

January 25, 2016

Professional Practice 544

Licensing of Architects

Forms of Association

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LICENSING OF ARCHITECTS

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Purpose of Licensing Architects

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

Illinois Department of Financial & Professional Regulation

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

LICENSING OF ARCHITECTS

Possible Sanctions for Violation

- Fines or penalties
- Denial of license upon subsequent application
- Inability to sue for fees or forfeiture of all fees

Types of Licensing Statutes

- “Holding Out” statutes
- “Practice” statutes
- Illinois has a hybrid statute (both)
- What is practicing

LICENSING OF ARCHITECTS

Practicing Architecture Without a License

- Under a licensed architect's supervision
- Reciprocity for out-of-state architects
 - NCARB – state to state
 - Hot and Cold

FORMS OF ASSOCIATION

THE LAW OF AGENCY

Principal, Agent, and Third Party

Examples of Common Agency Relationships

- Employer/employee
- Actor or athlete/agent
- Real estate broker/property owner
- Owner/architect (to a limited extent)

THE LAW OF AGENCY

Purposes and Theory

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

Effects of an Agency Relationship

- The agent may bind the principal to a contract
- Knowledge of the agent is attributed to the principal
- The agent's acts (and omissions) are attributable to the principal

THE LAW OF AGENCY

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

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

Source of the Agent's Authority

- Actual authority
- Apparent authority
- Subsequent ratification by the principal

THE LAW OF AGENCY

Termination of the Agency Relationship

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

SOLE PROPRIETORSHIPS

- **Any individual who conducts business**
- **No legal distinction between the business and the individual**
 - Income treated as personal income
 - No special liability protections
- **May use an assumed name (d/b/a)**
- **May have employees**
 - Employees can be agents within scope of their employment

PARTNERSHIPS

- **Similar to two or more sole proprietorships combined into one**
- **Governed by state law**
 - Uniform Partnership Act (default agreements)
 - Court created law
 - Partnership agreement (contract between partners)

PARTNERSHIPS

Ownership division between partners

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

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

- Full authority to act or bind the partnership
- All knowledge fully attributable to the partnership

PARTNERSHIPS

Effect of a partnership

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

“Limited” partnership distinguished

- Primarily a financing mechanism
- Role of “limited” partners:
 - No authority to manage or bind the partnership (not an agent)
 - Only liable to the extent of individual financial contribution

CORPORATIONS

Corporations are legal entities, just like people

Governed by state law

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

Rights of the owners (shareholders or stockholders) of the corporation

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

CORPORATIONS

The corporate hierarchy

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

CORPORATIONS

No personal liability for corporate malfeasance

- Shareholders, officers, directors, and employees are not liable for corporate acts
- Complex, restrictive tax, and accounting treatments (double taxation of dividends)
- Piercing the corporate veil

Professional corporations

- Set up to practice a particular licensed profession
- Now obsolete in Illinois
- Laws vary from state to state

LIMITED LIABILITY COMPANIES (LLCs)

A hybrid between a corporation and partnership

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

Also governed by state law

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

LIMITED LIABILITY COMPANIES (LLCs)

Hierarchy similar to a corporation

- Owners/unit holders are “members”
- Officers and directors are “managers”
- Employees just like any corporation

LLCs are usually the best vehicle for complex organizations

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

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

QUESTIONS