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# 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

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## 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

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## Practicing Architecture Without a License

- Under a licensed architect's supervision
- Reciprocity for out-of-state architects
  - NCARB – state to state
  - Exams – ARE Series
    - *Construction Documents and Services* (CDS); Practice, Planning and Programming (PPP); Site Planning and Design (SPD); Schematic Design (SD); Structural Systems (SS); Building Design and Construction System (BDCS); Building Systems (BS)

## Who is Licensed?

- Firm or individual
- Firm and individual

# FORMS OF ASSOCIATION

# THE LAW OF AGENCY

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## 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

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## 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

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## 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

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## 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)

# TYPES OF BUSINESSES

# SOLE PROPRIETORSHIPS

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- **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

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- **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

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## 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

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## 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

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**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

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## The corporate hierarchy

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

# CORPORATIONS

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## **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)

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## 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)

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## 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

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

# QUESTIONS