current statutory exemptions. While the results of this effort indicated almost as many variations as there are jurisdictions, it became apparent that there were five basic characteristics of buildings which, when used in varying combinations, formed the basis of establishing exemptions. These characteristics are:

- Cost of construction
- Area or volume
- Intended use or occupancy
- Number of stories or height
- Number of units or occupants

P&D decided to study how such exemptions affect the health, safety, and welfare of the public and then to fashion a legislative guideline in the light of its findings.

As a means of expanding the information base and of examining the impact and the roles of public building officials and licensed design professionals as they relate to the safety of the consumer, NCARB, in early 1981, organized a round-table discussion, including representatives of:

- Illinois Council of Code Administrators
- AIA Division of Codes and Standards
- National Society of Professional Engineers
- Victor O. Schinnerer and Company, Inc. (Professional liability insurance)
- International Conference of Building Officials
- U.S. Department of Housing and Urban Development

Building officials attending the meeting stated that the public may assume that the state or municipal building inspectors or code administrators are an effective means of assuring public health, safety, and welfare, but in practice this is rarely the case. A code administrator pointed out that while some of the building officials are indeed trained and registered as engineers and/or architects, they are a very small minority and that the majority has no professional academic background in engineering or architecture, although some do receive modest training in plan review for code compliance. The expectation that these dedicated and often overworked public servants can evaluate the technical adequacy of a complex building design is, in most instances, unrealistic.

While substantiating statistics are not available from public records, all participants at the round table agreed that their experiences would strongly support the concept that the public health, safety, and welfare can only be assured by requiring that licensed professionals design any significant improvements to real property. It was further established that few, if any, governmental building departments, inspectors, or code administrators have sufficient qualified staff to carry out their responsibilities; and that they must depend heavily upon licensed design professionals to deliver to the public safe structures designed within the limits of current codes. To demonstrate further potential for loss to the public, it was pointed out that errors and omissions insurance is not available from any source to unregistered persons.

# LEGISLATIVE GUIDELINES

In the summer of 1999, NCARB distributed a questionnaire to 9,450 building officials affiliated with the three major code organizations. One of the purposes of the questionnaire was to obtain from these officials their opinions (not necessarily the requirements of their existing laws) on what exemptions should be included within their statutes which would not impose overly restrictive standards, but which would reasonably protect the public health, safety, and welfare.

Of those responding, 95 percent agreed that a registered architect or engineer is essential on any “substantial” building project. Eighty-seven percent (87%) agreed that even well-staffed building departments must rely on registered design professionals to ensure that building designs meet performance standards of modern codes. Eighty-seven percent (87%) said that registered architects and engineers should be required to perform construction contract administration services. In response to a question asking what exemptions should be permitted in a model statute, 88 percent favored limiting the exemption only to one- and two-family dwellings and farm buildings. And a substantial minority favored deleting one- or two-family dwellings from the exemption.

While current statutes, with their broadly varying exemptions, attempt to limit risk to the public by limiting the building in some way (area, height, span, cost, function, etc.), it does not necessarily follow that these limitations will accomplish that goal.

It is assumed in the following guidelines that state registration laws begin with the requirement that plans and specifications for all buildings having a principal purpose of human occupancy or habitation shall be prepared and sealed by an architect registered in the state. The guideline then suggests principles upon which appropriate exemptions from the law may be developed. (Note, however, that some jurisdictions permit no exemptions.) In 1989, the Council deleted references to the engineering registration law from these guidelines because the Council believes that the public health, safety, and welfare is best protected by having architects and not engineers responsible for the design of buildings constructed for human occupancy or habitation. The scope of other structures that require the involvement of a registered engineer should be dealt with in the engineering registration law and not in the architectural registration law.

- A** Persons not registered under this registration law may design detached single- and two-family dwellings and any accessory buildings incidental thereto, unless an architect is otherwise required by law or by the building authority having jurisdiction over the project.

## COMMENTARY

Single- and two-family dwellings have historically been designed by their owners and more recently by contractors and developers. In many instances, state statutes have continued to permit this exemption as a concession to the right of an individual to make risk decisions impacting primarily on his/her

own family. As a practical matter, legislators have been unwilling to attempt to curtail the practice of an owner designing or purchasing a structure to house his/her own family.

While some statutes have attempted to limit the exemption to “designer occupied” structures, others have permitted a broader participation in the design of dwellings by omitting the limiting impact of designer occupancy. This less restrictive phrasing opens the field to contractors and developers on the premise that size and use do limit risk. On the other hand, limiting the exemption to “designer occupied” dwellings affords no protection to subsequent purchasers of the dwelling.

- B** Persons not registered under this registration law may design farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry or storage, if such structures are designed to be occupied by no more than 10 persons.

## COMMENTARY

States having particular occupations, whose participants have traditionally designed structures for their own use, may wish to continue to permit such buildings to be designed by non-licensed persons. This guideline recognizes the political reality that long-standing custom relating to occupations involving significant numbers of participants is unlikely to be changed by members of the state legislature. Farmers probably comprise the largest single group coming under this exemption. It would be appropriate, however, to consider limiting this and other traditionally “family” occupations when the magnitude of their individual operations requires involvement of significant numbers of non-family employees. Some non-agricultural states may support other occupations which, on the basis of history and custom, may require that buildings housing these occupations be exempt.

In any case, any effective statute attempting to limit risk to the public from failures in buildings must recognize that the only certain method is to limit the number of occupants permitted in that structure. Structural limitations in the building design (area, height, span, etc.) and building cost have no limiting effect on the numbers of people who may occupy the building and cannot be relied upon as effective means of protecting the public. Structural failures in tall single-story buildings erected on or near property lines or rights-of-way may compromise the safety of persons nearby. Limiting exempt structures to a single story, fixing maximum heights, and requiring substantial setbacks from property lines and rights-of-way will tend to localize the impact of any failure. It follows from the last restriction that, without engaging a registered design professional, no building may be built close to the property line.

The number of persons allowed to be put at risk is a judgment to be made by each jurisdiction.

- C** Persons not registered under this law may design particular features of a building when such features do not affect structural or other safety features of the building

# LEGISLATIVE GUIDELINES

and when the work contemplated by the design does not require the issuance of a permit under applicable building codes.

## COMMENTARY

This exemption would apply to any structure, including dwellings, factories, offices, and other commercial buildings, and recognizes that in many circumstances, competent, skilled trades-people can do the work. The references to structural and life-safety aspects are particularly important in instances where codes have not been adopted.

## VII REQUIRING THAT AN ARCHITECT BE ENGAGED DURING THE CONSTRUCTION OF A PROJECT

- A** An owner who proceeds to have constructed a project having as its principal purpose human occupancy or habitation and not exempted under Section VI shall be deemed to be engaged himself/herself in the practice of architecture unless he/she has employed an architect to perform at least minimum construction contract administration services, including (i) periodic site visits, (ii) shop drawing review, and (iii) reporting to the owner and building official any violations of codes or substantial deviations from the contract documents which the architect observed.
- B** It shall be the project design architect's obligation to report to the state board and to the building official if he/she is not engaged to provide construction contract administration services described in Paragraph A.
- C** A state board may waive these requirements with respect to a particular project or class of projects if it determines that the public is adequately protected without the necessity of an architect performing the services described in Paragraph A.

## COMMENTARY

This guideline increases the required role of the design architect during construction to at least the listed minimum of construction contract administration services. By stating that an owner who fails to engage an architect to perform such services for a project having as its principal purpose human occupancy or habitation is deemed to be engaged in the practice of architecture, it gives the state board legal power to seek a remedy against the owner failing to meet the requirement.

The origin of this provision was the statement of a significant number of building officials taking part in a 1981 NCARB survey that contracts for professional services that terminate upon completion of construction documents, which do not then provide for professional administration during construction, often result in buildings that do not meet code requirements that were specified in the documents. (In a 1999 survey of building officials, 87 percent of the respondents favored requiring that architects and engineers perform on-site observation during construction.) The Council believes that in order to effectively

protect the public health, safety, and welfare, statutes must include language requiring the retention of registered architects to provide responsible professional involvement throughout the construction process on all non-exempt structures.

The guideline suggests that the design architect be engaged for at least the minimum of construction phase professional services which include periodic site visits, shop drawing review, and reporting to the owner and the building official any violations of codes or substantial deviations from the contract documents which the architect observes. Most agreements between architects and their clients require that the architect report any observed code violations and defects in the work to the owner. The building codes of many jurisdictions require that a registered architect or engineer perform the other construction contract administration services listed in the guideline. For example, the city of Boston requires an architect or engineer to make at least one site visit per week, to be responsible for inspecting all phases of construction, and to notify the building official of any code violations, discrepancies between the design documents and the work in progress, and any condition constituting a hazard, which the architect observes. The International Building Code requires special inspections by a registered design professional.

Under legislation enacted pursuant to this guideline, if an architect is not engaged to perform the designated minimum construction phase services, then the owner is deemed to be himself/herself engaged in the unauthorized practice of architecture. This will allow the state board to seek an injunction, civil fines, and/or criminal complaints as appropriate to the circumstances and as permitted by the relevant state law. The enforcement role of the state board and local building official is aided by the design architect's obligation under the guideline to make both the state board and local building official aware of situations in which the design architect is not engaged to provide construction contract administration services. Presumably, the level of enforcement would be commensurate with the risk to the public health, safety, and welfare. For example, if an owner did not engage an architect to provide construction phase services in connection with the construction of a major downtown office building, the first course of action for a state board likely would be to seek an injunction to prevent the further construction of the building. A criminal complaint might be sought in circumstances where an owner has repeatedly disregarded this rule at peril to the public health, safety, and welfare. Civil fines might be imposed both to discourage transgressions of the law and to assist in funding enforcement efforts.

Of course, state boards should be free to waive these requirements for projects that do not require an architect to perform construction contract administration services in order to adequately protect the public. Structures that may be designed without the involvement of a registered architect under Section VI of the guidelines, for example, should also be exempted from the requirement that an architect be engaged to perform construction phase services. Where a public agency has its own

# LEGISLATIVE GUIDELINES

experienced construction contract administration staff, the state board may exempt the agency's projects from this requirement. The board should be able to exempt both specific projects and categories of projects.

## VIII REGULATION OF UNREGISTERED PERSONS PRACTICING ARCHITECTURE

- A** While violation of the architectural registration law by unregistered persons should be a crime, the state board should also be authorized, after a hearing, to impose civil fines of up to a stated amount, such as \$3,000, and to issue orders to cease against unregistered persons and persons aiding or abetting unregistered persons. The board, as well as the state attorney general and county or other local law enforcement authorities, should be authorized to seek injunctions against practice by unregistered persons and the aiding or abetting of such practice, and judicial enforcement of civil fines imposed by the board.
- B** All plans, specifications, and other technical submissions ("technical submissions") prepared in the course of practicing architecture (as defined in Guideline I) and required to be filed with state or local building or public safety officials should be sealed by an architect. If state law provides certain exceptions to the general requirement that technical submissions be sealed, then the person filing the technical submissions should specify on them the state law exempting the preparation of those technical submissions. Any permit issued on the basis of technical submissions not complying with these requirements shall be invalid.

### COMMENTARY

Virtually all state laws make the unregistered practice of architecture a crime. Yet most state boards have found that busy public prosecutors are rarely persuaded to prosecute unregistered persons practicing architecture. Except where life or property may already have suffered, prosecutors have generally given priority to "more serious" crimes. Authorizing the board itself to impose a civil fine after a hearing will unburden busy prosecutors and at the same time provide a more fitting sanction for many cases of unregistered practice. New Jersey has long had such authority and has used it with great effect. Many other states also have legislative authorization to impose civil fines. Where a fine remains unpaid or where the board believes that a court injunction is necessary to halt continuing unregistered practice, the board itself, as well as other public law enforcement authorities, should be authorized to apply to courts to enforce the board's orders to pay the fine or to cease the unregistered practice.

Local and state building and public safety officials have historically relied on the professional expertise implied by professional seals affixed to plans filed to obtain governmental permits. Therefore, state boards should consider pressing for including the substance of Guideline VII B in statutes, building codes, and other codes applicable throughout their states. By placing the burden of certifying the applicability of exemptions on applicants, they as well as building officials can be expected

to aid enforcement of the seal requirement. By providing that permits erroneously issued without the required seals are invalid, NCARB expects private enforcement of these provisions by owners and their lenders.

## IX PRACTICE BY FOREIGN ARCHITECTS

A person duly registered as an architect outside of the United States and Canada should be allowed to practice architecture in affiliation with a local architect within a state under the following conditions:

- A** The foreign architect must show that he/she holds a current registration in good standing which allows him/her to use the title "architect" and to engage in the unlimited practice of architecture in his/her national jurisdiction.
- B** The foreign architect must show that a bilateral agreement exists between NCARB and the national registration authority of his/her national jurisdiction.
- C** The foreign architect must affiliate with an architect duly registered in the state, who shall take responsible control over all aspects of the architectural services for any project in which the foreign architect is involved, and who shall file a written statement with the state board identifying the foreign architect, describing the project, and describing the foreign architect's role.
- D** The [foreign] architect must use the title: "[X], a foreign architect, in consultation with [Y], an architect registered in [state]."

### COMMENTARY

In 1998, the Council Board presented to the Annual Meeting a proposal by which foreign architects would be permitted to engage in architectural practice in the United States provided a U.S.-registered architect took responsible control over all aspects of the services to be performed. This proposal would require an agreement between NCARB, on the one hand, and the equivalent national registration body in the foreign country, on the other, before an architect registered in the foreign country would be permitted to engage in architectural practice in the United States. In contrast with inter-recognition agreements, such as the one between the U.S. and Canada, which accepts the two registration systems as sufficiently similar as to permit a registered architect in Canada and a registered architect in the United States freedom to practice in the other country, such agreements may be reached with countries whose registration requirements vary substantially from our own. State boards are encouraged to accept this procedure nonetheless because the public is protected by the role of the U.S. architect exercising responsible control over all aspects of the work.

Based on the 1998 report, the Council adopted the notion of bilateral accords in principle, asking that a legislative guideline be submitted to the 1999 Annual Meeting. That was done, and the Council adopted the new guideline without dissent.



## SECTION 1 – DEFINITIONS

The following words as used in Sections 1 to 13 inclusive, unless the context otherwise requires, shall have the following meaning:

### “Architect.”

Any person who engages in the practice of architecture as hereinafter defined.

### “Architect Emeritus.”

Means an honorific title granted to a previously registered architect who has retired from the active practice architecture.

### “Board.”

The Board of Registration of Architects established by **[Here, make reference to statute establishing Board; if no separate statute exists which sets out the composition of Board, terms, compensation, etc., insert those provisions as “Section 2–Board” and renumber existing Section 2 and all subsequent sections.]**

### “Good moral character.”

Such character as will enable a person to discharge the fiduciary duties of an architect to his/her client and to the public for the protection of health, safety, and welfare. Evidence of inability to discharge such duties shall include the commission of an offense justifying discipline under Section 7.

### “Practice of architecture.”

Providing or offering to provide those services, hereinafter described, in connection with the design and construction, enlargement, or alteration of a building or group of buildings and the space within and the site surrounding such buildings, which have as their principal purpose human occupancy or habitation. The services referred to include pre-design, programming, planning, providing designs, drawings, specifications and other technical submissions, the administration of construction contracts, and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects; provided that the practice of architecture shall not include the practice of engineering as defined in **[Statute Reference]**, but a registered architect may perform such engineering work as is incidental to the practice of architecture.

### “Prototypical building.”

Any commercial building or space within a commercial building that is intended to be constructed in multiple locations, and in fact then has been constructed in multiple locations, and which conveys an owner’s intended uniform business program, plan, or image.

### “Prototypical building documents.”

Technical submissions for prototypical buildings that are prepared by or under the responsible control of an architect then registered in any United States jurisdiction and

holding a current and valid certification issued by the National Council of Architectural Registration Boards, that identify such architect together with the architect’s registration number, jurisdiction of registration, and National Council of Architectural Registration Boards Certificate number and that are marked “Prototypical Design Documents Not for Construction.” Prototypical building documents do not comprise a final, comprehensive set of design and construction documents because a prototypical building also requires adaptations for local conditions, including site conditions, and may require additional design as well.

### “Registered architect.”

An architect holding a current registration.

### “Registration.”

The certificate of registration issued by the Board.

### “Responsible control.”

That amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architect applying the required professional standard of care, including but not limited to an architect’s integration of information from manufacturers, suppliers, installers, the architect’s consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect’s technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

### “Technical Submissions.”

Designs, drawings, specifications, studies, and other technical documents prepared in the course of practicing architecture. All technical submissions shall be identified by date and by the name and address of the architect or the architect’s firm.

## SECTION 2 – FEES

**[Here, set out fee structure for all matters for which a fee is set by statute, and/or identify procedure for establishing fees which are set other than by statute. Do not include examination fees.]**

## SECTION 3 – REGISTRATION QUALIFICATIONS

Every person applying to the Board for initial registration shall submit an application accompanied by the fee established in accordance with Section 2, with satisfactory evidence that such person holds an accredited professional degree in architecture or has completed such other education as the Board deems equivalent to an accredited professional degree. If an applicant is qualified in accordance with the preceding sentence, such person

shall then provide the Board with satisfactory evidence that such person has completed such practical training in architectural work as the Board requires and has passed an examination on such technical and professional subjects as are accepted by the Board. None of the examination materials shall be considered public records **[for purposes of state public records act]**. The Board may exempt from such written examination an applicant who holds a current and valid certification issued by the National Council of Architectural Registration Boards. The Board may accept as its own the requirements governing practical training and education published from time to time by the National Council of Architectural Registration Boards. The Board may also accept the examinations and grading procedures of the National Council of Architectural Registration Boards and the accreditation decisions of the National Architectural Accrediting Board. The Board shall issue its registration to each applicant who is found to be of good moral character and who satisfies the requirements set forth in this Section. Such registration shall be effective upon issuance.

Any person who holds a current and valid certification issued by the National Council of Architectural Registration Boards, who holds a current and valid registration issued by a registration authority recognized by the Board, who files his/her application with the Board on a form prescribed by the Board containing information pertinent to such person as is satisfactory to the Board, and who pays such fee as is prescribed by the Board shall have satisfied the basic education, experience, and national examination requirements of the Board for registration.

## SECTION 3A – REGISTRATION OF MILITARY PERSONNEL

The board may, upon presentation of satisfactory evidence by an applicant for licensure, accept education, training, or service completed by an individual as a member of any branch of the military toward the qualifications to receive their license. The board shall promulgate rules to implement this section.

## SECTION 4 – REGISTRATION RENEWAL

The Board shall mail yearly **[or state other time interval]** to every registered architect an application for renewal of registration. Such application, properly filled out and accompanied by the renewal fee established in accordance with Section 2, shall be returned to the Board on or before the date established by the Board. After review of the facts stated in the general renewal application, the Board shall issue a registration which shall be valid for one year **[or state other time interval]**. Any holder of a registration who fails to renew his/her application on or before the prescribed date shall, before again engaging in the practice of architecture within the state, be required to apply for reinstatement, pay the prescribed fee, and, in circumstances deemed appropriate by the Board, be required to be reexamined.

There is hereby created, for registration renewal purposes, a status to be known as “architect emeritus,” which shall apply to architects who are retired and not practicing any aspects of Architecture and who are 65 years of age or older or have been registered for a minimum of “10” years [in their state].

**[States requiring that each registered architect demonstrate continuing education should include the following]** A registered architect must demonstrate completion of annual continuing education activities. The Board shall by regulation describe such activities acceptable to the Board and the documentation of such activities required by the Board. The Board may decline to renew a registration if the architect’s continuing education activities do not meet the standards set forth in the Board’s regulations.

## SECTION 5 – CERTIFICATE OF REGISTRATION

Every registered architect having a place of business or employment within the state shall display his/her certificate of registration in a conspicuous place in such place of business or employment. A new certificate of registration, to replace a lost, destroyed or mutilated certificate, shall be issued by the Board upon payment of a fee established in accordance with Section 2 and such certificate shall be stamped or marked “duplicate.”

## SECTION 6 – SEAL

Every registered architect shall have a seal of a design authorized by the Board by regulation. All technical submissions, which are (a) required by public authorities for building permits or regulatory approvals, or (b) are intended for construction purposes, including all addenda and other changes to such submissions, shall be sealed and signed by the architect. The signature and seal may be electronic. By signing and sealing a technical submission the architect represents that the architect was in responsible control over the content of such technical submissions during their preparation and has applied the required professional standard of care. An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect’s responsible control; (iii) prepared by another architect registered in the same jurisdiction if the signing and sealing architect has reviewed the other architect’s work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding a current and valid certification issued by the National Council of Architectural Registration Boards if (a) the signing and sealing architect has reviewed the other architect’s work and has integrated the work into his/her own technical submissions and (b) the other architect’s technical submissions are prototypical building documents. An 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 architect has reviewed such work and has integrated it into his/her own technical submissions. No public official charged with the enforcement duties set forth in [statutory references for building officials] shall accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been sealed as required by this Section or the applicant has certified thereon to the applicability of a specific exception under Section 11 permitting the preparation of such technical submissions by a



person not registered hereunder. A building permit issued with respect to technical submissions which do not conform with the requirements of this Section shall be invalid. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect's own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care.

## SECTION 7 – DISCIPLINARY POWERS

The Board may revoke, suspend, or annul a registration, or impose a civil penalty in an amount not greater than [ ] thousand dollars for each violation, upon proof satisfactory to the Board that any person has violated the provisions of this Chapter or any rules promulgated by the Board under **[statutory reference giving Board authority to establish rules and regulations]**. In hearing matters arising under this Section, the Board may take into account suitable evidence of reform.

## SECTION 8 – DISCIPLINARY PROCEDURES

Charges against any person involving any matter coming within the jurisdiction of the Board shall be in writing and shall be filed with the Board. Such charges, at the discretion of the Board, shall be heard within a reasonable time after being so filed. The accused person shall have the right at such hearing to appear personally with or without counsel, to cross-examine adverse witnesses, and to produce evidence and witnesses in his/her defense. The Board shall set the time and place for such hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused person, at his/her latest place of residence or business known to the Board, at least [ ] days before such date. If after such hearing the Board finds the accused person has violated any of the provisions of this Chapter or any of the rules promulgated by the Board, it may issue any order described in Section 7. If the Board finds no such violation, then it shall enter an order dismissing the charges. If the order revokes, suspends or annuls an architect's registration, the Board shall so notify, in writing, the State Secretary and the Clerk of the city or town in the state wherein such architect has a place of business, if any.

The Board may re-issue a registration to any person whose registration has been revoked. Application for the reissuance of

said registration shall be made in such a manner as the Board may direct, and shall be accompanied by a fee established in accordance with Section 2.

## SECTION 9 – REGISTRATION PRIMA FACIE EVIDENCE

Every registration issued and remaining in force shall be *prima facie* evidence in all courts of the state that the person named therein is legally registered as an architect for the period for which it is issued, and of all other facts stated therein.

## SECTION 10 – PROHIBITION

Except as hereinafter set forth in Section 11, no person shall directly or indirectly engage in the practice of architecture in the state or use the title "Architect," "Registered Architect," "Architectural designer," or display or use any words, letters, figures, titles, sign, card, advertisement, or other symbol or device indicating or tending to indicate that such person is an architect or is practicing architecture, unless he/she is registered under the provisions of this Chapter, except that a person registered in another jurisdiction or a person retired from the practice of architecture may use the title "architect" when identifying his/her profession in circumstances which would not lead a reasonable person to believe that the person using the title "architect" is offering to perform any of the services which the practice of architecture comprises. No person shall aid or abet any person, not registered under the provisions of this Chapter, in the practice of architecture.

## SECTION 10A – CONSTRUCTION CONTRACT ADMINISTRATION SERVICES REQUIRED

1. The Owner of any real property who allows a Project to be constructed on such real property shall be engaged in the practice of architecture unless such Owner shall have employed or shall have caused others to have employed a registered architect to furnish Construction Contract Administration services with respect to such Project.
2. For purposes of this Section the following terms shall have the following meanings:
  - (a) "Owner" shall mean with respect to any real property any of the following persons: (i) the holder of a mortgage secured by such real property; (ii) the holder, directly or indirectly, of an equity interest in such real property exceeding 10 percent of the aggregate equity interests in such real property; (iii) the record owner of such real property; or (iv) the lessee of all or any portion of such real property when the lease covers all of that portion of such real property upon which the Project is being constructed, the lessee has significant approval rights with respect to the Project, and the lease, at the time the construction of the Project begins, has a remaining term of not less than 10 years.

- (b) "Project" shall mean the construction, enlargement, or alteration of a building, other than a building exempted by the provisions of Section 11.1, which has as its principal purpose human occupancy or habitation.
- (c) "Construction Contract Administration Services" shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of construction contract documents; and (iii) notifying an Owner and the Building Official of any code violations; changes which affect code compliance; the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress; or any deviation from the technical submissions which he/she identifies as constituting a hazard to the public, which he/she observes in the course of performing his/her duties.
- (d) "Building Official" shall mean the person appointed by the municipality or state subdivision having jurisdiction over the Project to have principal responsibility for the safety of the Project as finally built **[or use state statute or building code language]**.

3. If the registered architect who sealed the technical submissions which were submitted to the Building Official at the time the building permit was issued has not been employed to furnish Construction Contract Administration Services at the time such registered architect issued such technical submissions, he/she shall note on such technical submissions that he/she has not been so employed. If he/she is not employed to furnish Construction Contract Administration Services when construction of the Project begins, he/she shall file, not later than 30 days after such construction begins, with the Board and with the Building Official, on a form prescribed by the Board, a notice setting forth the names of the Owner or Owners known to him/her, the address of the Project, and the name, if known to him/her, of the registered architect employed to perform Construction Contract Administration Services. If he/she believes that no registered architect has been so employed, he/she shall so state on the form. Any registered architect who fails to place the note on his/her technical submissions or to file such notice, as required by this paragraph, shall have violated the provisions of this chapter and shall be subject to discipline as set forth herein.
4. If the Board determines, with respect to a particular Project or class of Projects, that the public is adequately protected without the necessity of a registered architect performing Construction Contract Administration Services, the Board may waive the requirements of this Section with respect to such Project or class of Projects.

## SECTION 11 – EXCEPTIONS

Nothing in this chapter shall be construed to prevent:

1. The practice of architecture performed in connection with any of the following:
  - (a) A detached single- or two-family dwelling and any accessory buildings incidental thereto, unless an architect is otherwise required by law or by the building authority having jurisdiction over the project; or
  - (b) Farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry, or storage, if such structures are designed to be occupied by no more than 10 persons; or
  - (c) Any construction of particular features of a building, if the construction of such features does not require the issuance of a permit under any applicable building code and does not affect structural or other life-safety aspects of the building.
2. The preparation of submissions to an architect by manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or others of any materials, components, equipment, or other information incidental to the architect's design of the entire project that describe or illustrate the use of such submissions.
3. The preparation of any details or shop drawings required of the contractor by the terms of the construction documents.
4. The management of construction contracts by persons customarily engaged in contracting work.
5. The preparation of technical submissions or the administration of construction contracts by persons acting under the responsible control of a registered architect.
6. Officers and employees of the United States of America from engaging in the practice of architecture as employees of said United States of America.
7. The following entities: a partnership (including a registered limited liability partnership), limited liability company, or corporation (including a professional corporation) from performing or holding itself out as able to perform any of the services involved in the practice of architecture; provided, that two-thirds of the general partners (if a partnership), or two-thirds of the managers (if a limited liability company), or two-thirds of the directors (if a corporation) are registered under the laws of any United States jurisdiction as architects or engineers and that one-third are registered as architects; and further provided that any agreement to perform such services shall be executed on behalf of the entity by an officer of the entity with authority to contractually bind the entity, a general

partner, manager, or director, as the case may be, who holds registration in this state, and that an officer, general partner, manager, or director who holds registration in this state will exercise responsible control over the particular services contracted for by the partnership, limited liability company, or corporation; and provided further that the partnership, limited liability company, or corporation furnishes the Board with such information about its organization and activities as the Board shall require by regulation. “Managers” shall mean the members of a limited liability company in which management of its business is vested in the members, and the managers of a limited liability company in which management of its business is vested in one or more managers.

8. A partnership (including a registered limited liability partnership), limited liability company, or corporation (including a professional corporation) from offering a combination of (i) services involved in the practice of architecture and (ii) construction services; provided that
  - (a) a registered architect or person otherwise permitted under paragraph 9 of this Section to offer architectural services participates substantially in all material aspects of the offering;
  - (b) there is written disclosure at the time of the offering that a registered architect is engaged by and contractually responsible to such partnership, limited liability company, or corporation;
  - (c) such partnership, limited liability company, or corporation agrees that the registered architect will have responsible control of the work and that such architect’s services will not be terminated without the consent of the person engaging the partnership, limited liability company, or corporation, and;
  - (d) the rendering of architectural services by such registered architect will conform to the provisions of the Chapter and the rules adopted hereunder.
9. A person, who holds a current and valid certification issued by the National Council of Architectural Registration Boards but who is not currently registered in the jurisdiction, from offering to provide the professional services involved in the practice of architecture; provided that he/she shall not perform any of the professional services involved in the practice of architecture until registered as hereinbefore provided; and further provided that he/she notifies the Board in writing that (i) he/she holds an NCARB Certificate and is not currently registered in the jurisdiction, but will be present in **[the State]** for the purpose of offering to provide architectural services; (ii) he/she will deliver a copy of the notice referred to in (i) to every potential client to whom the person offers to provide architectural services; and (iii) he/she will provide the Board with a statement of intent that he/she will apply immediately to the Board for registration, if selected as the architect for a project in **[the State]**.
10. A person, who holds a current and valid certification issued by the National Council of Architectural Registration Boards but who is not currently registered in the jurisdiction, from seeking an architectural commission by participating in an architectural design competition for a project in **[the State]**; provided that he/she notifies the Board in writing that (i) he/she holds an NCARB Certificate and is not currently registered in the jurisdiction, but will be present in **[the State]** for the purpose of participating in an architectural design competition; (ii) he/she will deliver a copy of the notice referred to in (i) to every person conducting an architectural design competition in which the person participates; and (iii) he/she will provide the Board with a statement of intent that he/she will apply immediately to the Board for registration, if selected as the architect for the project.
11. A person who is not currently registered in this state, but who is currently registered in another United States or Canadian jurisdiction, from providing uncompensated (other than reimbursement of expenses) professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector acting in an official capacity. “Emergency” shall mean earthquake, eruption, flood, storm, hurricane, or other catastrophe that has been designated as a major disaster or emergency by the President of the United States or **[the governor or other duly authorized official of the state]**.
12. An individual, registered and practicing in a nation other than the United States or Canada (a “foreign architect”) from practicing in this jurisdiction, so long as such practice is in strict accordance with the provisions of this subsection:
  - (a) The foreign architect must show that he/she holds a current registration in good standing which allows him/her to use the title “architect” and to engage in the “unlimited practice of architecture” (defined as the ability to provide services on any type building in any state, province, territory, or other political subdivision of his/her national jurisdiction).
  - (b) The foreign architect must show that a bilateral agreement exists between NCARB and the national registration authority of his/her national jurisdiction.
  - (c) An architect registered in this jurisdiction shall take responsible control over all aspects of the architectural services for said project.
  - (d) The foreign architect may not seek, solicit, or offer to render architectural services in this jurisdiction, except with the material participation of the architect referred to in (c) above.
  - (e) Promptly after the foreign architect has been selected to provide architectural services for a project within this jurisdiction, the architect referred to in (c) above must file a statement with the Board, (1) identifying the foreign architect, (2) describing the project, and (3) describing the foreign architect’s role.

(f) In all aspects of offering or providing architectural services within this jurisdiction, the foreign architect must use the title “[X], a foreign architect in consultation with [Y], an architect registered in **[this jurisdiction]**.”

13. A person currently employed under the responsible control of an architect, and who maintains in good standing a National Council of Architectural Registration Boards Record, from using the title “intern architect” or “architectural intern” **[some states allow both; some only one]** in conjunction with his/her current employment. Such person may not engage in the practice of architecture except to the extent permitted by other provisions of this Section 11.

## SECTION 12 – ENFORCEMENT

The Board shall be charged with the enforcement of the provisions of Sections 1 through 11 inclusive and of the rules adopted hereunder. If any person refuses to obey any decision

or order of the Board, the Board or, upon the request of the Board, the Attorney General or the appropriate District Attorney shall file an action for the enforcement of such decision or order, including injunctive relief, in the **[designate court with appropriate jurisdiction]**. After due hearing, the court shall order the enforcement of such decision or order, or any part thereof, if legally and properly made by the Board and, where appropriate, injunctive relief.

## SECTION 13 – PENALTIES

Whoever violates any provisions of Sections 1 to 11, inclusive, shall be punished by a fine of not more than [ ] thousand dollars or by imprisonment in a jail or house of correction for not more than [ ] months, or both.

### NOTE ON THE CONSTITUTIONAL LIMITS OF DELEGATION OF REGULATORY STANDARDS

The constitution of each state provides that the lawmaking power of the state shall be vested in its legislature. A state legislature may delegate its lawmaking power to administrative agencies as long as the legislature provides sufficient guidance for the proper exercise of that power. While lawmaking powers may not be delegated to non-governmental bodies, courts allow the incorporation of standards set by non-governmental bodies into statutes and regulations if the administrative agency, such as the architectural registration board, retains the discretion to approve or disapprove the standards. *Madrid v. St. Joseph's Hosp.*, 928 P.2d 250, 257, 258 (N.M. 1996). In such a case, the legislature “does not give the outside entity the power to determine what the law will be”. See *id.* at 256. See also *Bd. of Trustees of the Employees' Ret. Sys. Of the City of Baltimore v. Mayor and City Council of Baltimore City*, 562 A. 2d 720, 730 (Md. 1989), *Sutherland v. Ferguson*, 397 P.2d 335, 340 (Kan. 1964); *Tain v. State Bd. of Chiropractic Exam'rs*, 30 Cal.Rptr.3d 330, 347 (Cal. Ct. App. 2005).

For these reasons, the Model Law is permissive in allowing a state architectural registration board to adopt the education,

training, and examination requirements promulgated by NCARB. (“The Board may adopt as its own regulations governing practical training and education those guidelines published from time to time by the National Council of Architectural Registration Boards. The Board may also adopt the examinations and grading procedures of the National Council of Architectural Registration Boards and the accreditation decisions of the National Architectural Accrediting Board.”) The Model Regulations also permit the Board to accept NCARB education, training and examination requirements from time to time (“as accepted by the Board from time to time”). Also, the Model Regulations provide in Section 100.301(B) that an applicant may show that other experience is equivalent or better than that required by the NCARB standards.

Even if the NCARB standards were explicitly required by law or regulation, many courts have upheld such incorporation “where the standards are issued by a well-recognized, independent authority, and provide guidance on technical and complex matters within the entity’s area of expertise”. *Bd. of Trustees*, 562A. 2d at 731 and cases cited. While NCARB is a non-governmental body, its only members who set its policies are state and territorial boards of registration of architects.

# MODEL REGULATIONS

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# MODEL REGULATIONS

## **SCOPE; DEFINITIONS**

### **100.001 Purpose**

These rules and regulations are set forth for the purpose of interpreting and implementing **[cited statute]** establishing the Board, and conferring upon it responsibility for registration of architects and the regulation of the practice of architecture.

### **100.002 Citation**

These rules and regulations shall be known, and may be cited, as **[popular name]**.

### **100.003 Board's Regulatory Authority**

These rules and regulations are promulgated under authority of **[cited statute]**, and in conformity with applicable provisions of the state administrative procedure act. **[cited statute]**

### **100.004 Severability**

If any provisions of these regulations or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or the application of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

### **100.005 Terms Defined by Statute**

Terms defined in **[cited statute]** shall have the same meanings when used in these regulations unless the context or subject matter clearly requires a different interpretation.

### **100.006 Terms Defined Herein**

As used in these regulations, the following terms shall have the following meanings unless the context or subject matter clearly requires a different interpretation.

### **Applicant**

An individual who has submitted an application for registration to the Board.

### **Architect**

**[Presumed to be defined in statute. If not, incorporate definition from Model Law.]**

### **Education Requirements**

The education requirements including equivalences established from time to time by NCARB as the education requirements for certification by NCARB, as accepted by the Board from time to time.

### **Examination**

The Architect Registration Examination® (ARE®) prepared by and administered through NCARB, as accepted by the Board from time to time.

### **NCARB**

The National Council of Architectural Registration Boards.

### **Practice of Architecture**

**[Presumed to be defined in statute. If not, incorporate definition from Model Law]**

### **Prototypical Building**

Any commercial building or space within a commercial building that is intended to be constructed in multiple locations, and in fact then has been constructed in multiple locations, and which conveys an owner's intended uniform business program, plan or image.

### **Prototypical Building Documents**

Technical submissions for prototypical buildings that are prepared by or under the responsible control of an architect then registered in any United States jurisdiction and holding a current and valid certification issued by the NCARB, that identify such architect together with the architect's registration number, jurisdiction of registration and NCARB certificate number and that are marked "Prototypical Design Documents Not for Construction." Prototypical building documents do not comprise a final, comprehensive set of design and construction documents because a prototypical building also requires adaptations for local conditions, including site conditions, and may require additional design as well.

### **Responsible Control**

That amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architect applying the required professional standard of care, including but not limited to an architect's integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

### **Technical Submissions**

Designs, drawings, specifications, studies and other technical documents prepared in the course of practicing architecture. All technical submissions shall be identified by date and by the name and address of the registered architect or the registered architect's firm.

### **Training Requirements**

The Architectural Experience Program (AXP), formerly known as the Intern Development Program (IDP), training requirements established from time to time by NCARB for certification by NCARB, as accepted by the Board from time to time.

**[Boards requiring that each registered architect demonstrate continuing education should include the following definitions.]**



# MODEL REGULATIONS

## Continuing Education (CE)

Continuing education is post-licensure learning that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety, and welfare.

## Continuing Education Hour (CEH)

One continuous instructional hour (50 to 60 minutes of contact) spent in Structured Educational Activities intended to increase or update the architect's knowledge and competence in Health, Safety, and Welfare Subjects. If the provider of the Structured Educational Activities prescribes a customary time for completion of such an Activity, then such prescribed time shall, unless the Board finds the prescribed time to be unreasonable, be accepted as the architect's time for Continuing Education Hour purposes irrespective of actual time spent on the activity.

## Health, Safety, and Welfare Subjects

Technical and professional subjects related to the practice of architecture that the Board deems appropriate to safeguard the public and that are within the following continuing education subject areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment.

**PRACTICE MANAGEMENT:** This category focuses on areas related to the management of architectural practice and the details of running a business.

**PROJECT MANAGEMENT:** This category focuses on areas related to the management of architectural projects through execution.

**PROGRAMMING & ANALYSIS:** This category focuses on areas related to the evaluation of project requirements, constraints, and opportunities.

**PROJECT PLANNING & DESIGN:** This category focuses on areas related to the preliminary design of sites and buildings.

**PROJECT DEVELOPMENT & DOCUMENTATION:** This category focuses on areas related to the integration and documentation of building systems, material selection, and material assemblies into a project.

**CONSTRUCTION & EVALUATION:** This category focuses on areas related to construction contract administration and post-occupancy evaluation of projects."

## Structured Educational Activities

Educational activities in which at least 75 percent of an activity's content and instructional time must be devoted to Health, Safety, and Welfare Subjects related to the practice of architecture, including courses of study or other activities under the areas identified as Health, Safety and Welfare Subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

## GENERAL PROVISIONS

### 100.101 Board Meetings

**[Reference any applicable provisions of state administrative procedure act, including provisions governing quorums, majority actions, etc.]**

### 100.102 Board Seal

**[Describe.]** This seal shall be applied to all registrations issued by the Board.

### 100.103 Public Information

- (A)** The Board shall maintain a roster of duly registered architects **[and business entities subject to 100.901]** open to public inspection which shall show each registered architect's **[or entity's business]** name, registration or certificate or authorization number and last known mailing address.
- (B)** Each of the following documents relating to an application for registration as an architect **[and for a certificate of authorization or entities]** shall be treated as a public record: **[list]**.
- (C)** None of the following documents shall be treated as a public record pursuant to **[refer to state's public records law, or equivalent]** or otherwise disclosed to an applicant or any other member of the public: the ARE and all documents relating to the grading, content, administration or security thereof **[this must be modified if review or appeal is permitted pursuant to 100.602]** and **[list other documents which, if permitted by applicable law, may be excluded from 100.103(B) and otherwise deemed not to be public records]**.

### 100.104 Prohibition of Improper Contacts

Prior to the filing of an application for registration or the commencement of any disciplinary action, and after final Board action on an application or disciplinary action, verbal and written communication with individual Board members or any member of the Board's staff shall be freely permitted; provided, however, that in no event is any member of the Board or its staff authorized to give any indication of what specific action the Board may take upon the merits of any application or disciplinary action. General advice, however, may be given as to the manner of completing or submitting applications, the procedures to be followed in processing applications or responding to disciplinary actions and the nature of the standards applied by the Board in evaluating applications or disciplinary actions. While an application for



# MODEL REGULATIONS

registration or disciplinary action is pending before the Board, no one shall initiate any written or oral communication with individual Board members concerning the matter; but inquiries may be made orally or in writing to the Board staff or in writing to the Board.

## 100.105 NCARB

- (A) The Board shall maintain membership in NCARB and pay the necessary costs thereof.
- (B) The Board shall keep up-to-date information on the recommended policies adopted from time to time by NCARB.
- (C) The Board shall cooperate with NCARB in establishing uniform standards of architectural registration throughout the United States.

## 100.106 Availability of Forms

Any forms prepared in accordance with these regulations shall be available upon request made in person or by writing to the Board. If any such forms are amended by the Board, a copy of each such amended form shall be mailed or electronically transmitted by the Board staff to all individuals whose applications are known to be pending and are affected by such amendment.

## 100.107 Fees

**[Insert schedule of fees, with cross-references to statutory language permitting the Board to establish fees, or to any fees set by statute. This list should identify all categories of fees, including those to be established from time to time by the Board, and it should require the Board to maintain and provide to all individuals upon request a current and complete list of its fees.]**

## APPLICATION FOR REGISTRATION

### 100.201 Submission of Application

Every individual seeking a registration shall submit an application to the Board on a form prescribed by the Board, accompanied by **[a photograph and]** the filing fee **[cross-reference to 100.107]**.

### 100.202 Refund of Fee

The Board, in its discretion and if otherwise allowed by law, may return the application fee paid by any applicant whose application has been rejected. No refund of the application fee shall be returned to any applicant who takes any portion of the Examination or who voluntarily withdraws after his/her application has been approved.

### 100.203 Appeals

[Insert any references to applicable law providing for administrative or judicial review of the Board's decisions respecting applicants.]

## REGISTRATION STANDARDS

### 100.301 Initial Registration Standards

To be granted registration other than pursuant to 100.401, an applicant must meet the requirements set forth in 100.301–305.

- (A) In evaluating qualifications, the Board may, prior to reaching its decision, require the applicant to substantiate his/her qualifications.
- (B) Other experience may be substituted for the registration requirements set forth in 100.303 only insofar as the Board considers it to be equivalent to or better than such requirements. The burden shall be on the applicant to show by clear and convincing evidence the equivalency or better of such other experience.

### 100.302 Good Character

An applicant must be of good character as verified to the Board by employers and others.

### 100.303 Education

An applicant must meet the Education Requirements as accepted by the Board from time to time.

### 100.304 Training

An applicant must meet the Training Requirements as accepted by the Board from time to time.

### 100.305 Examination

An applicant must have passed the Examination in accordance with the NCARB pass/fail standards current at the time the applicant took the Examination, all as accepted by the Board from time to time.

## [REGISTRATION STANDARDS FOR MILITARY PERSONNEL]

### [100.401 Initial Registration Standards – Military Personnel]

To be granted registration other than pursuant to 100.501, an applicant must meet the requirements set forth in 100.401–100.405.

- (A) In evaluating qualifications, the Board may, prior to reaching its decision, require the applicant to substantiate his/her qualifications.
- (B) Other experience may be substituted for the registration requirements set forth in 100.403 only insofar as the Board considers it to be equivalent to or better than such requirements. The burden shall be on the applicant to show by clear and convincing evidence the equivalency or better of such other experience.

### 100.402 Good Character – Military Personnel

An applicant must be of good character as verified to the Board by employers or by honorable discharge evidenced by copy of military discharge document (DD 214).

# MODEL REGULATIONS

## 100.403 Education – Military Personnel

An applicant must meet the Education Requirements as accepted by the Board from time to time.

## 100.404 Training – Military Personnel

An applicant must meet the Training Requirements as accepted by the Board from time to time. The Board may accept “professional training while in active duty” as it deems acceptable and in keeping with the Training Requirements set forth by the National Council of Architectural Registration Boards.

## 100.405 Examination – Military Personnel

An applicant must have passed the Examination in accordance with the NCARB pass/fail standards current at the time the applicant took the Examination, all as accepted by the Board from time to time.]

## RECIPROCAL REGISTRATION

### 100.501 Registration of NCARB Certificate Holders

An applicant who holds a current and valid certification issued by NCARB and submits satisfactory evidence of such certification to the Board shall be registered without the necessity of complying with the provisions of 100.301-305 or 100.401 - 405 if he/she:

- (A) holds a current and valid registration as an architect issued by a registration authority of the United States or Canada, and submits satisfactory evidence of such registration to the Board, and
- (B) files his/her application with the Board, upon a form prescribed by the Board, containing such information satisfactory to the Board concerning the applicant, as the Board considers pertinent, and pays the applicable fee established by the Board.

### 100.502

**[Insert any other reciprocity provisions desired and permitted by statute.]**

## EXAMINATION

### 100.601 Examination Eligibility

- (A) *[For the purpose of qualifying for the examination, an applicant shall present satisfactory evidence to the board that he/she:*
  - (i) *Holds a professional degree from a school whose curriculum has been accredited by the National Architectural Accrediting Board (NAAB), or*
  - (ii) *Is a student actively participating in a NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within a NAAB-accredited professional degree program in architecture, or*
  - (iii) *Has met the education and experience requirements outlined in {insert specific reference to applicable laws/rules}]*
- (B) The Board will determine applicant eligibility and forward

eligibility information to NCARB (or the Board may request NCARB to determine such eligibility subject to its approval thereof).

### 100.602 Conditions of Examination

- (A) The Board will allow applicants to take the ARE at any NCARB-approved test center, whether or not it is located within this state.
- (B) The Board will accept the ARE results as determined by NCARB and will report the results to the applicant, or the Board may request NCARB to report such results to the applicant.
- (C) If there is any alleged misbehavior on the part of an applicant in connection with taking the examination, the board will investigate the allegation and take appropriate action. This behavior may include, without limitation, violation of NCARB’s guidelines or policies, or an applicant’s confidentiality agreements with respect to the examination.

### [100.603 Appeal]

**[NCARB recommends that an applicant not be permitted to review or appeal any division of the Examination which he/she fails, and thus does not recommend adoption of this section; if, however, the jurisdiction requires that such appeals be allowed, reference should be made here to the specific requirements of the jurisdiction to be followed:**

- (A) **The Board will determine the time and place for each review of a failed examination. All reviews will take place at an NCARB approved test center.**
- (B) **A Board member or a member of the Board’s staff will be present during the review.**
- (C) **The individual results on graphic vignettes may not be challenged.**
- (D) **The individual test questions on multiple-choice divisions may be challenged. All challenges must be made at the time of the review, in accordance with NCARB standards and procedures.]**

**[Note that it is possible to allow reviews and not challenges. In such cases, strike (D) and reword (C) to read: “The individual results on multiple-choice questions and graphic vignettes may not be challenged.”]**

### 100.604 Transfer of Scores to and from Other Boards

The Board, in its discretion, may forward to any other United States or Canadian architectural registration board or NCARB, or may receive from any other such board or NCARB the grades achieved by an applicant in the various divisions of the ARE for the respective purposes of evaluating such applicant’s eligibility for registration or permitting NCARB to evaluate such applicant’s eligibility for NCARB certification. Any applicant making such a request shall state his/her reason for requesting transfer, and pay any applicable transfer fee established by the Board. Such transfer to another jurisdiction shall terminate the applicant’s application pending before the Board or such other transmitting jurisdiction as the case may be.

# MODEL REGULATIONS

## REGISTRATION

### 100.701 Issuance

When the Board has determined that an applicant for registration has satisfied the registration standards set forth herein, the Board shall issue a registration containing the registered applicant's name and registration number.

### 100.702 Duration

Each registration issued by the Board shall be valid for **[state applicable period, e.g., one year or two years]**.

### 100.703 Renewal

**[Describe terms, including fee with cross-reference to 100.107, citing applicable statute.]**

**[The Board may require that each registered architect demonstrate continuing education by including the following provisions.]**

Continuing Education Requirements. In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 Continuing Education Hours each calendar year or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration.

- (A) Continuing Education Hours. 12 Continuing Education Hours must be completed in Health, Safety, and Welfare Subjects acquired in Structured Educational Activities. Continuing Education Hours may be acquired at any location. Excess Continuing Education Hours may not be credited to a future calendar year.
- (B) Reporting and Record keeping. An architect shall complete and submit forms as required by the Board certifying that the architect has completed the required Continuing Education Hours. Forms may be audited by the Board for verification of compliance with these requirements. Documentation of reported Continuing Education Hours shall be maintained by the architect for six years from the date of award. If the Board disallows any Continuing Education Hours the architect shall have 60 days from notice of such disallowance either to provide further evidence of having completed the Continuing Education Hours disallowed or to remedy the disallowance by completing the required number of Continuing Education Hours (but such Continuing Education Hours shall not again be used for the next calendar year). If the Board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required Continuing Education Hours, the architect may be subject to disciplinary action in accordance with the Board regulations.
- (C) Exemptions. An architect shall not be subject to these requirements if:
1. The architect has been granted emeritus or other similar honorific but inactive status by the Board; or
  2. The architect otherwise meets all renewal requirements and is called to active military service, has a serious

medical condition, or can demonstrate to the Board other like hardship, then upon the Board's so finding, the architect may be excused from some or all of these requirements.

- (D) A registrant who lists his or her occupation as "Retired" or "inactive" on the Board approved renewal form and who further certifies that he or she is no longer practicing shall be exempt from the Continuing Education Hours required. In the event such a person elects to return to active practice, he/she shall document completion of 12 HSW CEH's before returning to active practice. Inactive or retired registrants returning to active practice must report CEH's earned prior to the request to reactivate.
- (E) The Board adopts the forms [at the end of the Model Regulations] as the forms to be used for reporting compliance with these requirements.

### 100.704 Not Transferable

A registration shall not be transferable.

### 100.705 Revocation, Suspension, Cancellation or Non-Renewal of Registration

In the event of revocation, cancellation, suspension, or non-renewal of any registration, the architect shall be required immediately to return his/her registration to the Board.

**[Add reference to any statutory provisions regarding an architect's rights to contest such action.]**

### 100.706 Reissuance

**[Describe terms, including fee with cross-reference to 100.107, citing applicable statute for reissuance of registrations revoked, suspended, cancelled or not renewed.]**

### 100.707 Emeritus Status

- (A) An architect whose registration is in good standing may apply for architect emeritus status if he or she meets the following criteria:
1. The applicant is retired from the active practice of architecture. "Retired" means the architect no longer engages in the active practice of architecture as defined in **[point to statute defining the practice of architecture]**, and
  2. The applicant has been registered for at least "10" years [in their state], or
  3. The applicant is 65 years of age or older.
- (B) An architect who can provide, to the Board's satisfaction, documentation that they are physically or mentally unable to participate in the active practice of architecture may also apply for architect emeritus status.
- (C) Upon application to the Board, if all requirements are met, the architect shall be granted architect emeritus status.
- (D) An individual granted architect emeritus status may use the title "Architect Emeritus" or "Emeritus Architect" on any letter, title, sign, card or device.
- (E) If an emeritus architect wishes to return to the active practice of architecture, he/she may do so by submitting

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a current renewal application form, the renewal fee, and documentation of completing the continuing education hours required by regulation.

## **RULES OF PROFESSIONAL CONDUCT**

### **100.801 Competence**

- (A) In engaging in the practice of architecture, a registered architect's primary duty is to protect the public's health, safety, and welfare. In discharging this duty, a registered architect shall act with reasonable care and competence, and shall apply the knowledge and skill which are ordinarily applied by registered architects of good standing practicing in the same locality.
- (B) In designing a project, a registered architect shall take into account all applicable state and municipal building laws and regulations. While a registered 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 laws and regulations, once having obtained such advice, a registered architect shall not knowingly design a project in violation of such laws and regulations.
- (C) A registered architect shall undertake to perform professional services only when he/she, together with those whom the registered architect may engage as consultants, is qualified by education, training, and experience in the specific technical areas involved.
- (D) No individual shall be permitted to engage in the practice of architecture if, in the Board's judgment, such individual's professional competence is substantially impaired by physical or mental disabilities.

### **100.802 Conflict of Interest**

- (A) A registered architect shall not accept compensation in connection with his/her services from more than one party on a project (and never in connection with specifying or endorsing materials or equipment) unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.
- (B) If a registered architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the registered architect shall fully disclose in writing to his/her client or employer the nature of the business association or financial interest. If the client or employer objects to such association or financial interest, the registered architect will either terminate such association or interest or offer to give up the commission or employment.
- (C) A registered architect shall not solicit or accept compensation from material or equipment suppliers in connection with specifying or endorsing their products. As used herein, "compensation" shall not mean customary and reasonable business hospitality, entertainment, or product education.

- (D) When acting as the interpreter of building contract documents and the judge of contract performance, a registered architect shall render decisions impartially, favoring neither party to the contract.

### **100.803 Full Disclosure**

- (A) A registered architect making public statements on architectural questions shall disclose when he/she is being compensated for making such statements or when he/she has an economic interest in the issue.
- (B) A registered architect shall accurately represent to a prospective or existing client or employer his/her qualifications and the scope of his/her responsibility in connection with work for which he/she is claiming credit.
- (C) If, in the course of his/her work on a project, a registered architect becomes aware of a decision taken by his/her employer or client against such registered architect's advice which violates applicable state or municipal building laws and regulations and which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered 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; and
  2. refuse to consent to the decision; and
  3. in circumstances where the registered architect reasonably believes that other such decisions will be taken notwithstanding his/her objection, terminate his/her services with respect to the project unless the registered architect is able to cause the matter to be resolved by other means. In the case of a termination in accordance with this clause (3), the registered architect shall have no liability to his/her client or employer on account of such termination.
- (D) A registered architect shall not deliberately make a materially false statement or fail deliberately to disclose accurately and completely a material fact requested in connection with his/her application for a registration or renewal thereof or otherwise lawfully requested by the Board.
- (E) A registered architect shall not assist the application for registration of an individual known by the registered architect to be unqualified in respect to education, training, experience or character.
- (F) A registered architect possessing knowledge of a violation of the provisions set forth in 100.801 through 100.806 by another registered architect shall report such knowledge to the Board.

### **100.804 Compliance with Laws**

- (A) A registered architect shall not in the conduct of his/her architectural practice knowingly violate any state or federal criminal law.
- (B) A registered 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

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project in which the registered architect is interested.

- (C) A registered architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect was disciplined in any other United States jurisdiction.
- (D) An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of discrimination. **[States may choose instead to make specific reference to the “Federal Fair Labor Standards Act of 1938, as amended,” and “Equal Employment Opportunity Act of 1972, as amended,” and to state laws of similar scope.]** For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm’s architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule.

## 100.805 Professional Conduct

- (A) Each office in [name of state] engaged in the practice of architecture shall have a registered architect resident and regularly employed in that office.
- (B) All technical submissions, which are (a) required by public authorities for building permits or regulatory approvals, or (b) are intended for construction purposes, including all addenda and other changes to such submissions, shall be signed and sealed by the registered architect, which signature and seal may be electronic. The signature and seal shall mean that the registered architect was in responsible control over the content of such technical submissions during their preparation and has applied the required professional standard of care. A registered architect may sign and seal technical submissions only if the technical submissions were (i) prepared by such architect; (ii) prepared by persons under such architect’s responsible control; (iii) prepared by another registered architect if the signing and sealing architect has reviewed the other architect’s work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding a current and valid certification issued by NCARB and (a) the signing and sealing architect has reviewed the other architect’s work and has integrated the work into his/her own technical submissions and (b) the other architect’s technical submissions are prototypical building documents. 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 architect has reviewed such work and has integrated it into his/her own technical submissions. Any registered architect signing or sealing technical submissions

not prepared by that architect but prepared under that architect’s responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the Board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect’s control over and detailed knowledge of such technical submissions throughout their preparation. Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect’s own work as permitted under clauses (iii) or (iv) above shall maintain and make available to the Board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect’s review of and integration of the work of such other architect’s work into his/her own technical submissions, and that such review and integration met the required professional standard of care.

- (C) A registered architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the registered architect is interested.
- (D) An architect possessing knowledge of an applicant’s qualifications for registration shall cooperate with the applicant, the Board and/or NCARB by responding appropriately regarding those qualifications when requested to do so. An architect shall provide timely verification of employment and/or experience earned by an applicant under his or her supervision if there is reasonable assurance that the facts to be verified are accurate. An architect shall not knowingly sign any verification document that contains false or misleading information.
- (E) A registered architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.
- (F) An architect shall not make misleading, deceptive or false statements or claims.

## 100.806 Design and Use of Architect’s Seal

- (A) Pursuant to [statutory reference] and subject to 100.705 and 100.805(B), each registered architect shall procure a seal, which shall contain the name of the registered architect; his/her registration number, and the words REGISTERED ARCHITECT—[NAME OF STATE]. This seal shall comply in all respects, including size and format, with the seal shown below: [INSERT SPECIMEN SEAL IMPRINT.]
- (B) As required by [statutory reference], the seal shall appear on all technical submissions, as follows: on each design and each drawing; on the cover and index pages identifying each set of specifications; and on the cover page (and index, if applicable) of all other technical submissions. Such seal and signature may be electronic.
- (C) The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible control of the individual named on said seal.



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(D) All technical submissions prepared by a registered architect shall contain the following legend wherever the architect's seal appears: "The professional services of the architect are undertaken for and are performed in the interest of [name of person employing architect]. No contractual obligation is assumed by the architect for the benefit of any other person involved in the project."

## **PRACTICE**

### **[100.901 Permission to Practice Architecture as a Corporation, Limited Liability Company, or Partnership**

- (A) Any corporation (which term as used herein shall include any professional corporation), any limited liability company, and any partnership (which term as used herein shall include any limited liability partnership), whether organized under the laws of this or any other jurisdiction, may not offer to engage in or engage in the practice of architecture in [name of state] until such corporation, limited liability company, or partnership has obtained a certificate of authorization issued by the Board. A certificate of authorization shall be issued as of the date it is approved by the Board and shall be valid for one year from said date.
- (B) The Board shall issue a certificate of authorization to a corporation, limited liability company, or partnership upon receipt of the materials listed below, and upon ascertaining that the conditions set forth in **[statutory reference]** have been met.
1. An application on a form approved by the Board.
    - (a) In the case of a corporation, the application shall be signed by the president and **[secretary or clerk]**, and shall include the following information: the jurisdiction under which such corporation is organized; the name and residential addresses, and state(s) of registration and registration number(s) (if applicable) of each director; and the identity of each director or officer engaging in the practice of architecture on behalf of such entity in **[name of state]**.
    - (b) In the case of a limited liability company, the application shall be signed by a manager (or by a member in the case of a limited liability company in which management of its business is vested in all of the members) who is a registered architect, and shall include the following information: the jurisdiction under which such limited liability company is organized; the name and residential addresses, and state(s) of registration number(s) (if applicable) of each manager (or each member in the case of a limited liability company in which management of its business is vested in the members); and the identity of each manager (or each member) or officer engaging in the practice of architecture on behalf of such entity in **[name of state]**.
    - (c) In the case of a partnership, the application shall be signed by a general partner who is a registered architect, and shall include the following information:

the jurisdiction under which such partnership is organized; the name and residential addresses, and the state(s) or registration and registration number(s) (if applicable) of each general partner; and the identity of each general partner or officer engaging in the practice of architecture on behalf of such entity in **[name of state]**.

2. In the case of a corporation, a limited liability company, or a registered limited liability partnership, a copy of the articles of incorporation, registration statement, or similar charter document certified by the secretary of state of the jurisdiction in which the corporation, limited liability company, or registered limited liability partnership is organized; provided, however, that, subject to 100.901(C), such documents need not be resubmitted when seeking renewal of a certificate of authorization.
  3. A fee of **[set forth fee]** **[cross-reference to 100.107]**.
- (C) If any change occurs in any of the information provided to the Board pursuant to 100.901(B)(1) or (2) during the period for which a certificate of authorization is granted, such change shall be reported to the Board within 30 days after the effective date of such change.
- (D) The Board may revoke, suspend, or cancel a certificate of authorization granted pursuant to 100.901 if any officer, director, or employee of a corporation, or any manager or employee of a limited liability company (or any member in the case of a limited liability company in which management of its business is vested in the members), or any general partner or employee of a partnership violates any provision of **[cite statute]** or these regulations; provided, however, that it shall be an affirmative defense to show that such individual was not acting as an agent of the corporation, the limited liability company, or the partnership at the time such violation occurred.]

### **[100.902 Restricted and Prohibited Uses of Business Titles]**

**[Insert provisions regulating the use of business titles. Titles to be restricted or prohibited may include titles that include the names of non-architects, non-registered architects, related professionals, and deceased persons, as well as titles that do not include any individual names.]**

### **100.903 Activities Involving the Practice of Interior Architecture**

**[Cited statute]** provides that the practice of architecture includes services in connection with the design and construction, enlargement, or alteration of a building or group of buildings and "the space within" buildings, meaning interior architecture. Such interior space includes, without limitation, all areas, assemblies and components of buildings, whether new or existing, intended for human occupancy and with respect to which codes, laws and regulations intended to ensure the safety of building occupants are applicable in whole or in part. Examples of the foregoing codes, laws, and regulations are occupancy classification, use and zoning requirements, construction classification requirements,

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ingress and egress requirements, accessibility requirements, fire-rated construction assembly and finish requirements, alarm and suppression system requirements, smoke control system requirements, environmental health requirements, electrical, structural and seismic requirements. Such examples would not include services rendered in selling, selecting or assisting in the selection of furnishings, furniture, decorative accessories, art work or other decorative materials, paint and color schemes, textiles, wall coverings, window treatments or floor coverings.