



State Regulation of the Design Professional

ABA Forum on Construction Law | Design Professional's Guide to Construction Law

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Jaimee Nardiello, Partner and Patricia Harris, Special Counsel authored a chapter in the ABA published book, *Design Professionals Guide to Construction Law*.

Chapter Abstract: The licensing of design professionals can be a confusing patchwork quilt of disparate state regulations. States have professional boards or registration agencies that handle licensing, disciplinary proceedings and other professional matters. Most states have separate legislation and supporting regulations for the design professions such as architecture and engineering.

Projects are regulated by the states in which they are physically located. Definitions of the practice of architecture and engineering are not consistent from state to state. In fact, they are sometimes contradictory. Problems are created by the ambiguous and broad language used to define the practices of architecture and engineering. Performing work that meets a particular state's definition of architecture or engineering without appropriate individual licensure or business authorization could lead to civil and other disciplinary penalties.

Becoming a business entity and registering with the secretary of state does not confer the ability to perform design services in that state. When considering practice in a new state, one must determine whether licensure is required at the firm level. Professional design firm registration or authorization is a separate action from state registration. Whether or not an entity must be registered or authorized can vary depending on the state, the specific profession and the business entity type.

Consequences can be severe and far-reaching if a firm provides design professional services without properly registering the firm with the state's professional licensing board. Penalties may include monetary fines, sanctions on the "responsible charge" professional and the inability to collect fees from a client.

Once a firm is authorized or registered to practice in a particular state, the task of understanding the regulatory compliance framework can be challenging. Since each state has its own regulations governing work product such as signing and sealing plans and may have regulations regarding permissible firm names, distribution of marketing collateral, etc., it is very important to understand the rules and regulations of the state where the work is being performed.

Within each state where a firm practices, there are two dimensions to understanding who is in charge of or responsible for the work. The first dimension is whether the architect or engineer is in "responsible charge" or in supervisory control of the work. The second dimension is whether the design professional is the architect or engineer of record. States have different takes on the implications of these dimensions which in turn affects which entity is ultimately responsible for the work and thus can seal it and become the architect or engineer of record.

Practicing architecture or engineering in the fifty states requires a concerted and dedicated effort to identify the licensure requirements for individuals and firms in each state, and to practice legally under disparate rules and regulations.

To read the chapter in its entirety, purchase the book through the ABA, by clicking [here](#).

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PRACTICE AREAS

Professional Licensing