



Informational Bulletin: Responsible Control Within Design and Design-Build Firms

Recent expansion of the design-build business model and increased collaboration between architects and unlicensed designers in California has raised questions among architects, contractors, and business owners regarding the role of licensed architects in a design firm's corporate structure and the level of control they are required to maintain over architectural designs. This article addresses the legal and professional responsibilities of stakeholders in design and design-build firms.

The Architects Practice Act (Act) does not prevent a corporation from contracting out architectural services, as long as those services are under the responsible control of a licensed architect (Business and Professions Code section (BPC) 5535.3). "Responsible control" means that level of control over the content of architectural instruments of service during their preparation that is ordinarily exercised by an architect applying the required professional standard of care (BPC 5535.1). An architect in responsible control of plans, specifications, and instruments of service for others shall sign and stamp those plans, specifications, and instruments of service and all contracts therefor (BPC 5536.1). **BPC 5536.22(a) requires that any written contract for architectural services be executed by the architect, and include their name, address, and license number.**

If a business includes in its name or description of its services the term "architect," "architecture," or "architectural," or any abbreviation or confusingly similar variation thereof, that business must have a licensed architect who provides management control of the professional services that are offered and provided by the business and who is also an owner, part-owner, officer, or an employee of the business (California Code of Regulations, title 16 section (CCR) 134(a)). Furthermore, all of the professional services offered by that business must be offered and provided by or under the responsible control of a licensed architect (CCR 134(b)). **This includes structures, such as single-family residences, that would otherwise be exempt from licensing requirements under BPC 5537.** Any architect who provides professional services through any business entity is required to report the name and address of that entity to the Board (BPC 5558).

If an architect signs instruments of service which have not been prepared by them, or under their responsible control, or has permitted their name to be used for the purpose of evading the Act, the architect is subject to disciplinary action (BPC 5582.1; CCR 151).

The Board's Enforcement Unit has seen these factors come into play, for example, when a business named "Acme Architecture," run by unlicensed individuals, contracts out on a project-by-project basis with one or more licensed architects. Under BPC 5535.3 and CCR 134, such a business can contract out the work, but it is not allowed to use the term "architecture" in its name, its advertising or its contracts.

Many architects believe that they can maintain such an arrangement and have no responsibility for the company's exempt projects. However, if the business includes the term "architecture" in their name or advertises architectural services or contracts for architectural services, one architect must at least be an "employee" (as defined by the Internal Revenue Service) and an architect must be in responsible control over all of that company's professional services.

If an architect allows their name to be used by such a business without being in management control of all their professional services, the owner of the business is subject to citation under BPC 5536 and CCR 134, while the architect is subject to disciplinary action under BPC 5582.1 and CCR 151.

Architects Practice Act Provisions Involving Responsible Control

Business and Professions Code

Section 5535.1 Responsible Control Defined

The phrase "responsible control" means that amount of control over the content of all architectural instruments of service during their preparation that is ordinarily exercised by architects applying the required professional standard of care.

Section 5535.3 Corporation Responsible Control

This chapter does not prevent a corporation from furnishing or supplying by contract architectural services, as long as any architects' professional services are offered and provided under the responsible control of a licensed architect or architects.

Section 5536(a) Practice Without License or Holding Self Out as Architect

(a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that he or she is an architect, that he or she is qualified to engage in the practice of architecture, or that he or she is an architectural designer.

Section 5536.1(a) Signature and Stamp on Plans and Documents

(a) All persons preparing or being in responsible control of plans, specifications, and instruments of service for others shall sign those plans, specifications, and instruments of service and all contracts therefor, and if licensed under this chapter shall affix a stamp, which complies with subdivision (b), to those plans, specifications, and instruments of service, as evidence of the person's responsibility for those documents. Failure of any person to comply with this subdivision is a misdemeanor punishable as provided in Section 5536. This section shall not apply to employees of persons licensed under this chapter while acting within the course of their employment.

Section 5536.22(a) Written Contract Requirements

(a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or the client's representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of the project for which the client is seeking services.
- (2) A description of the services to be provided by the architect to the client.
- (3) A description of any basis of compensation applicable to the contract and the method of payment agreed upon by both parties.
- (4) The name, address, and license number of the architect, the name and address of the client, and the project address.
- (5) A description of the procedure that the architect and the client will use to accommodate additional services and contract changes, including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation and method of payment.
- (6) A description of the procedure to be used by either party to terminate the contract.
- (7) A statement identifying the ownership and use of instruments of service prepared by the architect.
- (8) A statement in at least 12-point type that reads: "Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834."

Section 5537(a) Exemptions

(a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

- (1) Single-family dwellings of woodframe construction not more than two stories and basement in height.
- (2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.
- (3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.
- (4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.

Section 5558 Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements

Each person holding a license to practice architecture under this chapter shall file with the board his or her current mailing address and the proper and current name and address of the entity through which he or she provides architectural services. For purposes of this section, "entity" means any individual, firm, corporation, or limited liability partnership.

Section 5582 Aiding Unlawful Practice

The fact that the holder of a license has aided or abetted in the practice of architecture any person not authorized to practice architecture under the provisions of this chapter, constitutes a ground for disciplinary action.

Section 5582.1 Signing Other's Plans or Instruments; Permitting Misuse of Name

(a) The fact that the holder of a license has affixed his or her signature to plans, drawings, specifications, or other instruments of service which have not been prepared by him or her, or under his or her responsible control, constitutes a ground for disciplinary action.

(b) The fact that the holder of a license has permitted his or her name to be used for the purpose of assisting any person to evade the provisions of this chapter constitutes a ground for disciplinary action.

California Code of Regulations

Section 134(a) and (b) Use of the Term Architect; Responsible Control within Business Entity

(a) Use of the Term Architect: It shall be unlawful for any person to use a business name that includes as part of its title or description of services the term "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations thereof, unless that person is a business entity wherein an architect is: (1) in management control of the professional services that are offered and provided by the business entity; and, (2) either the owner, a part-owner, an officer or an employee of the business entity.

(b) Responsible Control within Business Entity: Where a person uses a business name that includes as part of its title or description of services the term "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations thereof, all of the professional services offered and provided by that person are to be offered and provided by or under the responsible control of an architect.

Section 151 Aiding and Abetting

(a) For purposes of Sections 5582 and 5582.1 of the code, aiding and abetting takes place when a California licensed architect signs any instrument of service which has been prepared by any person who is not: (1) a California licensed architect or civil engineer or structural engineer, or (2) a subordinate employee under his/her immediate and responsible direction, or (3) an individual, who is associated by written agreement with the architect and who is under the architect's immediate and responsible direction as described in subsection (b) of this section.

(b) The requirements of "immediate and responsible direction" as used in this section shall be deemed to be satisfied when the architect: (1) instructs the person described in subsection (a) of this section, in the preparation of instruments of service, and (2) the architect has exercised the same judgment and responsibility in reviewing all stages of the design documents and other phases of the work as required by law, and which would normally be exercised if he/she personally performed the required tasks.