
N C A R B

REGULATION OF
ARCHITECTS

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Regulation of Architects

National Council of Architectural Registration Boards

1801 K Street, NW, Suite 1100-K

Washington, DC 20006-1310

(202) 783-6500

www.ncarb.org

This report, dated March 2001, was prepared by the National Council of Architectural Registration Boards.

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INTRODUCTION

The [insert name] Board protects the health, safety, and welfare of the public by establishing qualifications to be met by applicants for architectural registration (thereby ensuring, at the least, minimally competent practitioners in the profession), by regulating the practice of registrants, and by discouraging unlicensed practice.

Under the state's "Sunset Laws," the Board, in common with many other agencies, is to be abolished unless the legislature decides that its continued existence is justified.

The Board will provide in separate submissions the statistical, financial, and other specific data concerning its day-to-day operations requested by the legislature. The following paragraphs describe in general terms the practical and legal justifications for state regulation of the practice of architecture and the actual process of regulation.

I. REGULATION OF THE PROFESSIONS

Since the early days of the Republic, it has been a recognized and accepted function of state governments to regulate activities which affect the public health, safety, or welfare. One aspect of this role has been the regulation of the professions, whose members are properly considered to have special responsibilities to the public as well as to the individuals receiving services. The essential rationale and standard for such regulation was set forth by the U.S. Supreme Court in *Dent v. West Virginia*, 129 U.S. 114, 122 (1889), when the Court wrote:

"The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subject, scientific and otherwise, with which such

pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity."

The goals of the architectural registration law have been threefold:

1. To ensure at least a minimum level of competence;
2. To ensure appropriate standards of conduct [and continuing professional development]¹; and
3. To discourage unlicensed practice.

II. WHO BENEFITS FROM THE REGULATION OF ARCHITECTS?

The activities of the Board benefit two categories of people.

First, regulation protects the consumers of architectural services. The necessity of ensuring that those who hire architects are not victimized by incompetent or dishonest architects is self-evident.

Second, regulation protects the public at large. The primary responsibility of an architect is, of course, to design buildings so that they are safe, durable, and satisfy reasonable environmental standards. See, e.g., *Coombs v. Beede*, 89 Me. 187, 188-189 (1896); *Bloomsburg Mills, Inc. v. Sordoni Construction Co.*, 164 A.2d 201, 203 (Penn. 1960); *St. Joseph Hospital v. Corbetta Construction Co.*, 316 N.E. 2d 51, 63-64 (Ill. App., 1974). To accomplish this, the architect's design must satisfy the applicable requirements of laws and also must be a correct application of the skills and knowledge of the profession. It should be emphasized that the results of faulty design may injure the users of the building as well as the person who engaged the architect.

There are other less obvious reasons that the regulation of architecture benefits the public. An architect's actions shape the social and physical environment. The design and siting of a building and its relationship to its surroundings will affect the safety, comfort, and convenience of passers-by and users of neighboring buildings. The siting and design together will determine to a considerable degree what demands the building will make on public services, such as power, water, sewerage, and fire protection. In many locations, the design will determine, for good or ill, the immediate impact of the building on physical characteristics of the environment; the building may change the water table, the soil support of surrounding buildings, the

1. We have bracketed references to professional development which should be unbracketed by boards with CE requirements and deleted by boards without such requirements.

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availability of open space, and the pattern of wind current, to cite a few examples.

The architect's decisions may well also have subtle long-range effects, particularly where very large projects are involved. The architect is a planner as well as a designer. By making decisions on the organization and use of space, the architect shapes the surroundings as well as the project site. This shaping process inexorably affects the present and future character of the area. The architect plays a major role in ensuring that a project develops in harmony with its surroundings.

Many of the foregoing matters are not under the exclusive control of the architect; they are subject to the desires and needs of the owner of the building. There are, it is true, not many cases in which the architect has complete freedom to design as he or she pleases. However, the architect cannot, therefore, be permitted to abdicate responsibility. In most cases, a reasonable and responsible owner can be expected to accept the architect's suggestions for making the project comply with appropriate standards, particularly when injury or detriment to others will thus be avoided. In those unusual cases where the owner insists on harmful or even illegal action, the architect's duty to the public may well require drastic steps to forestall the threatened action, including withdrawal from the project and notifying the appropriate government authorities. (See, e.g., National Council of Architectural Registration Boards' *Model Rules of Conduct*, Section 3.3.)

This public duty of the architect has become particularly critical as the economic and legal organization of building projects has changed. Nowadays, in many of the projects with which American architects are associated, the owner in the traditional sense no longer exists. Instead, he or she has been largely supplanted by the developer, whose interest lies not in ownership but in the development of an income-producing package which can be quickly transferred to another party. The developer arranges financing, buys or assembles land, hires the architect and the contractor, has the building built, sells out, and moves on. In this situation, the architect, whose professional training and standards do not permit the architect to design a project without regard for its qualities after completion, has increasingly become the representative of the public interest in safe, well-designed structures, with the primary task (more important than the architect's contractual

obligations to the developer) of seeing to it that public interest is protected.

Finally, the national comity among the states which fosters and facilitates interstate practice through the use of the National Council of Architectural Registration Boards' Certificate depends upon every state having a comparable registration system. Our architects would be denied access to the NCARB Certificate if our state did not have in place registration laws analogous to those in other U.S. jurisdictions.

III. PUBLIC VERSUS PRIVATE REGULATION OF ARCHITECTURE

Every profession, including architecture, has private organizations with some ability to regulate the members of that profession. In architecture, the American Institute of Architects, the largest professional organization, determines to a considerable degree acceptable terms for contracts between architects and their clients and promulgates ethical standards for its members. It claims approximately 50 percent of the country's registered architects as its members.

Why, then, is it necessary to involve the state in regulation which is in part already performed by the profession itself? That state involvement is believed necessary would seem to be conclusively demonstrated by the fact that every state has adopted legislation regulating the practice of architecture. (See Appendix A for a chronological list of initial enactment, by each state, of architectural regulation statutes.) There are three salient reasons for state involvement. First, public regulation has no interest other than the public interest, while private trade or professional groups may be expected to resist, or at least neglect, some aspects of the public interest. Second, public regulation can be made binding on all members of the profession; in contrast, the scope of a private body's regulatory scheme and its authority to enforce that scheme is in the final analysis entirely dependent on the voluntary cooperation of its members. Finally, it is difficult, if not impossible, for a professional organization to police unlicensed practice by persons who, by definition, are not members of the organization.

To the extent that there is a danger that state architectural registration boards may favor particular interests over those of the public, this is a problem subject to the same means of correction as any other malfunction in government—public protest, action by

the governor or legislature, resort to the courts. Abuses by a private professional group are not subject to such controls.

VI. THE PROCESS OF REGULATION

As was previously stated, the purposes of the architectural registration board are to ensure that only persons with at least a minimum level of competence are permitted to practice and that practicing architects act according to professional standards of conduct [and continue to develop professionally after initial registration]. Accordingly, the regulatory process comprises three functions: ascertaining competence, disciplining misconduct [and monitoring professional development], and discouraging unlicensed practice.

V. ASCERTAINING MINIMUM COMPETENCE BEFORE REGISTRATION

Architectural registration boards use a combination of education and training requirements and written examinations to decide whether a candidate should be registered.

Boards generally rely on the National Architectural Accreditation Board for accreditation of academic programs in schools of architecture.

The state boards, working together through the National Council of Architectural Registration Boards (NCARB),² an organization whose membership comprises the regulatory boards of all U.S. states and territories, have developed a formal program of apprenticeship—the Intern Development Program (IDP)—designed to standardize and monitor the practical experience of candidates for registration. (See *IDP Guidelines* for a description of IDP.) This Board has adopted the IDP training requirement and procedures as its own.

As described in *ARE Guidelines*, a registration examination for architects, the Architect Registration Examination (ARE), is prepared by NCARB with state board participation and is adopted for use by all state boards, a process which has been judicially recognized and approved. E.g., *Henkes v. Fisher*, 314 F.Supp. 101 (1970, aff'd. 400 U.S. 985 (1971)). The ARE examines candidates for their knowledge, skills, and ability to provide the various services required in the design and construction of buildings. No single examination can test for competency in all aspects of architecture, and the ARE is not designed for that purpose. The ARE

concentrates on those services that most affect the public health, safety, and welfare. The various divisions of the ARE are designed with this objective in mind, and the core functions of architectural practice—site design and building planning—are accorded fundamental importance in the ARE. The other divisions are written to assess or evaluate the candidate's ability to deal with the design process as well as the technical and programmatic aspects integral with design. This exam approach helps to establish and measure the level and type of job-related performance encountered in practice.

The ARE comprises the following nine divisions:

- Pre-Design
- General Structures
- Lateral Forces
- Mechanical and Electrical Systems
- Materials and Methods
- Construction Documents and Services
- Site Planning
- Building Technology
- Building Planning.

The last three divisions consist of “vignettes,” and the candidate is expected to solve problems by graphic solutions on the computer. The remaining divisions are multiple choice. All divisions are scored by specially programmed computers. The scores are reported directly to the Board.

Through NCARB, the content of the ARE is reviewed continuously by representatives of boards around the country. The Chauncey Group International, a wholly-owned subsidiary of Educational Testing Services of Princeton, New Jersey, serves as testing consultant and test administrator.

Periodically, NCARB appoints and funds a task force to study in detail the practice of architecture and the knowledge, skills, and abilities required to practice architecture, in order to test the validity of the national exam and to ascertain that the exam is reasonably related to the practice of architecture. (It was the results of such a validation study that formed the basis of content and format for the ARE.)

[Over the last ____ years, an average of ____ individuals from this state took the ARE annually, of whom ____% were successful each year.]

2. See *How Architectural Registration Boards Work Together* for a description of how architectural registration boards work together through NCARB.

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VI. CONTINUING PROFESSIONAL DEVELOPMENT

The practice of architecture is dynamic. Both the ways in which architectural services are performed and the materials, systems, and designs incorporated in buildings are constantly changing. The public interest is not adequately protected by relying on the knowledge which an architect had to demonstrate to achieve initial registration. Accordingly, this Board and many other state boards have recognized the need for registrants to demonstrate that they have maintained their competence and have stayed abreast of changes in practice. We require our registrants to [fill in the continuing education requirements.] One way for a registrant to meet that requirement is by studying the monographs prepared by NCARB and demonstrating, by passing the associated quiz, that he or she understands the information presented. The monographs deal exclusively with subjects related to the public health, safety, and welfare. Recent monographs have focused on roof design, wind forces, professional conduct, energy-conscious design, fire safety, sustainable design, etc.

VII. DISCIPLINE

Society is entitled to demand from architects, as from members of other learned professions, standards of behavior toward clients and the public at large which are higher than the standards of the marketplace, and which can be enforced against architects by formal proceedings. [Citing the statutes and regulations giving the Board authority to discipline registrants, describe the Board's current disciplinary activities.]

VIII. UNLICENSED PRACTICE

The efforts to ensure the competence and proper behavior of registrants would be futile if persons not holding registration were allowed to perform architectural services. [Citing the statutes and regulations giving the Board authority to punish or restrain unlicensed practice, describe the Board's activity in this area. If the Board has undertaken "jawboning" activity not sanctioned by statutory authority, such as meeting with building officials to persuade them to reject submissions not signed by registrants, describe that activity. Finally, use this opportunity to point to problem areas and argue for more authority for the Board to act.]

IX. CONCLUSION

The foregoing description demonstrates that this Board is effectively furthering the goals of architectural regulation in order to protect the public health, safety, and welfare. Working on its own and in conjunction with other state boards, through NCARB, this Board is improving and changing its standards and procedures to take account of developments in the profession and to correct weaknesses in the regulatory process.

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APPENDIX A

Chronological List of Initial Enactment, by State, of Architectural Regulation Statute

1897	Illinois	1925	Oklahoma
1901	California	1925	South Dakota
1902	New Jersey	1927	Iowa
1909	Colorado	1928	Mississippi
1910	Louisiana	1929	Indiana
1911	Utah	1930	Kentucky
1913	North Carolina	1931	Alabama
1915	Florida	1931	Ohio
1915	Michigan	1932	New Mexico
1915	New York	1933	Connecticut
1917	Idaho	1933	Delaware
1917	Montana	1935	Maryland
1917	North Dakota	1936	Rhode Island
1917	South Carolina	1937	Nebraska
1917	Wisconsin	1937	Texas
1919	Georgia	1939	Alaska
1919	Oregon	1939	Arkansas
1919	Pennsylvania	1941	Massachusetts
1919	Washington	1941	Missouri
1920	Virginia	1945	Maine
1921	Arizona	1948	New Hampshire
1921	Minnesota	1949	Kansas
1921	Tennessee	1949	Nevada
1921	West Virginia	1951	Vermont
1923	Hawaii	1951	Wyoming