

N C A R B

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**Necessity
of an
Architect
During
Construction**

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MISSION STATEMENT

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, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands as its members.

The mission of NCARB is to work together as a council of member boards to safeguard the health, safety, and welfare of the public and to assist member boards in carrying out their duties. Pursuant thereto, the Council shall develop and recommend standards to be required of an applicant for architectural registration; develop and recommend standards regulating the practice of architecture; provide to member boards a process for certifying the qualifications of an architect for registration; and represent the interests of member boards before public and private agencies, provided that the Council shall not purport to represent the interest of a specific member board without that member board's approval.

Necessity of an Architect During Construction
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Necessity of an Architect During Construction

This paper argues for the adoption of NCARB Legislative Guideline VII, which requires that an owner retain an architect during the construction phase of a building project.¹

I. Background

In the spring of 1981, NCARB polled members of the Council of American Building Officials to ascertain the extent to which building officials relied on the presence of a registered architect to ensure that the public was protected. In response to a question concerning the architect's role during construction, a substantial majority of the building officials stated that a design professional should be engaged during the construction phase to ensure a safe project.

At about the same time, national building codes were amended to strengthen requirements that either a registered architect or a registered engineer be engaged to review contractor submittals, to inspect critical construction components, and to report observed violations of the building code to the building official.² In addition, many progressive building departments were enacting special requirements beyond those set out in the national codes. Boston, for example, in response to a disaster on a high-rise residential project with no registered architects or engineers involved after the issuance of the building permit, requires an "affidavit architect," who must visit the site at least once a week and notify the building department of any code violations, of any

¹This paper is intended to complement a similar but perhaps more eloquent argument made by Michelangelo more than 400 years ago with regard to his role during the construction of the Basilica of St. Peter. A catalogue recently published by the National Gallery of Art in Washington, D.C., to accompany an exhibition titled "Italian Renaissance Architecture" describes the circumstances:

"The model for the vault surmounting the south apse had undergone numerous adjustments, reflecting Michelangelo's changing ideas for the vault. Construction of the vault began according to this altered model or one made from it for the foreman to follow. In June 1557, however, it was discovered that the foreman, misunderstanding Michelangelo's model, had miscalculated the curvature of the vault. Because of its instability, the vault had to be dismantled, and took nearly a year to rebuild.

"According to Michelangelo's own account of this error, the model was intended as a guide for the builders but was not intended as a substitute for the architect's direct supervision of the actual construction. As matters turned out, however, Michelangelo was unable to visit the site during construction of the vault. Here is what he wrote: 'Owing to this mistake, the vault has gone so far ahead that a number of the blocks will have to be taken down. . . . As the model, such as I make for everything, was exact, this mistake [ought never to have been made]; it happened through my not being able to go [to the building site] often enough, owing to old age. Whereas I believed that the said vault would now be finished, it will not be completed until the end of this winter, and if one could die of shame and grief, I should not be alive.'" (Michelangelo, Letter to Giorgio Vasari, 1 July 1557)

²SBCCI's Standard Building Code § 103.6.2 provides that "[w]henever a permit is issued in reliance upon an affidavit [as provided in § 103.3.2] or whenever the work to be covered by a permit includes installation under conditions which, in the opinion of the Building Official, are hazardous or complex, the Building Official shall require that the architect or engineer who signed the affidavit or prepared the drawings or computations shall supervise such work."

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discrepancies between the construction documents (upon which the permit issued) and the work in progress, and of any condition, observed by the architect, constituting a hazard.

In 1989, the member boards of NCARB adopted Legislative Guideline VII³, which effectively requires that a registered architect be engaged during the construction phase of any building intended for human occupancy or habitation by declaring that a building owner who begins construction without a registered architect is himself/herself engaged in the unlicensed practice of

ICBO's Uniform Building Code § 1701.1 then provided that "the owner or the engineer or architect of record acting as the owner's agent shall employ one or more special inspectors who shall provide inspections during construction on the types of work listed under Section 1701.5 [in accordance with the duties and responsibilities of the special inspector set forth in Section 1701.3]." Section 1702 provided that, under certain listed circumstances, "[t]he owner shall employ the engineer or architect responsible for the structural design . . . to perform structural observation. . . . Observed deficiencies shall be reported in writing to the owner's representative, special inspector, contractor and the building official. The structural observer shall submit to the building official a written statement that the site visits have been made and identifying any reported deficiencies which, to the best of the structural observer's knowledge, have not been resolved." There were similar provisions in Sections 302.4 and 306 of the Uniform Administrative Code.

BOCA's National Building Code, § 114.2 provided (in the section describing professional architectural and engineering services) that "[s]pecial inspections shall be made in accordance with Section 1705.0."

Some states have gone beyond the administrative procedures required by the model building codes when enacting their own building codes. For example, the Massachusetts State Building Code, which is based on BOCA's National Building Code, included a provision setting forth the architect/engineer responsibilities during construction: "The registered architects and registered professional engineers who have prepared plans, computations and specifications or the registered architects or registered professional engineers who have been retained to perform construction phase services, shall perform the following tasks for the portion of the work for which they are directly responsible: 1. Review, for conformance to the design concept, shop drawings, samples and other submittals, which are submitted by the contractor in accordance with the requirements of the construction documents. 2. Review and approval of the quality control procedures for all code-required controlled materials. 3. Be present at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the work and to determine, in general, if the work is being performed in a manner consistent with the construction documents." 780 CMR 116.2.2 (2001)

³Legislative Guideline VII provides:

- 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."

architecture and is, accordingly, subject to the fine and other sanctions set out in the statutes for unlicensed practice.

To the best of NCARB's knowledge, in the ensuing years only five states require, in their architects' registration act, that an architect perform construction contract administration; and only one, West Virginia⁴, has adopted the requirement in the form recommended by NCARB.

In 1999, NCARB commissioned an independent national polling firm to test how building officials view the role of the architect in ensuring the safety of buildings. Two thousand four hundred forty-seven (2,447) building officials responded. A little more than 87 percent of the respondents agreed that "[i]n order to protect adequately the health, safety, and welfare of the public, licensed architects and engineers should be required to conduct on-site observations of the construction of any substantial building."

This overwhelming endorsement by those on the front line underscores the importance of NCARB Legislative Guideline VII and the critical need to implement its recommendations.

II. The Nature of the Problem

The public safety is protected by a registered architect taking responsibility for the preparation of technical submissions and by a competent building official reviewing the technical submissions to ensure that they conform to applicable codes. But that process gives no assurance that the project will be built as described in the technical submissions.

Moreover, many components of a project critical to the public safety are not designed or specified until construction has begun. Structural steel connections (the inadequacy of which caused the infamous 1981 Hyatt Regency Hotel disaster in Kansas City, Missouri) are only one of the components customarily designed during construction. Many elements are installed by contractors on the basis of performance specifications rather than prescriptive specifications. Many elements are "design/built" during the construction phase. Even on an old-fashioned, simple project where none of the foregoing exists, technical submissions are adapted to actual site conditions, corrected to remove errors, and supplemented to supply omissions—indeed, these practices occur on almost every building project.

Why then do developers often terminate the architect after the completion of construction documents? To save money. The building permit has issued; many developers see the retention of an architect thereafter as a "needless expense" and often a nuisance because the architect may be uncompromising in insisting that the safety and quality of the project not be diluted.

⁴See W.Va. Code § 30-12-11a.

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But doesn't the developer's interest in the long-term safety and durability of the building persuade him/her to retain the architect during construction? Consider who this "developer" has become in the last 50 years. He/She no longer builds to create an asset for himself/herself and his/her children (as was once the case); more typically, he/she now builds to sell the building to condominium purchasers, to lease the building triple-net to long-term tenants, to syndicate the building, or to sell it to a publicly owned real estate investment trust (REIT). In short, he/she seldom has a long-term interest greater than his/her short-term target of saving money. In areas where either the building code or the construction lenders require an architect during construction, many developers consider the retention of an architect a burden imposed on them as part of the cost of doing business.

Some architects have resisted or at best been lukewarm in their support of legislation that requires an architect's presence during construction. Apart from a natural predisposition against more regulation, some architects fear that Legislative Guideline VII will expose them to greater liability. In one sense, that fear has a legitimate foundation. At the time the building permit issues, the architect's duty—and accordingly his/her liability exposure—is confined to the project owner who engaged him/her. Once construction begins, the architect is like Ishmael of the Bible: Every man's hand is against him. Contractors, subcontractors, workers, and injured pedestrians all have charged the architect with some liability for damage suffered during construction.

This fear of liability led to a great schism in the architectural profession in the 1960s when the American Institute of Architects proposed deleting the word "supervision" from the description of the architect's services during construction and substituting the word "observation."⁵ Many architects, remembering that debate and the ultimate decision of the AIA's Documents Board to use softer language in AIA documents, fear that NCARB's Legislative Guideline VII will impose new legal liability on the profession.

Perhaps the best response to the architect's fear of undertaking this responsibility comes from the two principal professional liability insurers. In 1996, Victor O. Schinnerer & Company, Inc., which underwrites the CNA program, commissioned Professor David Haviland to study risk management by design professionals. He produced a list of the Top 20 Claim Preventors and the Top 20 Claim Starters. Number 3 on the list of Claim Preventors was "construction administration services are in the contract." Number 6 and number 12 on the list of Claim Starters were "infrequent site observation" and "construction administration services not in contract," respectively. In short, Professor Haviland's study demonstrated that there were fewer claims and less liability when the architect's services were not terminated after the design phases.

⁵See, for example, "An Argument for the Use of the Word Supervision." William Stanley Parker, October 1, 1961.

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The Design Professional Insurance Companies' advice is entirely consonant with that of Professor Haviland. Authors Crowell and Dixon write:

“[I]f you are not performing construction observation because you think it will increase your exposure to risk, think again. True, when you visit a job site, you may have an increased risk for claims of site safety. But that risk (which is largely manageable) should be weighed against another—and bigger—issue. When you design a project, you assume the associated liability, whether or not you visit the project. In avoiding observation, you forfeit the opportunity to satisfy yourself that construction is proceeding as it should. No matter how detailed or near perfect your plans are, even the best contractor can't build from them without some degree of interpretation. It is far better to protect your interests and those of your client by being there to provide clarification and interpretation.” [From DPIC's *Contract Guide, A Risk Management Handbook for Architectural, Engineering and Environmental Professionals*, III-8.]

In light of the unequivocal advice of their professional liability insurers, architects should endorse NCARB's Guideline VII and the principle that there must be a design professional furnishing construction contract administration services on all non-exempt building projects.

III. Doesn't NCARB's Broad Definition of Architectural Practice Cover the Problem?

Legislative Guideline I defines the practice of architecture 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; and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects.”

Many believe that since “the administration of construction contracts” is specifically identified as an architectural service, anyone else performing that service is engaged in unlicensed practice.

The simple answer, available to the developer who terminated his/her architect after a building permit issued, is that no one administered the construction contract. There were no shop drawing submissions. He/she relied entirely on the contractor's agreement to build as prescribed in the construction documents.

A longer answer turns on the legal question of whether one who engages in construction contract administration is engaged in the practice of architecture. The attorneys general of Arizona and South Carolina have indicated that

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they believe the administration of construction contracts is architectural practice.

In 1987, the Arizona Attorney General construed the Arizona statute⁶ as requiring that “only qualified registrants can conduct construction observation services to determine conformance with contract documents and design insofar as such review involves the applications of architectural . . . analysis.”

1987 Ariz. Op. Atty. Gen. 31, No. I87-022

In 1980, the South Carolina Attorney General construed the South Carolina statute⁷ as barring an independent construction manager who was not registered as an architect or engineer from undertaking the duties of inspection or supervision of construction.⁸ 1980 S.C. Op. Atty. Gen. 146, No. 80-94 (In 1973, South Carolina’s Attorney General issued an informal opinion that the South Carolina statute did not, however, require a project owner to engage an architect or engineer for construction supervision. 1973 WL 27011 (S.C.A.G.) Read together with the 1980 opinion, the Attorney General makes an important distinction: Under South Carolina law, no one other than a registered architect may offer an owner services that constitute architectural practice, but the owner is not obliged to procure those services from anyone.)

In 1995, the California Attorney General construed California law as barring an unlicensed person from performing construction management services on municipal or state projects. 78 Cal. Op. Atty. Gen. 48 (1995)

While a majority of decisions of attorneys general preclude an unlicensed person from engaging in construction contract administration services, that conclusion is not universal; there is dicta in various court opinions that “supervision of construction contracts” (again, using the old terminology) is not the exclusive province of architects. See, e.g., *Di Silvestri v. Golden Crest Motel Corp.*, 148 Conn. 121, 167 A.2d 857 (1961); *Gastaldi v. Reutermann*, 345 Ill.App. 510, 104 N.E.2d 115 (1952). Moreover, as noted at the outset of this section, the most common condition threatening the public safety is that no one is furnishing construction contract administration services. Therefore, more than NCARB’s broad definition of the practice of architecture is required.

⁶The statute defines the practice of architecture as “the application of . . . the principles of architecture . . . to such professional services as . . . review of construction for conformance with contract documents and design. . . .” See A.R.S. § 32-101(B)

⁷The statute defines the practice of architecture to include “supervision of construction for the purpose of assuring compliance with the specification and design. . . .” See S.C. Code § 40-3-10(2)

⁸The opinion uses the pre-1987 terminology “supervision of construction” to refer to construction phase responsibilities traditionally performed by an architect.

IV. The Solution

Guideline VII is given concrete form in NCARB's Model Law as Section 10A. (The entire Model Law is attached to this paper as an appendix.) The basic principle is set out in Section 10A.1:

“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.”

In Section 10A.2(a), “Owner” is broadly defined to include every owner of more than 10 percent of the equity in the real property, as well the mortgagee, the record title owner, and, in appropriate circumstances, a long-term tenant. In Section 10A.2(c), “Construction Contract Administration Services” are defined as comprising at least the following:

“(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.”

No doubt the implementation of Legislative Guideline VII will be vigorously opposed by owner/builders, particularly those who habitually use architects only to procure a building permit. They may argue to legislators that it represents more regulation in a nation, which now is apparently in favor of less.

Two strong arguments should persuade your legislature that Legislative Guideline VII is good public policy. The first turns on the critical need for professional review during the construction phase. See Section II. Make the convincing argument that public safety is at stake.

The second turns on the practicality of enforcement. With the definition of “owner” set out in the Model Law, no responsible mortgage lender will advance funds, knowing its own exposure, without ensuring that the record title owner has retained a registered architect during the construction phase of the building project. This lending practice soon will become as routine as ascertaining that there is insurance coverage for the project.

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APPENDIX: NCARB MODEL LAW**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 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.

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“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 knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care. Reviewing, or reviewing and correcting, 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 reports prepared in the course of practicing architecture.

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 and with satisfactory evidence that such person has completed such practical training in architectural work as the Board requires. If an applicant is qualified in accordance with the preceding sentence, the Board shall, by means of a written examination, examine the applicant on such technical and professional subjects as are pre-

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scribed by it. 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 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 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.

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."

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SECTION 6 – SEAL

Every registered architect shall have a seal of a design authorized by the Board by regulation. All technical submissions prepared by such architect, or under his/her responsible control, shall be stamped with the impression of his/her seal, which 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 inspectors]** shall accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped 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.

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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

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Chapter, except that a person registered in another jurisdiction or a person retired from the practice of architecture and 65 years of age or older 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.

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- (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.

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2. The preparation of submissions to architects by the manufacturer, supplier, installer, or others of any materials, components, or equipment incidental to the architect's design of the entire project that describe or illustrate the use of such items.
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. 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 partnership, limited liability company, or corporation by the general partner or partners, or by the manager or managers, or by the director or directors who hold registration in this state and who 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.

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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 render 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 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.

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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.

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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 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.