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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 (IDFPR)

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

LICENSING OF ARCHITECTS

Sanctions for Violation of License Statutes

- Fines or penalties
- Denial of license upon subsequent application
- Inability to sue for fees or forfeiture of all fees
 - Issues/cases arise mostly in this area
 - Should the client avoid paying fees simply bc of no license?

LICENSING OF ARCHITECTS

Types of Licensing Statutes

- “Holding Out” statutes
 - Simply requires to design professional to use a particular label
 - Does not regulate the work
 - Allows the public to know a licensed architect is competent, but nothing for the unlicensed
- “Practice” statutes
 - Prohibits practice w/o a license
 - But what then is the definition of architectural services?
 - You simply cannot contract with an unlicensed architect (fees +/-)
- Illinois has a hybrid statute (both)
- Who should be able to decide about contracting parties

LICENSING OF ARCHITECTS

Practicing Architecture Without a License

- Under a licensed architect's supervision
 - Content versus “fly-by”
- Reciprocity for out-of-state architects
 - National Council of the Architectural Registration Boards (NCARB)
 - The rules and regulations still vary state to state, and what is actually recognized
 - “Hot” v “Cold” states

LICENSING OF ARCHITECTS

Questions re: Licensing and Registration

- If an architect can pass a competency exam (i.e., the AREs), why should the degree or experience matter?
- Does having a license prevent incompetence?
- What about licensing interior architects, landscape architects, contractors for design?
- Why prohibit the recovery of fees for “practicing” without a license, especially if licensed elsewhere?

FORMS OF AGENCY

THE LAW OF AGENCY

Principal, Agent, and Third Party

- Agent – a person acting on behalf of another
 - Principal is the party for whom the agent is acting
 - The third party is the person with whom the agent is interacting on behalf of the principal

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 – Why have an agent?

- 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 – even if the principal does not have such knowledge
- 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)

THE LAW OF AGENCY

Source of the Agent's Authority

- Actual authority
 - Explicitly granted – communication from principal to agent
 - Written, oral or implied
- Apparent authority
 - Authority the principal leads third parties to believe is granted to agent
 - Must be principal who creates – not the agent
- Ratification by the principal
 - Not all actions by agent are binding on principal
 - Principal may adopt/accept/ratify an act after-the-fact – even if unauthorized
 - May be express or implied

THE LAW OF AGENCY

Undisclosed principal

- An agent pretends to be acting on her own behalf, but really acting on behalf of an undisclosed principal
- An agent indicates there is a principal but fails/refuses to provide the identity of the principal
 - Third party may have a claim against both the agent and the principal
 - Third party has right to know with who it is dealing

THE LAW OF AGENCY

Termination of the Agency Relationship

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

FORMS OF ASSOCIATION

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 a sole proprietorships owned jointly by two or more people - combined into one**
- **Governed by state law**
 - Uniform Partnership Act (default agreements)
 - Court created law
 - Partnership agreement (contract between partners)
- **Debts and Taxes**
 - Individual partner are responsible for the debts of the entire partnership.
 - Profits and losses are taxed pro rata to the partners' interests

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
- Partnership duties are similar to agency duties, but two-way direction

PARTNERSHIPS

Effect of a partnership

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

“Limited” partnership distinguished

- Primarily a financing mechanism
- Role of general partner – same as with a regular partnership
- 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 and owe fiduciary duties)
- Officers (agents and owe fiduciary duties)
- 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 – if sham, shell corp., not true

Professional corporations

- Set up to practice a particular licensed profession (law, architecture, etc.)
- Laws vary from state to state
- Generally obsolete in Illinois

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

- “Members” are owners/unit holders (like shareholders)
- “Managers” are like officers and directors
- May have 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