

N C A R B

June 2010



**Model Brief to Enforce  
Laws Prohibiting  
Architectural Practice by  
Unlicensed Persons**

### **ABOUT NCARB**

The National Council of Architectural Registration Boards (NCARB) is a nonprofit corporation comprising the legally constituted architectural registration boards of the 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands as its members.

### **MISSION STATEMENT**

The National Council of Architectural Registration Boards protects the public health, safety, and welfare by leading the regulation of the practice of architecture through the development and application of standards for licensure and credentialing of architects.

*Model Brief to Enforce Laws Prohibiting Architectural Practice by Unlicensed Persons*

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Architectural registration boards protect the public by ensuring that all registrants have had proper education, training, and have passed a rigorous examination on technical and practice issues. While many states have limited exemptions permitting persons to prepare plans for single-family houses, farm buildings, and other projects of limited scope, it is universal public policy that buildings of significant size or complexity must be designed by licensed architects.

Where unlicensed persons practice architecture, the public health, safety, and welfare is endangered, licensed architects are discouraged from strictly adhering to rules of professional conduct, and respect for the law generally is devalued. Sometimes an impediment to effective enforcement of the registration laws is that legal counsel to the architectural registration board may not be aware of all of the cases throughout the United States where courts have rigorously upheld laws against unlicensed practice.

NCARB has prepared this model brief to assist counsel who represent its Member Boards in enforcing their state laws prohibiting architectural practice by unlicensed persons. The model brief generally assumes that a state has enacted laws regulating the practice of architecture by unlicensed persons similar to those contained in the *NCARB Model Law* (see Appendix A for the most recent version of the *NCARB Model Law*, visit [www.ncarb.org](http://www.ncarb.org) and search under Publications and Resources, Special Papers). In particular, the *Model Law* (in section 12) explicitly authorizes injunctive relief against unlicensed practice. Member Boards without this explicit authority should consider seeking it in their state registration law.

Boards and their counsel may find the Case Annotations (see Appendix B to Model Brief) of particular importance. This attachment describes cases in various states that have considered what actions constituted the “practice of architecture” or the unlawful use of the title “architect” by unlicensed individuals. Be cautioned, however, that many state laws have somewhat different statutory definitions that the courts apply. The definitions in the *Model Law* are important for the Member Boards of NCARB to consider adopting since these are carefully written.

## BRIEF IN SUPPORT OF BOARD'S REQUEST FOR PRELIMINARY INJUNCTION

### INTRODUCTION

Plaintiff, the **[name of the state architectural registration board]**, submits this memorandum in support of its request for a preliminary injunction preventing defendant **[name]** from continuing to practice architecture [and/or, holding himself/herself out as an architect] without being licensed to do so. As set forth below, such relief is necessary to protect the health, welfare, and safety of this state's citizens, as the Legislature intended when it enacted **[name or cite of state architectural registration statute]**.

### STATEMENT OF FACTS

**[Description of particular facts supporting conclusion that defendant is engaged in unlicensed practice, and/or holding himself/herself out as an architect without registration, with citations to affidavits, pleadings, depositions, any live testimony, exhibits, etc.]**

**[Description of any procedural history, such as orders issued to the defendant by the board as contemplated by the Model Law, which the defendant has failed to obey.]**

### STATUTORY SCHEME

**[Description of Model Law set forth below should be modified to fit particular state architectural registration statutes which may vary from the Model Law language.]**

The **[Model Law]** is designed to protect the health, welfare, and safety of this state's citizens by regulating the profession of architecture. This statute accomplishes this in several important ways. The statute sets forth strict qualifications for those seeking to practice architecture or to hold themselves out to the public as architects. (Model Law, § 3). Among other qualifications, an applicant for licensure as an architect must hold an accredited professional degree in architecture (or have equivalent educational experience), must complete a program of practical training, and must pass an examination demonstrating competence in various technical and professional subjects. The statute also requires each licensed architect to identify responsibility for all technical submissions such as plans with his/her seal. (Model Law, § 6). The statute provides that the Board may discipline licensed architects who violate the provision of the statute or the regulations promulgated thereunder. (Model Law, §§ 7-8).

The **[Model Law]** expressly prohibits unlicensed persons under the statute from directly or indirectly engaging in the practice of architecture, from using the title of "architect," "registered architect," or "architectural designer," and from using "any words, letters, figures, titles, sign, card, advertisements, or other symbol or device indicating or tending to indicate that such person is an architect or is practicing architecture." (Model Law, § 10) This broad prohibition is subject only to the very limited statutory exceptions set forth in **[§ 11]**, none of which are here relevant.

**[Discuss and cite any statutory exemptions that may need to be distinguished from the case at hand.]**

Section **[12]** of the **[Model Law]** addresses enforcement of the statute. That section vests in the Board enforcement powers with respect to sections

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[1 through 11 of the Model Law]. That same section authorizes the Board, the Attorney General, and the District Attorney to file an enforcement action in this Court in the event that any person refuses to obey any decision or order of the Board. Section [12] expressly empowers the Court to issue “injunctive relief” where the Court deems it appropriate. Section [13] also subjects those who violate Sections [1 through 11] of the statute to a criminal fine and/or a term of imprisonment.

This case is brought under Section [12] of the [Model Law], to enforce the prohibition in Section [10] against unlicensed practice [**and against holding one’s self out as an architect**]. The Board has issued an order to the defendant to cease and desist from the practice of architecture [**and holding himself/herself out as an architect**], which the defendant has refused to obey. [**Attach copy of Board Order as Exhibit.**] The Board now seeks an order enjoining defendant from continuing to [**insert particular description of illegal activity**], and otherwise in any manner directly or indirectly engaging in the practice of architecture in this state or using the title “architect” or any name or title or any words, letters, figures, sign, card, advertisement, symbol, or device indicating or tending to indicate that the defendant is an architect or is practicing architecture.

**ARGUMENT****I. Defendant is Plainly Practicing Architecture Without a License [and Holding Himself/Herself Out as an Architect].**

The evidence before this Court decisively establishes that defendant is violating the statute by engaging in the unlicensed practice of architecture [and/or holding himself/herself out as an architect]. **[Discuss facts in detail relying on affidavits of Board members, staff, or others to establish defendant's illegal conduct.]** (See Appendix B: Case Annotations for particular fact patterns that may be useful.)

**II. This Court Should Enjoin Defendant From Continuing to Practice Architecture Without a License [and Holding Himself/Herself Out as an Architect].**

Section [12] of the [Model Law] provides that injunctive relief against unlicensed practice shall issue “where appropriate.” The Legislature thus clearly intended that this Court’s remedial authority extend to equitable relief. Since the statute expressly authorizes this Court to issue injunctive relief, the Board need not show that the traditional common law criteria governing injunctive relief are satisfied. *Waterfront Comm’n v. Sea Land Serv., Inc.*, 764 F.2d 961, 967 (3d Cir. 1985) (applying New Jersey law) (where statute provides for injunction against unlicensed crane maintenance workers, Commission need not establish irreparable injury or lack of an adequate remedy at law); *State ex rel. Mo. Bd. for Architects, Prof’l Engineers and Land Surveyors v. Henigman*, 937 S.W. 2d 757, 759 (1997) (applying Missouri law) (holding that burden for injunction under statute governing unlicensed practice of architecture requires only establishing that a party practiced architecture without a license). **[Note: where the state statute does not expressly authorize injunctive relief, disregard this paragraph and begin with next paragraph.]**

In any event, a preliminary injunction is clearly warranted in this case under the traditional criteria governing equitable relief. **[Cite to state decisions setting forth customary criteria for injunctive relief.]**

**A. The Board is likely to succeed on the merits of this case.**

In order to establish that the statute has been violated, the Board need only show that the defendant is “directly or indirectly engage[d] in the practice of architecture,” and is not registered “under the provisions of this Chapter.” (Model Law, § 10). **[Substitute different statutory language if appropriate.]** Even where some of the work done by an unlicensed person involves services for which no license is required, the statute has nevertheless been violated where the unlicensed party has engaged in some services defined as the “practice of architecture.” *Marshall-Schule v. Goldman*, 137 Misc. 2d 1024, 523 N.Y.S.2d 16 (1987); see also *Gordon v. Adenbaum*, 171 A.D.2d 841, 567 N.Y.S.2d 777 (1991) (holding that Florida statute prohibiting unlicensed practice of architecture applied in case where services provided by appellant also included consulting services).

As shown in Section I above and the affidavits attached, defendant is clearly in violation of the architectural registration statute. Accordingly, the Board is likely to prevail on the merits of this enforcement case. An injunction against the defendant’s unlicensed practice of architecture should accord-

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ingly issue, just as injunctions have issued in other cases involving unlicensed persons engaged in the practice of architecture and landscape design. See, e.g., *State ex rel. Mo. Bd. for Architects, Prof'l Engineers and Land Surveyors v. Henigman*, 937 S.W.2d 757, 759 (1997) (injunction properly issues where defendant practiced architecture without holding a valid certificate of registration to practice architecture); *State of South Carolina ex rel. Love v. Howell*, 281 S.C. 463, 316 S.E.2d 381 (1984) (injunction properly issues where defendant consulted with clients, determined their needs, viewed their property and prepared architectural plans, but was not licensed under statute); *State of New Jersey Board of Architects v. North*, 197 N.J. Super 349 484 A.2d 1297, 1299 (1984) (injunction properly issues where defendant gathered structural data and prepared detailed drawings for construction, but was not licensed under the statute); *State Board of Architecture v. Kirkham, Michael & Assoc., Inc.*, 179 N.W.2d 409 (N.D. 1970) (injunction properly issues against false advertising that corporation is authorized to practice architecture where corporation identifies itself as a firm of architects and engineers on its letterhead, on plans and specifications that it prepares and in its advertising, but a corporation may not be licensed to practice under the terms of the architectural registration statute); *Hopping v. Louisiana Horticulture Comm'n*, 509 So.2d 751 (La. App. 1st Cir. 1987) (upholding Board's cease and desist order where unlicensed landscape designer prepared preliminary site plans and represented himself as a "landscape designer" on letterhead and checking account).

### **B. The threat of irreparable harm to the public supports injunctive relief.**

The [Model Law] is regulatory legislation aimed at protecting the public from the risks that are inherent when individuals who are unwilling or unable to demonstrate their competence through the prescribed professional licensing process design buildings that human beings will inhabit. See [cite to any helpful language in the state statute or local case law]; see generally *State Bd. of Architects v. Clark*, 114 Md. App. 247, 260, 689 A.2d 1247, 1254 (1997) (purpose of statute preventing unlicensed practice of architecture is to "safeguard life, health, public safety, and property and to promote the public welfare," quoting Maryland Architects Act § 3-102); *Gallagher v. Leary*, 164 Vt. 633, 634, 674 A.2d 787, 788 (1996) (holding that statute preventing unlicensed practice of architecture is intended "to protect the public from unqualified practitioners"); *Marshall-Schule v. Goldman*, 137 Misc. 2d 1024, 1029, 523 N.Y.S.2d 16 (1987) ("The profession of architecture involves 'the safety and lives of the general public'" (citation omitted)); *Rolls v. Bliss & Nyitray, Inc.*, 408 So.2d 229, 235 (Fla. App. 1982), app. dismissed without opin. 415 So.2d 1359 (Fla. 1982) (statute preventing unlicensed practice states that "the Legislature finds that improper design and improper construction supervision by architects of buildings principally designed for human habitation or use present a significant threat to the public"); *White Co. v. LeClair*, 25 Mich. App. 562, 564, 181 N.W.2d 790 (1970) (purpose of statute preventing unlicensed practice of architecture is to "safeguard public life, health and property").

The practice of architecture directly implicates the public safety. In the view of one judge construing an architectural registration statute:

*“The statute here sought to be enforced is akin to many licensed fields where the protection of the public is paramount. Examples are in the professions of medicine, dentistry, nursing, chiropractic, pharmacy, podiatry, optometry, engineering and of course law. Would one permit the unlicensed practice of any of these professions? The court is of the opinion that the underlying public policy requiring licensing as proof of professional competence and responsibility outweighs all other considerations.”*

*Wineman v. Blueprint*, 75 Misc.2d 665, 667, 348 N.Y.S.2d 721, 723-24 (1973) (denying recovery of fees for architectural services where practitioner is unlicensed); accord *Harrie v. Kirkham, Michael & Associates*, 179 N.W.2d 413, 415 (N.D. 1970) (“We can find no valid reason for holding that the profession of architecture should be treated any differently from the professions of medicine, dentistry, or law. The State, in the exercise of its police power, may regulate the profession of architecture. . .”). Indeed, the threat to the public safety created by unlicensed practitioners of architecture is especially great because the consequence of permitting unlicensed practice may be severe—including “the collapse, or consumption by fire, of a building and death of its occupants.” *Georgia State Board for Examination, Qualification and Registration of Architects, et al. v. Arnold*, 249 Ga. 593, 597, 292 S.E.2d 830, 833 (1982) (Hill, J., dissenting).

As courts have found in construing analogous licensing statutes, this kind of harm to the public is, by its nature, irreparable. See, e.g., *State of South Carolina ex rel. McLeod v. Holcomb*, 245 S.C. 63, 138 S.E.2d 707, 709 (1964) (enjoining unlicensed practice of dentistry) (“It is well known that the practice of dentistry is a highly specialized profession and its practice, by unqualified persons, a danger to the health of the people. The interest of the State in the enforcement of the statute for the prevention of imminent and irreparable injury to the health of the people is, therefore, apparent”); *State v. Howard*, 214 Iowa 60, 66, 241 N.W.682 (1933) (“It is part of the public policy of this state, as declared by the chapter under consideration, that the practice of medicine without a license is injurious to the public health”). In short, the Legislature has clearly stated its intent to protect the public from the manifest risks created by the unlicensed practice of architecture. This Court should speak just as clearly to the defendant. An injunction is fully warranted to effectuate the statute’s purpose.

### **C. There is no adequate remedy at law.**

Equitable relief is required because there is no adequate remedy at law. The statute authorizes the imposition of a criminal penalty. That relief, however, does not constitute an adequate remedy at law. This is so for several reasons.

First, the mere imposition of a fine or a prison term does not, in and of itself, protect the public from the risk of recurrence. As courts have recognized, it may well be cost effective for an offender to continue in unauthorized practice. In *Commonwealth v. Brown*, 239 Ky. 197, 39 S.W.2d 223 (1931), the Court enjoined an unlicensed pharmacist from filling prescriptions. The defendant argued that the criminal penalties provided by the statute offered the appropriate remedy. The Court rejected this view because:

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*“The Board could make little progress towards enforcing the act, if it was confined to prosecutions to recover small penalties. If an arrest was made and the highest penalty administered, the practice could be resumed, and, perhaps, many times the amount of the penalty could be collected from ignorant and confiding patrons until the second violation was discovered, if at all, and in the meantime the mischief intended to be prevented would continue unabated.”*

239 Ky. at 201 (quoting *Kentucky State Board of Dental Examiners v. Payne*, 213 Ky. 382, 281 S.W.188 (1926)); see also *Green Star Supermarket v. Stacy*, 242 Ark. 54, 411 S.W.2d 871, 874 (1967) (enjoining violation of Sunday closing ordinance) (“if it should be held that the imposition of a criminal penalty for violation of a law would deprive a court of equity jurisdiction to enforce its orders, then a person desiring to proceed or continue in violation of the law might be able to pay a maximum fine and, thus, make himself immune from a valid chancery court injunction”).

The need for equitable relief is well demonstrated by *South Carolina ex. rel. Love v. Howell*, 281 S.C. 463, 316 S.E.2d 381, 382-83 (1984), where the Court enjoined Howell from the unlicensed practice of architecture. Subsequently, Howell violated the order and the Court was forced to issue a contempt order to secure Howell’s compliance. See *South Carolina ex. rel. Love v. Howell*, 285 S.C. 53, 328 S.E.2d 77 (1985). Without an equitable order and the corresponding power of contempt, the violations could not have been efficiently and effectively restrained. The sole remedy would have been seriatim criminal trials. See also *State ex rel. Mo. Bd. for Architects, Prof’l Engineers and Land Surveyors v. Henigman*, 937 S.W.2d 757, 759 (1997) (enjoining defendant who had been warned about preparing plans in violation of the state licensing statute prior to the incident leading to the injunction) (“It would be hard for [plaintiff] to know what [defendant] intended to do in the future and such proof would be difficult, if not impossible. If [plaintiff] had to wait to seek an injunction until after [defendant] committed an improper act of practicing architecture without a license, then the same argument could be made every time and an injunction would never be issued”).

Moreover, courts in equity have the all-important power to prevent future violations before they occur—as opposed to imposing penal sanctions only after a violation has occurred. Given the potentially disastrous results of permitting unqualified persons to practice architecture, such prospective relief is the only fully adequate remedy that protects the public.

In a similar vein, the mere fact that the statute also authorizes imposition of a criminal penalty does not, in and of itself, prevent this Court from granting equitable relief. Here, there is express statutory authority for injunctions, and there accordingly can be no bar to injunctive relief. **[Delete paragraph in states without statutes such as the Model Law which expressly authorizes injunctions.]**

Moreover, it is well settled that where the action sought to be enjoined is a menace to the public health and safety, the action may be enjoined, whether or not it is also made criminal. See *Minnesota v. Red Owl Stores, Inc.*, 253 Minn. 236, 92 N.W.2d 103, 109 (1958) (holding that enjoining unlicensed sale of drugs is appropriate, even though criminal sanctions also were available) (“courts of equity will interfere by injunction to restrain acts amounting to a public nuisance if they

affect public rights or privileges or endanger public health, regardless of whether such acts are denounced as crimes”); *Kentucky State Board of Dental Examiners v. Payne*, 213 Ky. 382, 281 S.W.188 (1926) (upholding injunction against unlicensed practice of dentistry, even though criminal sanctions were also available); *State ex rel. La Prade v. Smith*, 43 Ariz. 131, 29 P.2d 718 (1934) (authorizing injunction against unlicensed practice of medicine, even though criminal sanctions were also available); *Ritholz v. Ark. State Board of Optometry*, 206 Ark. 671, 177 S.W.2d 410, 411-12 (1944) (upholding injunction against unlicensed practice of optometry, even though criminal sanctions were also available).

The rationale underlying these cases is that the “basic purpose [of professional licensing statutes is] not to create a crime, but to safeguard the health and welfare of the public by protecting, in a measure at least, [the public] from the consequences of incompetency and inefficiency in the profession.” *Holcomb*, 138 S.E.2d at 709; accord *Ritholz*, 177 S.W.2d at 411 (“[t]he action is not one to enjoin the commission of a crime, as such. Its purpose, primarily, is to prevent illegal practice of optometry, rather than to penalize the practitioner”); *People ex rel. Oakland County Prosecuting Attorney v. Kevorkian*, 210 Mich. App. 601, 534 N.W.2d 172, 175 (1995) (“Harm to the public is presumed to flow from the violation of a valid statute enacted to preserve public health, safety and welfare....The existence of a criminal or other penalty for the practice of a profession without a license will not oust equity from jurisdiction”). Any contrary rule would be harsh, indeed, since it would expose the public to health and safety risks pending the conclusion of often-protracted criminal proceedings. Accordingly, there is no adequate remedy at law and the availability of criminal sanctions does not divest this Court of its equitable powers.

#### **D. The public interest justifies an injunction.**

As set forth above, public health and safety concerns are at the heart of architectural registration statutes. Because the Legislature has recognized that unlicensed practitioners endanger the public’s health and safety, the public interest clearly favors entry of injunctive relief.

#### **CONCLUSION**

For all of the foregoing reasons, the Board respectfully requests that a preliminary injunction issue to prevent the defendant from engaging in the practice of architecture in this state or using the title “architect” or any name or title or any words, letters, figures, sign, card, advertisement, symbol, or device indicating or tending to indicate that the defendant is an architect or is practicing architecture, and, in particular, from **[insert particular description of illegal activity to be enjoined]**.

**APPENDIX A: NCARB MODEL LAW 2009-2010**

**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.

**“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 the 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 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

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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 the 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 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.

A registered architect must demonstrate professional development activities since the architect's last renewal or initial registration, as the case may be; the Board shall by regulation describe professional development activities acceptable to the Board and the form of documentation of such activities required by the Board. The Board may decline to renew a registration if the architect's professional development 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 with the impression of his/her seal and the signature of the architect. The signature and seal shall mean 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 the certification issued by the National Council of Architectural Registration Board 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.

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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 the 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]**.

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10. A person, who holds the 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.

**APPENDIX B: CASE ANNOTATIONS<sup>1</sup>**

**1. CASES HOLDING THAT INDIVIDUAL VIOLATED STATE STATUTE PROSCRIBING UNLAWFUL PRACTICE OF ARCHITECTURE**

**Arkansas**

*Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003) (holding that actions by appellant licensed engineer, which included preparation of drawings and specifications for a building consisting primarily of office space and intended for human occupancy, were not incidental to the practice of engineering and constituted the practice of architecture, for which appellant was not registered or licensed as required under state law) (construing Ark. Code. Ann. §§ 17-15-102, 17-15-203, 17-15-302, 17-30-101, and 17-30-104).

*Ark. State Bd. of Architects v. Hawkins*, 69 Ark. App. 250, 12 S.W. 3d 253 (2000) (holding that actions by appellee, which included offering to provide “architectural/engineering design services” for a courthouse, attending a meeting to make a presentation for architectural design work, and preparing a color rendering of the proposed courthouse project, constituted the practice of architecture, for which appellant was not registered or licensed as required under state law) (construing Ark. Code. Ann. §§ 17-14-301 and 17-14-302(a)(1)).

*McQuay v. Ark. State Bd. of Architects*, 337 Ark. 339, 989 S.W.2d 499 (1999) (holding that actions by appellant, which included preparation of construction documents for a nursing home, a laboratory facility, and a medical clinic, constituted the practice of architecture, for which appellant was not registered or licensed as required under state law) (construing Ark. Code. Ann. §§ 17-14-102, 17-14-203, and 17-14-301).

*Arkansas State Bd. of Architects v. Bank Bldg. & Equip. Corp. of Am.*, 225 Ark. 889, 893-96, 286 S.W.2d 323, 324-27 (1956) (holding that activity of appellee corporation, not licensed to practice architecture in Arkansas, which employed 200 unlicensed architects supervised by one licensed architect constituted the performance of architectural services by unlicensed persons; injunctive and declaratory relief imposed) (construing Ark. Act. 270, § 2 (1941), which stated that “no person shall practice architecture in this state, or engage in preparing plans, specifications or preliminary data for the erection or alteration of any building located within the boundaries of this state, or use the title ‘Architect’ . . . unless such person shall have secured from the examining body of a certificate of registration and license in the manner hereinafter provided . . .”).

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<sup>1</sup> Many of these cases involve private fee disputes, rather than public enforcement actions. The lack of a license is asserted as a defense to payment in these cases. Fee dispute cases are relevant and are included here because they construe the statutory definitions of the “practice” of architecture and use of the title “architect.” Note also that many of the cases in this Appendix construe specific state statutes, the wording of which may differ from state to state.

For further citations to architectural registration statutes generally, see J. Sweet, *Legal Aspects of Architecture, Engineering, and the Construction Process* 204-31 (3d ed. 1985). See also Annotation, *What Amounts To Architectural Or Engineering Services Within License Requirements*, 82 A.L.R.2d 1013-29 (1962) (additional older case annotations).

**California**

*Palmer v. Brown*, 127 Cal. App. 2d 44, 273 P.2d 306 (1954) (fee recovery case) (architectural firm could not recover fees because an unlicensed partner had signed a certificate of payment which designated him as “architect”) (citing Cal. Bus. & Prof. Code §§ 5536-5537).

**District of Columbia**

*Holiday Homes, Inc. v. Briley*, 122 A.2d 229, 231 (D.C. Mun. Ct. App. 1956) (fee recovery case) (holding that rendering of designs in connection with prefab housing by architect whose registration had lapsed constituted unlicensed practice of architecture) (D.C. Code 1951 § 2-1014(b) proscribed “[the] rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of any building or structural alteration thereto”).

**Florida**

*O’Kon and Company, Inc. v. Reidel*, 16 Fla. L. Weekly D2780, 588 So.2d 1025 (1991) (fee recovery case) (corporation that designed plans and specifications for a hotel was engaged in the unlicensed practice of architecture) (construing Fla. Stat. ch. 481.219).

**Illinois**

*Kaplan v. Tabb Associates, Inc.*, 276 Ill.App.3d 320, 657 N.E.2d 1065 (1995) (fee recovery case) (corporation that served as architectural and construction manager on property renovation project was engaged in the unlicensed practice of architecture) (construing Illinois Architecture Practice Act of 1989, Section 21).

*Ransburg v. Hasse*, 224 Ill.App.3d 681, 586 N.E.2d 1295 (1992) (fee recovery case) (business that provided professional services as an architect in connection with the design, construction and decoration of an out-of-state residence was engaged in the unlicensed practice of architecture) (construing Illinois Architecture Act, Section 1 (1987)).

**Louisiana**

*Hopping v. Louisiana Horticulture Comm’n*, 509 So.2d 751, 754 (La. Ct. App. 1987) (licensed contractor, who did a site analysis and prepared preliminary site plans, and who represented himself as “Michael Hopping, Landscape Design and Construction” on his letterhead and checking account and signed a contract as “Michael Hopping, Landscape Designer,” was engaged in the unlicensed practice of landscape architecture; injunction entered) (construing La. Rev. Stat. Ann. § 37:1964(C) [now redesignated as La. Rev. Stat. Ann. § 3:3804(C)], which stated: “No person shall receive fees, whether directly or indirectly, for engaging in a regulated profession, or advertise as engaged in a regulated profession, or solicit business in a regulated profession, unless the person holds a valid appropriate license issued by the commissioner, or has a regular employee who holds a valid appropriate license issued by the commissioner, or is employed by or is working under the direct supervision of a person who holds a valid appropriate license issued by the commissioner.”).

*West Baton Rouge Parish School Bd. v. T.R. Ray Inc.*, 367 So.2d 332, 334 (La. 1979) (fee recovery case) (corporation that contracted with school board to prepare detailed drawings and specifications for building project, to act as owner’s represen-

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tative during construction, and to accept responsibility of rejecting work that did not conform to designs and specifications, was engaged in the unlicensed practice of architecture) (construing La. Rev. Stat. § 37:145, proscribing unlicensed practice of architecture, and § 37:141, defining practice of architecture (statutory language not quoted)).

### **Maine**

*State v. Beck*, 156 Me. 403, 165 A.2d 433 (1960) (upholding criminal conviction of engineer who used the title “architect” without required registration, although, under Maine statutes, a registered professional engineer may perform architectural services incidental to engineering services) (construing Me. Rev. Stat. tit. 81, §§ 8-9 (1954)).

### **Maryland**

*Kirschner v. Klavik*, 186 A.2d 227, 229 (D.C. Mun. Ct. App. 1962) (fee recovery case) (unlicensed draftsman engaged in the practice of architecture cannot recover for services rendered because he was a principal on the contract; further, draftsman was not the agent of the licensed architect with whom he consulted, because licensed architect did not give draftsman authority to bind architect’s firm by contract) (construing Md. Ann. Code art. 43, § 515 (1957), which holds that only registered persons may hold themselves out as architects and Md. Ann. Code art. 43, § 516, defining architect as “any person who holds himself out as able to perform or who does perform any professional service, such as consultation, investigation, planning, . . . or responsible supervision of construction . . . wherein the safeguarding of life, health or property is concerned”).

### **Missouri**

*State ex rel. Mo. Bd. for Architects, Prof’l Engineers and Land Surveyors v. Henigan*, 937 S.W.2d 757, 759 (1997) (injunction properly issues where defendant practiced architecture without holding a valid certificate of registration to practice architecture) (construing Mo. Rev. Stat. §§ 327.091-101, defining practice of architecture and requiring licensure).

### **New Jersey**

*State of New Jersey Bd. of Architects v. North*, 197 N.J. Super. 349, 484 A.2d 1297, 1299 (1984) (licensed professional engineer who gathered structural data and prepared three detailed drawings that qualified as “plans” for the construction of a duplex engaged in the unauthorized practice of architecture; injunction and fine imposed) (construing N.J. Stat. Ann. § 45:3-10, imposing a fine on “[a]ny person [unlicensed to practice architecture] who shall pursue the practice of architecture in this state, or shall engage in this State in the business of preparing plans, specifications and preliminary data for the erection or alteration of any building, except buildings designed by licensed professional engineers incidental or supplemental to engineering projects . . . ,” and N.J. Admin. Code § 13:27-2.2(a), defining the practice of architecture).

**New York**

*Gordon v. Adenbaum*, 567 N.Y.S. 2d 777, 171 A.D.2d 841 (1991) (fee recovery case) (holding that plaintiff, who was not licensed as an architect, violated state licensing requirements where he produced construction bid documents) (construing N.Y. Educ. Law § 7302, which states that “only a person licensed or otherwise authorized to practice under this article shall practice architecture or use the title ‘architect’”).

*Marshall-Schule Assocs. Inc. v. Goldman*, 137 Misc. 2d 1024, 1026-27, 523 N.Y.S.2d 16 (1987) (fee recovery case) (holding that officers and employees of plaintiff’s interior design firm, who were not licensed as architects, violated state licensing requirements where they provided not only interior design services for which no license was required (such as furniture layout and color schemes) but also prepared floor plans, elevations and other architectural drawings, rearranged doors and closets, and supervised the general contractor) (construing N.Y. Educ. Law § 7302 and § 7301, defining the practice of architecture as “rendering or offering to render services which require the application of the art, science, and aesthetics of design and construction of buildings . . . wherein the safeguarding of life, health, property, and public welfare is concerned”).

**North Carolina**

*North Carolina Bd. of Architecture v. Lee*, 264 N.C. 602, 612-13, 142 S.E.2d 643, 645-50 (1965) (defendant violated state licensing statute by preparing plans for the construction of a building, supervising the construction, and noting on the plans “Plans by C.A. Lee,” but court denied injunctive relief because the board delayed in seeking such relief for nine years; as for two other claimed instances of unlicensed practice, defendant was within an exemption for buildings owned by the unlicensed architect) (construing N.C. Gen. Stat. § 83-12, stating that “it shall be unlawful for any [unlicensed] person to practice architecture in this State as defined in [§ 83-1(3)] . . . Nothing in this chapter shall be construed to prevent any individual for making plans or data for buildings for himself”).

**North Dakota**

*State Board of Architecture v. Kirkham, Michael Associates, Inc.*, 179 N.W.2d 409 (N.D. 1970) (in North Dakota, only an individual may be licensed to practice architecture, and so corporation was unlawfully holding itself out as an architect by referring to itself as a firm of architects and engineers on its letterhead, on plans and specifications, and in its advertising; corporation had only one employee registered as an architect in North Dakota) (construing N.D. Civ. Code § 43-03-09).

**Oregon**

*Davis v. Board of Architect Examiners*, 200 Or. App. 370, 193 P.3d 1019 (2008) (owner of drafting and design business practiced architecture without a license, in violation of state statute, even though the buildings planned and designed were never erected, as the definition of the practice of architecture included planning or designing the erection of a building) (construing Or. Rev. Stat. §§ 671.010(1) and 671.010(5) (2001)).

*Merrill v. Board of Architect Examiners of Oregon*, 300 Or. 34, 706 P.2d 556 (1985) (designer of school classrooms engaged in unlicensed practice of architecture, and was not exempt from fine under statutory exemption for contractors or their supervisors or foremen who work under the supervision of a registered architect or engineer) (headnote cites Or. Rev. Stat. § 671.010(5)).

**South Carolina**

*State ex rel. Love v. Howell*, 281 S.C. 463, 464-65, 316 S.E. 2d 381, 382-83 (1984) (appellant, who owned an architectural design business that consulted with clients, determined their needs, viewed their property, and prepared architectural plans for the construction of commercial office buildings and residential structures, was engaged in the unauthorized practice of architecture) (construing S.C. Code Ann. § 40-3-10 (1976), defining architectural practice as “[a]ny service or creative work requiring architectural education, training and experience, and the application of the principles of architecture and related technical disciplines to such professional services or creative work as consulting, evaluating, planning, designing, specifying, coordinating of consultants, administration of contracts, and supervision of construction for the purpose of assuring compliance with the specifications and design, in connection with any building, or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents himself to be an architect . . .)

*State ex rel. Love v. Howell*, 285 S.C. 53, 328 S.E.2d 77 (1985) (the unlicensed architect in the above case was in contempt of the court’s injunction because he continued to use letterhead and business cards with the logo “George L. Howell Associates/Architects & Designers” and to sign documents in the space designated for the architect; the unlicensed architect did not qualify for statutory exemption by having licensed architects in his employ because the licensed architects were not true employees, but “mere puppets” who signed documents but had no real control over the projects).

**Vermont**

*Rodgers v. Kelley*, 128 Vt. 146, 259 A.2d 784 (1969) (even though he did not use the title “architect,” individual violated architect registration statute because he held himself out as one who performed architectural services) (construing Vt. Stat. Ann. tit. 26, § 121 (1951), which states: “The term ‘architect’ . . . shall mean a person who holds himself out as able to perform, or does perform, while representing himself as an architect, any professional service such as consultation, investigation, planning, designing, . . . or responsible supervision of construction. . .”).

**2. CASES HOLDING THAT INDIVIDUAL DID NOT VIOLATE STATE STATUTE PROSCRIBING UNLAWFUL PRACTICE OF ARCHITECTURE**

**California**

*McDowell v. City of Long Beach*, 12 Cal. App. 2d 634, 638, 55 P.2d 934 (1936) (fee recovery case) (architect not licensed in California may recover fees for supervision of construction work because he informed the building owner that he was not licensed in California; statute includes “construction supervision” within the definition of the practice of architecture because it did not specifically exclude it) (construing 1901 Cal. Stat. p. 641, Act 486, as amended, 1903 Cal. Stat. p. 522, stating that “nothing in this act shall prevent any person from . . . furnishing plans or other data for buildings for other persons, provided the person so furnishing such plans or data shall fully inform the [other] person . . . that he . . . is not a certificated architect . . .”).

*Medak v. Cox*, 12 Cal. App. 3d 70, 90 Cal. Rptr. 452 (1970) (denying recovery by clients of fees paid to unlicensed architect because services performed fit within statutory exemption from definition of architectural services, and because clients knew that architect was unlicensed when they entered into contract) (construing Cal. Bus. & Prof. Code § 5537, regarding exemption for single-family dwellings).

*Walter M. Ballard Corp. v. Dougherty*, 106 Cal. App. 2d 35, 234 P.2d 745, 749 (1951) (fee recovery case) (corporation could recover fees for doing preliminary sketches for client, because corporation was to hire licensed architect to make final and detailed working plans, and because preliminary sketches were not within the statutory definition of architectural services) (construing Cal. Bus. & Prof. Code §§ 5536 and 5537, which exempt from licensing requirement individuals who inform clients that they are not licensed before they perform services).

### **District of Columbia**

*Dunn v. Finlayson*, 104 A. 2d 830, 832 (D.C. Mun. Ct. App. 1954) (fee recovery case) (holding that statute does not include construction administration within the meaning of the practice of architecture; also noting that previously, only the unlicensed use of the title “architect” was unlawful) (construing D.C. Code § 2-1014(b) (1951), defining the practice of architecture as “rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of any building . . .”).

### **Florida**

*Alfred Karram, III, Inc. v. Cantor*, 19 Fla. L. Weekly D666, 634 So.2d 210 (1994) (fee recovery case) (Florida architect-licensing statute does not require licensure for preparation of plans and specifications for one-family or two-family residences) (construing Fla. Stat. §§ 481.219, 481.229).

*Rolls v. Bliss & Nyitray, Inc.*, 408 So.2d 229, 235-37 (Fla. App. 1981), appeal dismissed, 415 So.2d 1359 (1982) (fee recovery case) (Florida architect-licensing statute does not constitute a bar to recovery under contract where one of the architects is not licensed in Florida, if the services are rendered in connection with the design of a building to be constructed outside the borders of that state) (construing Fla. Stat. § 467.17 (1977), proscribing practice of architecture by unlicensed persons “in this state”).

### **Georgia**

*Georgia State Bd. for Examination, Qualification and Registration of Architects v. Arnold*, 249 Ga. 593, 594-96, 292 S.E.2d 830, 831-33 (1982) (subcontractor who erected the metal walls and roof of a warehouse in accordance with technical drawings prepared by a licensed engineer did not engage in the practice of architecture within the meaning of the Georgia architect-licensing statute because these services were the services of a specialty subcontractor, not an architect, and were done in accordance with drawings prepared by a licensed engineer) (applying Ga. Stat. Ann. §§ 84-301 and 84-321).

*Georgia State Bd. for Examination, Qualification and Registration of Architects v. Bush*, 249 Ga. 593, 594-96, 292 S.E.2d 830, 832-33 (1982) (individual who prepared drawings for his employer for buildings that the employer intended to sell and lease to others did not engage in unlicensed practice of architecture, but qualified for statutory exemption because his services were purely “in-house” as they were

## Model Brief

done for his employer and not “for others”) (construing Ga. Stat. Ann. § 84-301, defining the practice of architecture, and § 84-321, providing exemptions to that definition and stating that “any person engaged . . . in the planning or design for the erection, enlargement or alteration of any building . . . for others . . . shall be deemed to be practicing architecture . . .”).

*Cahoon v. Kubatzky*, 138 Ga. App. 393, 394-96, 226 S.E.2d 467, 468-70 (1976) (fee recovery case) (although construction supervisor suggested and entered changes in some construction details on architectural drawings, he did not engage in the unauthorized practice of architecture because he did not hold himself out or describe himself as an architect) (not citing any statute).

### Illinois

*Hattis Assocs., Inc. v. Metro Sports, Inc.*, 34 Ill. App. 3d 125, 127-28, 339 N.E.2d 270 (1975) (fee recovery case) (plaintiff corporation’s vice-president, a licensed architect who functioned as the managing agent of the architectural division, did not violate the Illinois Architectural Act by planning and supervising the construction of an ice hockey rink) (construing Ill. Rev. Stat. ch. 10½, para. 3 (1971), which provides: “it shall be lawful for . . . a corporation to prepare drawings, plans and specifications for buildings . . . which are constructed, erected, built, or their construction supervised by such . . . corporation, provided that the chief executive officer or managing agent of such . . . corporation in the State of Illinois shall be a registered architect under this Act, and provided further that the supervision of such buildings . . . shall be under the personal supervision of said registered architect and that such drawings, plans and specifications shall be prepared under the personal direction and supervision of such registered architect and bear the stamp of his official seal.”).

*Kansas Quality Constr., Inc. v. Chaisson*, 112 Ill App. 2d 277, 250 N.E.2d 785, 787 (1969) (fee recovery case) (corporation did not perform architectural services by contracting to develop plat layout and to cause plans of the proposed building to be drawn for loan submission) (construing 111. Rev. Stat. ch. 10½, § 2 (1965)).

### Maryland

*Gerry Potter’s Store Fixtures, Inc. v. Cohen*, 46 Md. App. 131, 136-37, 416 A.2d 283, 286 (1980) (fee recovery case) (contractor did not perform architectural services within the ambit of the Maryland licensing statute by doing the layout drawings to clarify the placement of fixtures, color scheme, and type of materials for use in obtaining building permits, because that work “did not require the services of an architect,” was more akin to building contractor services, and was done without charge; however, contractor’s typing his initials in a space on the contract provided for the name of the architect was a technical violation of the statute, but was insufficient to preclude him from recovering under the contract for the services, since he did not use the term “Architect” as part of his business name or represent himself to the public as an architect).

### Michigan

*White Co. v. LeClair*, 25 Mich. App. 562, 563-64, 181 N.W.2c 790, 791 (1970) (a person not licensed to practice architecture does not “practice” architecture by testifying at trial about variance between planned and actual construction of a building) (citing Mich. Comp. Laws Ann. § 338.552 (1970)).

**Mississippi**

*State Bd. of Regis. for Prof. Eng'rs v. Rogers*, 120 So.2d 772 (Miss. 1960) (individual who performed engineering services for architects and engineers but not for the general public, and who held himself out as a “Mechanical Designer” did not violate state engineering registration statute, because he acted as the subordinate of his clients, who were registered; injunction denied).

**New York**

*SKR Design Group, Inc. v. Yonehama, Inc.*, 660 N.Y.S. 119, 230 A.D.2d 533 (1997) (fee recovery case) (holding that unlicensed design corporation did not engage in unlicensed practice of architecture because it hired a licensed architect to perform all architectural services and because it neither performed any architectural services itself nor contracted to do so) (construing N.Y. Educ. Law § 7302).

**Oregon**

*Friedman v. Mt. Village, Inc.*, 55 Or. App. 1018, 640 P.2d 1037, 1040-41 (1982), pet. denied, 293 Or. 235, 648 P.2d 852 (1982) (fee recovery case) (performance of a contract for architectural services constitutes unlawful practice if the party performing the services is not registered; simply making a contract that provides for the performance of architectural services does not constitute the practice of architecture) (construing Or. Rev. Stat. § 671.010(5), defining the practice of architecture as “[t]he planning, designing or supervision of the erection, enlargement or alteration of any building or of any appurtenance thereto other than exempted buildings . . .” and § 671.220(3), stating that fees may not be recovered in Oregon courts by those practicing architecture without licenses).

**Pennsylvania**

*McKeown v. State Architects Licensure Bd.*, 705 A.2d 524 (1998) (holding that contractor’s advertisement offering free design in connection with additions did not constitute an unauthorized offer to engage in the practice of architecture) (construing Section 18 of Architects Licensure Law).

**Texas**

*Seaview Hosp., Inc. v. Medicenters of Am., Inc.*, 570 S.W.2d 35, 38-40 (Tex. Civ. App. 1978) (corporation that contracts to arrange for the provision of architectural services, but does not itself perform the services, does not “practice” architecture in violation of the statute) (construing Tex. Rev. Civ. Stat. Ann. art. 249a (1973), defining the practice of architecture as “performing or doing, or offering or attempting to do or perform any service, work, act or thing within the scope of the practice of architecture . . .”).

**Washington**

*Frey v. Kent City Nursing Home, Inc.*, 62 Wash. 2d 953, 385 P.2d 323 (1963) (fee recovery case) (licensed professional engineer and another individual, neither of whom was an architect licensed in Washington, did not violate statute, even though they performed architectural services, because they did not hold themselves out as licensed architects) (construing Wash. Rev. Code §§ 18.08.170 and 18.08.250, which states: “Nothing contained in this chapter shall be deemed to prevent or affect in any way the practice of engineering except . . . that no person shall use the designation ‘architect,’ ‘architectural,’ or ‘architecture’ unless licensed . . .”).