

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO EXAMINING BOARD OF ARCHITECTS

1997 SUNSET REVIEW



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EXECUTIVE SUMMARY

The Department of Regulatory Agencies (DORA) has concluded its 1997 Sunset Review of the regulation of architects by the Examining Board of Architects (Board). DORA found there is a need for continued regulation of the profession and recommends continuing the regulation of architects by the Board. In evaluating the operation of the Board against the Sunset Evaluation Criteria in §24-34-104 (9)(b), C.R.S., DORA found that regulation by a board was necessary to protect the public health, safety, or welfare. The report contains a total of 5 statutory recommendations.

Each recommendation is followed by a brief summary and an expanded discussion of the analysis and issues surrounding the recommendation. A single discussion section is used when several recommendations are on a single topic area. The recommendation section begins on page ___ of the report.

The majority of the disciplinary actions the Board implements are based on complaints by licensees on title protection issues. The language of the Act does not give the Board discretion to dismiss these complaints without taking some action, despite the fact there is no threat of harm to the public. The second recommendation is to eliminate the prohibition against the use of a derivative of the term architect. This would eliminate unnecessary activities currently being fulfilled by the Board, without compromising public safety.

The third recommendation is to close a loophole in the licensing law to eliminate the ability of architects to practice with an expired license. The fourth recommendation is to increase the disciplinary options available to the licensing Board to better protect the public.

BACKGROUND

The Sunset Process

The regulation of architects by the Colorado Board of Examiners of Architects, established in §12-4-101, et. seq. C.R.S., is scheduled to terminate on July 1, 1998 unless continued by the General Assembly pursuant to §24-34-104, C.R.S. The purpose of the sunset report is to evaluate the performance of Board of Examiners of Architects (Board), based on the statutory evaluation criteria which are attached as Appendix A of this report. The central question this report seeks to answer is whether the continuation of this program is necessary and beneficial to the public health, safety, and welfare of the people of Colorado, and whether, if the function is continued, statutory or regulatory changes are necessary to improve agency operations and to enhance the public interest.

Research for this report consisted of a review of the relevant state statutes and regulations, a review of Board minutes, disciplinary actions, licensing procedures, application processing, and fee development. Interviews were conducted with Board members, staff of the Division of Registrations, individual architects, trade associations for purchasers of architectural services, building officials, the architects trade association, and local government representatives. The regulation of the profession by other states was also considered. A comparison to other occupational licensing laws was made, as well as a literature search.

To assist in the Sunset Review, the Board prepared a comprehensive document detailing the regulatory process, the licensing, and disciplinary activities of the Board. The document also explained the functions of the National Council of Architects Registration Boards (NCARB) and national issues related to the regulation of architects. Board members and staff were readily available for interviews and technical assistance throughout the Sunset Review.

SUMMARY OF STATUTE

The scope of regulation for the practice of architecture in Colorado is contained in article four of title 12 of the Colorado Revised Statutes. The statute is included in this report as appendix B.

Section 101 states that regulation is necessary to protect the people of this state against unauthorized, unqualified, and improper practice of architecture. Section 102 provides the definitions used in the article. Definitions are established for Architect, Board, Buildings, Dwellings, Practice of Architecture, and Responsible Charge.

Section 103 creates the Board of Examiners of Architects and establishes the sunset date for the Board. The Board consists of seven members, four licensed architects, two public members, and a licensed general building contractor. Board members are appointed by the Governor for no more than two consecutive four year terms.

Section 104 delineates Board powers and duties. The Board is authorized to elect officers from its membership, schedule meetings as it deems necessary, adopt a seal, conduct hearings on complaints, and adopt rules and regulations necessary to implement the provision of the statute.

The Board may cause the prosecution of persons violating the statute by the district attorney or by the Attorney General. The Board may subpoena witnesses, records, books and papers pursuant to an investigation or hearing. The Board is required to adopt and publish rules for disciplining architects. The Board must annually notify each architect in writing of revisions to the disciplinary rules.

The Board is required to publish and distribute annually to all licensed architects, the Executive Director of DORA, each county clerk, and county building officials, a complete roster of licensed architects. The roster is to include copies of the architect statute, name address and place of business for each licensed architect, location of technical publications purchased by the board which are available to the public, regulations of the Board, and any other information the Board deems necessary.

The Director of the Division of Registrations is authorized to employ adequate personnel to properly assist the Board in its duties. The Board is allowed to charge fees for the administration of the program. Fees are transmitted to the State Treasurer and are subject to the appropriations procedures of the General Assembly. Records of proceedings and a register of all applications for licensure are to be maintained by the Board. Records are open to the public, subject to the restrictions of the open records act. Copies of records authenticated by the Board seal are received in all courts as originals.

Section 107 requires the Board to establish minimum requirements for licensure, within statutory guidelines. To be licensed as an architect in Colorado an applicant must have either:

1. A degree from a program accredited by the National Architectural Accrediting Board and three years of practical experience supervised by an approved architect; or
2. Substantially equivalent education or experience approved by the Board. The required combination of education and experience may not exceed ten years.

Regardless of education or experience, the applicant must receive a passing score on an examination developed or adopted by the Board. The examination must be offered at least twice each year. The Board may adopt standards for education and experience that do not conflict with the statute. The Board is required to issue licenses by endorsement to license holders in good standing in another jurisdiction with substantially equivalent licensing standards. Applicants for licensure by endorsement may apply directly to the Board or use a national clearinghouse for endorsement processing.

All licenses expire on June 30 of odd numbered years, architects who allow licenses to lapse are allowed a two-year grace period for renewing by paying all past fees. After the two year grace period, the Board may require reexamination or some other means to evaluate continued competency. Section 109 is a grandfathering clause, allowing architects licensed prior to 1986 to continue practicing without meeting additional requirements.

Licensed professional architects may form approved legal business entities to provide architectural services, provided the business entity is formed in compliance with the appropriate legal requirements. The responsible architect in charge must stamp all architectural work. Regardless of the form of business entity an architect practices the profession, the individual architect is responsible to the Board and public for professional acts and conduct. This sections requires that all members of the business unit must agree to be jointly liable for actions, including errors and omissions, of each member or employee of the entity. This requirement is not necessary if the business entity maintains a liability insurance policy in the amount of \$75,000 for each architect in the business up to a maximum of \$500,000.

Licensed architects may form business entities with professional engineers, provided all parties are licensed by the appropriate licensing body. Only businesses formed by licensed architects and engineers may use the phrase “architects and engineers” in its title. Business entities must cease to use the name of an individual not a member of the entity within two years subsequent to the individual ceasing to be an active member of the business entity, unless the entity is a corporation.

The Board is authorized by section 111, to investigate complaints and impose disciplinary actions on licensees on its own motion or upon receipt of a written complaint from any person. This section identifies grounds for disciplinary action and requires that all disciplinary actions be conducted in accordance with the Administrative Procedure Act (APA). The Board may, deny, suspend, place on probation, restrict the practice of a licensee or, revoke a license. For less serious offenses, the Board may issue a letter of admonition.

In addition to other forms of discipline, the Board has the ability to require education or training courses for licensees to continue practicing. The Board may also levy monetary penalties for licensees violating the statute or regulations regulating architecture. Fines range from a minimum of \$500, to a maximum of \$2,000 for repeat offenses. Licensees who have a license revoked may not reapply for two years for re-licensure.

Section 112 provides exemptions from the Act. Dwellings for up to four families, commercial buildings designed for less than 10 people and that do not exceed one story in height are exempt from regulation. Additions or alterations to any building exempt from the statute that does not bring the building or dwelling over the exemption limits is still exempt. Alterations to any building that does not affect the life safety of the occupants of the building are exempt.

The Act specifically states that local governments may adopt building codes to protect the inhabitants of their jurisdiction. Employees of the federal government may practice architecture in the scope of official duties without obtaining a Colorado architect license.

Violations of the Act, such as the practice of architecture without a license, advertising architectural services without holding a valid Colorado license, or misleading the public into believing a person is a licensed architect are a class three misdemeanor. The Board may apply for an injunction in a court of competent jurisdiction for violations of this article.

Section 115 prohibits the use of the word architect, or any derivative of the word, by any person not licensed as an architect. Section 116 details the requirements for the use of an architect's stamp. An architectural must retained a record set of architectural plans for three years following the beneficial occupancy or use of a project. Architects are required by section 117 to notify the Board of any action involving life safety issues concerning occupants of a building designed by the architect.

Regulatory Summary:

The Board has adopted regulations to implement the provisions of the Act. Periodic rule making hearings are held to address statutory changes and issues raised by the public, members of the regulated profession, and the Board.

Board regulations include comprehensive rules for licensure qualifications, pre-examination qualifications, examinations, licensure, professional conduct, and organizational practice. The Board has also promulgated procedural rules for practitioners to obtain declaratory orders. Board regulations, and policies formally adopted by the Board are available to the public from the DORA, Division of Registrations.

The federal or local governments do not directly regulate architects. However, buildings designed by licensed architects must comply with all local and federal laws and codes, such as plumbing, electrical, zoning, and environmental regulations. The Federal "Americans with Disabilities Act" impacts new public building construction and existing building remodels.

Two private, or semi-private, organizations are very influential in the regulatory process concerning architects. The American Institute of Architects (AIA) is a private trade organization for Architects. The organization has chapters in all 50 states and is active in promoting the industry and lobbying legislatures and regulatory boards for regulatory changes. The NCARB is an association of state regulatory boards. NCARB developed the examination used by all state licensing boards and promulgates model regulations and legislation for use by its member boards. Architects may use NCARB as an information clearinghouse to facilitate licensure by endorsement in all states and United States Territories.

RELATED PROFESSIONS

Several other disciplines are closely related to the practice of architecture. The architect studies engineering, space planning, interior design, landscape architecture, and urban planning, among other recognized occupations. Most buildings incorporate mechanical and electrical engineering concepts and all incorporate some structural engineering concepts. On large projects, architects work with licensed professional engineers to ensure concepts are implemented correctly.

Colorado licenses engineers through the Board of Engineers and Land Surveyors. Colorado does not grant licenses in specific engineering disciplines, however, engineers are expected to practice only within their area of education and experience. Colorado does not license interior designers, space planners, urban planners, or landscape architects. Some other states license some of these related professions.

There is some overlap in education and practice in architecture and engineering. The licensing requirements, and examination process for the two professions are very different. In actual practice settings it is not uncommon for architects and engineers to work together, and form business partnerships. Both practice acts require that licensees limit their practice to their own profession.

SUNSET ANALYSIS

Board

The licensing of architects by the Board was originally established in 1909. Since that time, the licensing law and the composition of the Board has been changed several times. Board membership currently consists of four licensed architects, two public members, and one licensed general contractor. The Board is authorized to elect its own officers and schedule meetings as it deems necessary. The Board generally meets the fourth Friday of each month, with the exception of June. Board meetings are generally well attended by Board members. A review of sign in sheets and minutes for Board meetings showed attendance by representatives of trade associations affiliated with the building industry but negligible public participation in Board meetings. The Board regularly requests personal appearances by applicants for the examination or licensure by endorsement.

A review of other state regulatory programs revealed a wide variety of scenarios. Louisiana has a seven-member board consisting of licensed architects, all of whom must be members of the AIA. Approximately 15 states combine the regulatory authority for architects with other professional occupations such as engineers, interior designers, landscape architects, and surveyors.

Individuals and organizations interviewed for this report generally support the continuation of the Board; however, there was not consensus on composition. The intent of licensing programs is to protect the public. When the majority of the members of the licensing body are members of the profession it gives rise to the appearance, and potential, for Board decisions to be self-serving.

The current composition requires a licensed general building contractor. The state does not license general building contractors, however, several municipalities do. Licensing requirements and fees for building contractors vary greatly among local jurisdictions. The insight of a contractor is valuable to the Board in the formulation of regulations and policies. However, requiring for the possession of a license not issued by the state for membership on the Board does not seem reasonable. An interested and qualified building contractor could be eliminated from consideration for a Board appointment because he or she does not desire to obtain work in a jurisdiction that licenses building contractors.

Several interested parties contacted for this review recommended positions on the Board be specifically designated to represent academia and building officials. A representative from a university program in architecture may be beneficial. However, instructors or department heads in those programs are generally licensed architects, therefore already eligible for membership.

Any structure designed by an architect is expected to be constructed. Most, if not all, of these projects will be required to obtain a building permit and be inspected by a local government. The addition of a local building official would be a valuable addition to the Board.

The question becomes whether to simply add a position to the Board, or change the composition of the Board. Concern expressed by industry representatives is that either option could dilute the control licensed architects have over the regulation of the profession. However, from a public policy standpoint, that is not necessarily a negative result. From a practical standpoint the Board refers disciplinary hearings to an Administrative Law Judge (ALJ), so the architectural expertise is not paramount in the disciplinary process. Expert opinions can be obtained, if necessary in the investigatory phase. Reducing the ratio of licensed architects on the Board would not jeopardize the Board's ability to regulate the profession.

Licensing

The licensing functions of the Board are administered by the DORA, Division of Registrations (Division), Board of Examiners of Architects unit. Staffing consists of .5 FTE for an administrator, and 1 FTE for a senior administrative clerk. In addition, the Division investigations unit provides investigative support as needed. The Department of Law provides legal support to the Board for rule making, disciplinary hearings, and appeals of final agency actions.

The regulation of architects is cash funded by licensing and examination fees. The Board evaluates past and projected expenses annually to establish fees for the subsequent licensing period. All licenses expire on June 30 of odd numbered years. A two-year licensing cycle does appear to be reasonable for public protection. All fees are remitted to the state treasury and are subject to the appropriations process of the General Assembly.

To qualify for licensure in Colorado, an applicant must submit an application documenting minimum levels of education and experience, pass a national examination administered by the Board, pass a jurisprudence examination developed by the Board, pay the appropriate fees. Every state uses the same Architects Registration Examination (ARE) developed by NCARB. Prior to February, 1997, the ARE was a nine part, or division, pencil and paper examination designed to be taken over a four day period. In 1996, the cost to an applicant to take all nine divisions of the examination over the four day period was \$350. The examination was offered twice annually and applicants were allowed to retake any division they did not receive a passing score on the next time the exam was offered for an additional fee.

NCARB model legislation requires a five year bachelors degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB), and three years of experience to be qualified for licensure. There are two NCARB approved alternatives to the standard NCARB model. The first is a bachelor's degree in a related field, a two year advanced degree from an NAAB accredited program, and three years of experience. The second is any bachelor's degree, a three and a half year degree from an NAAB accredited program and three years of experience. Most states have adopted some variation of the NCARB model. Colorado is one of only seven states that does not require a degree for licensure.

Beginning in February 1997, NCARB adopted a nine division computerized examination. Applicants must pass all nine parts before a license can be granted. Candidates may retake sections of the examination receiving failing grades, for an additional fee. The examination fee for fiscal year 1996/97 was \$980 for the complete examination. Fees for individual divisions vary based on the complexity of the division. Applicants are able to schedule examinations at sites around the state six days a week. Applicants will be able to schedule individual divisions of the examination in any order, and spread the length of time between the divisions at their own discretion. The current divisions, and associated fees are as follows:

Title	Hours allowed	Content	Cost
Division A	4	Pre-Design	\$ 92
Division B	5	Site Planning	129
Division C	5.5	Building Planning	155
	4.5	Building Technology	145
Division D/F	4.5	General Structures	108
Division E	3	Lateral Forces	79
Division G	3.5	Mechanical & Electrical	83
Division H	3.5	Material & Methods	90
Division I	4	Construction Documents & Services	99
TOTAL	37.5		980

Individual states establish criteria for eligibility to take the ARE. States may also require additional demonstrations of competency before issuing a license. Colorado requires all candidates for licensure to successfully pass an examination on Colorado architecture laws. The examination is a mastery type examination, that is, an open book mail in examination. The examination is designed to ensure applicants have read the appropriate statute and regulations prior to licensure.

Previous sunset reports have been critical of the ARE for several reasons. The reports question whether the examination cut point was established at a level designed to pass candidates with a minimum level of competency. Also, prior to 1996, the examination was offered only twice each year, thereby placing a significant barrier for entry into the profession. The examination was called to question because of an unusually high failure rate. Nationally, approximately 20.2% of the examinees taking all nine divisions pass on the first attempt. Colorado examinees rank slightly higher than the national average, with 20.6% taking all nine divisions passing the examination.

NCARB contracted with a private company, the Chauncey Group International (formerly Educational Testing Services) to use a task analysis to update the ARE. The task analysis was conducted in 1994 by CTB/McGraw-Hill. The test consists of a combination of multiple choice and graphic presentations. NCARB maintains the examination is a fair and accurate assessment of the skills and knowledge necessary to be a licensed architect.

There are approximately 5,400 architects licensed in Colorado. There is no distinction made between non-resident and resident license holders. Due to the nature of the profession, it is common for architects to be licensed in more than one state. The following chart, Table A, indicates the licensing volume of the Board for the past several years.

FISCAL YEAR	FY 1991/92	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
Licensed by examination	85	90	78	93	90
Licensed by endorsement	140	144	175	242	252
Licensed by grade transfer	2	1	5	4	6
Licenses renewed	4290	183	4022	1745	4623
Total licensees	4484	4659	4521	4973	5139

There are several paths to licensure in Colorado. All applicants must complete an application for license as a Colorado architect, pay the license fee, and pass the Colorado jurisprudence examination. The Board reviews and approves all qualified applicants, regardless of the path used to apply for

licensure. Board staff is responsible for verification of degree, experience value units achieved, collecting application fees, and verifying examination scores.

For applicants who have never been licensed, there are two possibilities. If the applicant has not taken the ARE, an exam application complete with application fee is sent to the Board. The application requires transcripts and verification of experience. Once the Board staff has determined eligibility, the applicant is notified and an eligibility transmittal is sent to the examination administrator. Applicants may schedule the examination divisions at a time and order convenient to their individual needs. Once all divisions of the examination have been passed, the examinee may then apply for licensure.

The process for an applicant who has never been licensed, but has already taken the ARE in another state is similar. The applicant must transfer exam scores to the Board, if any divisions need to be retaken, the applicant may retake them at any of the examination sites nationwide, and have the new scores sent to the Board. Once satisfactory scores on all divisions of the examination have been achieved, the applicant may apply for licensure in Colorado.

Architects licensed in another state may apply for licensure in Colorado by one of two methods. A direct endorsement is when the architect request the "home state" to send verification of licensure and examination history to the Board. The application for licensure in Colorado by direct endorsement requires a resume and project list. Once all materials are received and verified, the architect then must pass the jurisprudence examination and be approved by the Board.

Architects who are licensed in another state have the option of applying for license by endorsement using the NCARB clearinghouse. For a fee to the applicant, NCARB will provide the Board with license and examination verification. The applicant still must pass the jurisprudence examination and be approved by the Board. The majority of applications for licensure in Colorado are NCARB endorsements. Since most of the verification is done by NCARB, these are the simplest for the staff to process. However, the applicant does pay an up-front fee to NCARB for this service.

All licenses expire on June 30 of odd numbered years. Renewals are sent out prior to the expiration date. Licensees who do not renew their license prior to the renewal date are eligible to apply for renewal anytime up to the next expiration date, in other words, two years. During this two year grace period, the architect may continue to practice architecture. After the two year grace period, an applicant is required to reinstate an expired license. The reinstatement application requires a letter of explanation for the lapse, three

letters of recommendation, and proof of the applicant's continuing competency prior to reinstating a license. The Board requires reinstatement applicants to take the jurisprudence examination.

Practice of Architecture

Architecture is a combination of practical application of engineering, construction management, environmentalism, and art. In early American history, architects served lengthy apprenticeships to become qualified to practice architecture. The Massachusetts Institute of Technology established the first degree program for architects in the United States in 1865. Illinois adopted the first state licensing law in 1897. Colorado began licensing architects in 1909.

Traditionally, an architect has been involved in every aspect of the construction of a building. Responsibilities have included:

Programming Determining functional requirements of the project, budget limitations, and scheduling requirements. The architect will review potential regulatory compliance issues at the federal, state, and if possible, local level.

Site Analysis and Planning This typically involves research into zoning and code restrictions, environmental considerations (including determining if an environmental impact statement is necessary), access, topography, geological considerations and any other factor that may impact the cost and scheduling of the project.

Schematic Design This would include conceptualizing the projects key systems, such as HVAC, electrical, and structural. Site and floor plans are developed, building materials identified, dimensions and other physical characteristics are drafted.

Design Development Once the schematic design has been approved by the client, the architect completes the design process. Key systems are developed and designed, final building materials determined and the budget and schedule finalized.

Construction Documents Construction documents are prepared to be filed with the appropriate regulatory agencies for permit approval. Architects typically work with the client to identify the method of determining the actual builder of the project.

Construction The involvement of the architect in the construction phase depends on the complexity of the project, and the agreement between the client and the architect. The architect could take on complete project management including approving contractor payments, site observations, authorizing change orders, and issuing clarifications or interpretations of plan specifications. Upon completion of the project by the contractor, the architect will assist and advise the client on closing out the project.

Coordination Depending on the complexity of the project, the architect may have several other professional disciplines involved with the design, planning and construction of the project. Landscape architects, interior designers, and environmental, electrical, mechanical, or other engineering specialties.

The practice of architecture has been changing over the past decade. The change in the ARE from a pen and paper examination to a computerized model reflects one of the major changes in the profession. Computer Aided Drafting (CAD) has virtually replaced T-squares and mechanical pencils in the modern architect's office. Electronic communications make it possible for an architect in New York to review drawings prepared by a draftsman in Denver, make changes, and have them printed out for a client in Colorado Springs in a matter of minutes.

Architectural trade groups, and NCARB are concerned about the ease with which non architects can pull designs from various electronic sources, such as the Internet, and design a structure without training, oversight, expertise, or a license. The use of standardized plans and design specifications by large commercial clients has reduced the role of the architect in the creative process. Even when architects are involved in the complete design function, they frequently incorporate complete systems, such as windows, or rest rooms, pre-designed by a vendor.

It is now common for a client to be more involved in the construction phase of the project. This can be done directly, or by delegating construction

supervision to the general contractor or a firm specializing in construction management. Many developers have found this to be an effective cost saving measure on some projects.

A classic example of this is a typical fast food restaurant or convenience store. Large chains have in house staff design the buildings, field staffs do the site selection, and a real estate division secures property rights. A local architect is hired to review the plans for compliance with local codes and submit them to the building department. In house staff supervise the construction, using a locally licensed general contractor to obtain the necessary permits and arrange for qualified subcontractors to perform specialty work.

Some professionals would argue the architect did little more than plan stamp, a clear violation of the architecture statute, regulations, and code of ethics. However, the local architect is responsible for any design problems or code violations on a project bearing his or her stamp. So from a liability standpoint, any architect should make a thorough review of any plans prior to stamping them.

Another change in the practice of architecture, particularly in large cities, is a shift from new building design to remodeling and retrofitting existing buildings. The conversion of warehouses and industrial buildings to retail stores, restaurants, lofts, and apartments is common in urban areas. Depending on the nature and extent of the remodel, the plans may have to be designed by an architect or professional engineer. In most cases, plumbing, electrical and other systems will have to be brought up to current codes before a certificate of occupancy will be granted by the local building department.

The AIA, at the request of some local building officials, is requesting some of the exemptions in §12-4-112, C.R.S., be modified to bring more of these remodels under the restrictions of the architect statute. No evidence was presented by AIA or the building officials that the current exemptions present a harm to the public. Local jurisdictions have the option of adopting standards stricter than state law for building requirements, therefore if the existing exemptions present a problem in a particular jurisdiction; local governments can address the issue without state government mandates.

Clientele

The practice of architecture is defined in §12-4-102(5), C.R.S., as “the performance of the professional services of planning and design of buildings, preparation of construction contract documents including working drawings and specifications for the construction of buildings, observation of construction pursuant to an agreement between an architect and any other person, and administration of construction contracts for the construction of buildings, but not the performance of the construction of buildings.” C.R.S. 12-4-102(3) defines buildings, “Buildings means buildings of any type for public or private use, including the structural, mechanical, and electrical systems, utility services, and other facilities required for said buildings.”

The architecture statute requires that any buildings designed and constructed in Colorado, unless exempt under §12-4-112, C.R.S., or other applicable statute, use the services of a Colorado licensed architect. Home rule cities can, and some have, adopted stricter standards, eliminating some of the exemptions.

Proponents of the regulations of architects argue that regulation protects two categories of people. If regulatory standards are adopted, and enforced, that ensure a minimum level of competency, then clients of architects are protected from incompetent practitioners. Since statutes mandate that buildings accessible to the public be designed by an architect, proponents also argue the regulation protects the public at large.

The argument for this second category is definitely less direct. The safe design of a building is important for public protection. However, it can be argued that others besides architects can perform this function. Clearly engineers are authorized to design buildings and structures, and do so. It must also be recognized that the design is only one layer of the public protection. Building codes are written to protect the public, building permits are presumably only issued after a plan review by building officials to determine compliance with building codes developed for public safety. Construction contractors also have influence over safety issues, as well as building inspectors.

Proponents of regulations go further in saying that architects play an important role in even passersby and neighboring building occupants can be protected by the site planing and design skills of an architect. This argument is very tenuous. Recently, there was a controversy in Denver regarding the redevelopment of the May D&F building. A prominent architect designed the structure. Many people felt the building had significant artistic and historic value, others felt it was an eyesore. The general public does not universally recognize even recently designed buildings as aesthetic pleasing. To some extent, the value of an architect's work is highly subjective.

Architects receive training in a variety of subjects, engineering, environment, construction management, design, geology, and landscaping. Knowledge and expertise in these areas are necessary to protect the public when constructing a major project. Architects are very qualified generalists to oversee projects and ensure the public is protected. However, it is presumptuous and self-serving to maintain architects are the only occupation or profession capable of this service.

Currently an architect must design any public building, from the largest factory, or airport, to the smallest restaurant. The architectural statute exempts one to four family residential dwellings, garages, industrial buildings and certain other one story buildings, provided they are not designed for occupancy by more than ten people. Additions or alterations to exempt buildings that do not cause the building to exceed the exemption limitations are also exempt. Non structural alterations to non-exempt buildings that do not affect the life safety of the occupants are also exempt from the statute.

To a large extent, the enforcement of the architecture statute is controlled by local building departments, since most construction projects are required to obtain a building permit prior to commencing construction. Some members of the Board, and the profession, have claimed that some local building departments do not require plans to be stamped by an architect prior to the issuance of a building permit. The claimants also assert this presents a significant threat to the health and safety of the public. Other individuals contacted for this report indicated some building departments will not issue building permits for certain projects unless the plans are stamped by a registered engineer, a violation of §30-28-205(3), C.R.S., the county planning and building code statute. No documentation was available to substantiate claims that county building departments will not accept architect stamps on design work.

Developers for large commercial or industrial projects are fairly sophisticated. Decision makers for these types of projects are responsible for reviewing designs and plans for multi-million dollar investments. The architect's fee on this project may exceed the average cost for a single family home in Colorado. These developers are capable of selecting an architect without the oversight of the state. These developers review previous designs, education, experience, and reputation before contracting with an architect.

This is not to say that life safety issues do not arise on large projects. Design flaws or errors have had a role in injuries and deaths in Colorado and elsewhere. In 1979, over 100 people died and many more were injured when an elevated walkway collapsed in a Hyatt hotel in downtown Kansas City MO.. Missouri regulatory authorities disciplined both the designing architect and the engineer who designed the walkway. In Denver, architects have misjudged the ice melting capacities of systems on some downtown buildings. Streets have had to be closed to eliminate potential injuries or deaths from large sheets of ice falling from what was then the United Bank Building.

The issue becomes, is the general public sufficiently knowledgeable to select an architect without government intervention? The most significant investment most people own is their home. According to recent figures, the average single family home in Colorado cost over \$100,000. Most homeowners would like to think their home was designed and built by competent professionals. As previously noted, single family homes are exempt from the design requirements of the architect statute.

While there have been some problems with single family homes designed by non licensed individuals, overall, no evidence was presented to indicate the exemption should be changed. AIA, and some individual architects expressed concern that some homeowners do hire an architect, either because it is required by local ordinance, or because they voluntarily want the expertise for new construction or a remodel of an existing home. Without a state licensing program, some of individuals contracting for architectural services for exempt buildings could be misled regarding the qualifications of the individual providing design services.

The prohibition on the use of the word architect or any derivative of the word is intended to protect the public from misrepresentation by individuals not licensed as Colorado architects. Misrepresentation as a licensed architect does present a potential harm to the public. However, the restriction against the use of any derivative has unintended repercussions. There are degree programs in Architectural Engineering, Architectural Design, and other titles that could be considered derivatives of the word architect. The Board has considered some of these an equivalent degree to qualify someone to sit for the ARE. However, if a graduate uses the term architectural engineer in seeking employment opportunities, the Board could hold up the candidate's application for review, for use of a derivative. The Board has required exam candidates who have used legitimate derivatives to appear before the Board prior to authorization to sit for the exam. This is not an efficient use of Board resources, unless there is documented harm to the public. However, because of the title protection provision in the Act, the Board believes it must address the issue.

Board Enforcement Activities

The Board may initiate investigations into complaints made by the public, other licensees, or upon its own motion. When a complaint is received, the Board requests information from the respondent. When probable cause exists, based on the information in the complaint and response, that a violation of the act or regulations exists, the complaint is referred to the investigation section of the Division. Based on the findings of the investigator, the Board may either, dismiss the complaint, issue a letter of admonition, hold a disciplinary hearing, or refer the matter to the Attorney General's office for a hearing before an Administrative Law Judge (ALJ).

All hearings must comply with the due process requirements of the APA. If the respondent is found guilty of a violation of architecture regulations, the Board has several disciplinary options. The Board may issue a letter of admonition, suspend, restrict, or revoke a license. The Board may also fine licensees in addition to, or in place of these options.

As with most regulatory authorities, the Board frequently enters into formal agreements with violators without the necessity of a formal hearing. This practice saves time and resources without compromising public protection. Stipulated agreements can contain practice restrictions, or require completion of educational courses in order to maintain an architecture license.

All licensees are required to report any life safety claims concerning an occupant of a building designed by the licensee within 90 days of being notified of the action. The Board has a committee review each report against

standards designed to determine the potential threat to the public. The four standards are:

1. Does the claim appear to involve a situation that puts public health and safety at risk?
2. Does the claim appear to involve the violation of a statute regulating the practice of architecture?
3. Is the problem from which the claim arose likely to have been the result of architect's error?
4. If the claim is true, does the problem reflect upon the architect's general level of competence?

The Board has received 22 disclosures since the last Sunset review in 1986. Each disclosure is considered a formal complaint and is registered as such by the Board. The most common course of action for the Board, if the claim is justified, is to require the licensee to report to the Board on a regular basis all professional activities. In severe cases, the Board may require a practice monitor for the licensee.

The Board has the ability to discipline licensees based upon disciplinary actions in another state. Since the last Sunset review, the Board has issued two LOAs and revoked one license based upon actions of other state's regulatory boards.

Since the last review, the Board has averaged slightly less than 42 complaints per year. An average of 13 of these complaints are dismissed because no violation has occurred. Another 12 complaints each year are not pursued because of voluntary compliance by the respondent. Most voluntary compliance situations result from non licensed individuals agreeing not to use a derivative of the term architecture in violation of §12-4-115, C.R.S. Table A details the number and types of complaints received by the Board by fiscal year (FY) since the last review.

TABLE A
Architect Board Complaint Detail

COMPLAINT TYPE	FY 88/89	FY 89/90	FY 90/91	FY 91/92	FY 92/93	FY 93/94	FY 94/95	FY 95/96
Derivative	10	16	20	18	9	11	13	10
Use of title	2	4	4	5	6	7	1	1
Unlicensed activity	1	0	0	0	2	3	22	1
Unlicensed advertising	10	0	12	0	1	7	20	16
License expired	0	1	3	7	3	1	2	1
Unethical practice	0	2	0	3	0	2	3	3
Fraud	0	1	0	0	0	0	4	1
Plan Stamping	5	2	0	0	8	1	1	0
Discipline in another state	0	0	0	0	0	0	2	1
Substandard design	2	0	1	0	3	5	1	3
Forgery of Seal	0	0	0	0	0	1	0	0
Organizational practice	0	0	1	1	0	0	0	0
Life safety	0	6	0	15*	0	0	0	1
Felony conviction	1	0	1	0	0	0	0	0
Fee Dispute	1	3	0	0	0	0	0	0
TOTAL	32	35	42	49	32	38	69	38

* FY 1991/92 and 1992/93 life safety claims are combined

In analyzing the complaint data the most obvious fact is that a significant number of complaints concern unlicensed individuals. In fact, of the 335 total complaints received, 137, or 40% concerned use of title or a derivative by unlicensed individuals. Unlicensed advertising and activity make up another 26% of the complaints registered by the Board. This could be interpreted to mean that 66% of the complaints registered by the Board have little or nothing to do with the unsafe practice of architecture. This may be surprising unless it is considered that consumers file only 17% of the complaints.

Most complaints are filed by architects, against non architects. Architects argue that it is protecting the public to prevent non architects from using the term architect, or advertise architectural services, it is clear the statute specifically prohibits these actions. The policy question is what level of protection is necessary, is the prohibition overly restrictive? It appears from the complaint data that the public is not confused about the qualifications of architects.

If an individual holding him or herself out as an architect deceives the public, there is a slight potential for public harm. Most projects likely to be contracted for by a consumer unfamiliar with the regulation of architects are exempt from the statute. In these situations, the local building department may not require an architect stamp on plans. However, a review of complaints did not find a single instance of a consumer claiming harm by deceptive practices of a non licensed architect.

Severe action against a licensee is rare. Since 1988, the Board has revoked just two licenses, and suspended five others. Some members of the Board and industry argue that suspensions are ineffective and unenforceable. This is the reason the Board and AIA both support increased fines for licensed architects. It is their belief that low fine potential does not serve as a deterrent for questionable practices.

A suspension is difficult to monitor, since the architect can always work on exempt projects or simply hold off on filing plans on non exempt projects until the suspension has expired. Similar arguments can be made for any professional license. If a CPA has a license suspended, the accountant could still practice as an unlicensed accountant, legally, or as a CPA illegally. If a physician or dentist has a license suspended, it is unlikely the appropriate board could monitor their office doors to prevent unauthorized practice. Suspension of an architect license is as enforceable as any other professional license suspension.

While severe disciplinary actions are rare, they do occur. The Board also uses a variety of other disciplinary actions to resolve issues. Table B details disciplinary actions by the Board since FY 1988/89.

TABLE B
ARCHITECT DISCIPLINARY ACTIONS

Action	FY 88/89	FY 89/90	FY 90/91	FY 91/92	FY 92/93	FY 93/94	FY 94/95	FY 95/96
Fines Assessed	0	\$6,000	\$500	\$1,500	\$3,100	\$2,750	\$3,275	\$1,925
Probation	0	0	0	0	1	1	0	0
LOA	0	2	0	2	1	0	2	3
Suspension	0	0	2	0	1	0	2	0
Revocation	1	0	0	0	0	0	0	1
Cease & Desist	2	0	2	2	4	4	4	9
Public censure	0	0	0	0	1	0	0	0
Other actions	1	2	3	17	4	0	4	0
TOTAL	4	4	7	21	12	5	12	13

The Board has the discretion to hold disciplinary hearing itself, or refer hearings to an ALJ. As previously mentioned, most disciplinary matters are settled without a hearing. Only two hearings have been necessary since 1988, both were conducted by an ALJ. In making a determination on technical matters concerning the practice of architecture, the Board generally contracts with professionals to provide expert analysis and opinions. Even though architects dominate the Board, this is a sound practice as it eliminates the question of investigator bias from the disciplinary process. The review found that the Board did operate efficiently and appropriately in most enforcement actions.

Issues

Both the Board and AIA spent a considerable amount of time identifying issues and proposals to be considered during the sunset review. The review process is open and comments from interested parties, trade, and professional organizations were welcomed.

12-4-102

The AIA proposes several changes and additions to the definition section of the statute. The practice definition would be broadened to include offering services. The definition of “Responsible charge” would be replaced with a definition of “Responsible control”, to conform with NCARB model language. The NCARB definition includes the language, “...*planning of sites, and the design, in whole or in part, of buildings... ..intended for human habitation or occupancy.*” Drawings would be defined as original documents produced to describe a project regardless of the means by which they were produced. This is to address technological changes in the industry.

The changes recommended by AIA for defining drawings and responsible control would not present additional protection to the public. No evidence was presented that documented harm, or unnecessary burden to the public or the profession by the use of current definitions. The change in the definition of the practice of architecture proposed by AIA could potentially impact the practice of related professions, such as interior designers, construction contractors, space planners and others. The phrase “in whole or part” is of particular concern to the interior designers, the Building Owners and Managers Association (BOMA) has also protested this change in the definition.

In addition, the inclusion of the word “offering” services in the definition serves to restrict trade, more than protect the public. Essentially, this definition would prevent an architect licensed in another state from handing out business cards at a convention in Colorado unless he or she first obtained a Colorado license, since handing out the business card could be considered soliciting business. It would also prohibit out of state architects from bidding on projects in Colorado, unless a license was obtained first. The definition also blurs the line between the practice of architecture and some related professions such as interior design. It may also effectively eliminate some of the exemptions contained in section 112 of the act. This is unnecessarily restrictive and self-serving of the profession, the General Assembly should reject the proposal outright.

12-4-103

Another AIA proposal is to require the Governor to fill Board vacancies from a list of applicants selected by a nominating committee dominated by licensed architects. This proposal raises constitutional issues regarding limiting the appointment powers of the Governor. No evidence was presented that indicated the current selection process fails to protect the public. However, this report agrees that changes should be made to the composition of the Board.

12-4-104

Both AIA and the Board recommend changes and modifications to the Board's powers. Both entities are concerned that the practice of architecture without a license is a growing problem. Both also maintain that the current provision that the Board may cause the prosecution of violating the licensing act by the district attorney or the Attorney General is not a sufficient deterrent to violators. Both entities seek to expand the Boards jurisdiction over non licensees, by giving the Board the ability to issue cease and desist orders and fines to any violators of the Act.

The Board and AIA disagree on the continuation of the roster. The Board is required to publish and distribute annually to all licensees, local building departments, and each county clerk a complete roster of licensed architects. The AIA would like to mandate the roster be available by electronic means free to all Colorado residents. The report recommends removing all statutory references to the roster.

In its present form, the roster is outdated the day the information is extracted from the Board's licensing data base for publication. The roster is expensive to print, and with postage rates increasing, the distribution costs have steadily increased as well. In fiscal year 1996/97, maintenance and distribution of the roster accounted for over 50% of the operating budget for the Board. Several building officials commented that they find the roster useful, most architects indicate they have little use for the publication.

There are many advantages to an electronic roster, it could be updated instantly, there are low distribution expenses, and the access by the public would be greatly enhanced. Many of the DORA boards are using alternative technologies to make licensing information available to the public, without a statutory mandate to do so. It is expected that information about licensed architects will continue to be made available by a variety of means, even without a statutory requirement.

One issue agreed upon by the Board and AIA is that the Board has little control over the unauthorized or unqualified practice of architecture, as required by §12-4-101, C.R.S. Currently the Board may request the Attorney General seek an injunction to prevent unlicensed persons from performing architectural services, if the activity negatively impacts the health, safety or welfare of the public. It is clearly a shift in current public policy to grant the Board the authority to fine unlicensed individuals or to issue cease and desist orders without completing the standard judicial process.

Some boards, such as the Chiropractic, Outfitters, and the Barbers and Cosmetology Boards do have broader powers over non licensees than the Board of Examiners for Architects. These boards may issue cease and desist orders as a quasi judicial authority without going through a district court hearing. If a non licensed individual ignored the Board, the Board would have to request the Attorney General obtain a court order to enforce the cease and desist order issued by the Board.

A few regulatory boards, such as Barbers and Cosmetology and Outfitters, have the ability to impose fines on violators of their practice acts even if the violators are not licensees. The General Assembly should consider granting the Board the ability to issue cease and desist orders, however, disciplinary actions such as fines imposed on non licensees is not necessary to protect the public. If the non licensed activity presents a harm to the public, criminal prosecution by the appropriate authority is the proper course of action.

12-4-107

Colorado is one of the few states to allow individuals to become a licensed architect without obtaining a college degree. The trend in architectural regulation, pushed by NCARB, is to not only require a degree, but to mandate that the degree be from a program accredited by the National Architectural Accrediting Board (NAAB). AIA supports the NCARB model language, the Board does not.

The University of Colorado (CU) is the only Colorado institution of higher education with NAAB accredited degrees. CU offers accredited advanced degrees through the Denver campus of the university. The Boulder campus offers a four year degree that is not recognized by NAAB, but is considered an equivalent degree for licensure in Colorado. Both AIA and CU officials expressed concern that Colorado has lower educational requirements for licensure than the national norm. Colorado licensees who do not meet NCARB standards are not able to obtain licenses in most other states.

The current statute requires the Board to establish minimum education and experience requirements for licensure. The requirements are a degree from NAAB program and three years of experience, an equivalent degree and Board approved experience or ten years of approved experience and no degree. The examination process is standardized nationally. There is no evidence that Colorado examination candidates perform at a lower level than those in states requiring NAAB degrees. There is also no evidence that there are more life safety issues in Colorado than in states with more restrictive standards. More restrictive standards may serve to raise the professional ability of licensees. However, licensing programs are designed to establish a minimum level of competency to protect the public. The market place should determine which professionals perform at the highest level.

The Sunset criteria require an evaluation of whether the existing requirements establish the least restrictive form of regulation consistent with public interest. While many licensed architects, and most academics argue that Colorado has low standards for entry requirements, no documentation exists to support claims of public harm. It can certainly be argued that there is the potential for economic impact on licensees who chose non-NCARB approved paths to licensure.

The staff of the Board conducted a review of the educational qualifications of Colorado licensees. The review divided licensees into two time periods, those licensed prior to 1983, and those licensed since January of 1993. There are a total of 1,265 Colorado licensed architects who obtained licensure in 1982 or earlier. Of this total, 278, or 22% did not have a NAAB accredited degree. There are a total of 1073 Colorado licensed architects who obtained licensure since January of 1983. Of this total, 321, or 30%, used the equivalent education or experience option for licensure.

This trend alarms some academics and professionals who are concerned that Colorado may become a haven for architects with lower standards and abilities than other states. If there were evidence that the educational alternatives resulted in substandard performance, this would be a justified concern. However, no evidence to this effect exists.

Architects boast the one of the most comprehensive and difficult examination of any Colorado licensed profession. This examination is used by every state and several United States Territories and Canadian Provinces. The Board staff also compared the performance of examination candidates with NAAB accredited degrees to those qualifying with equivalent degrees, or experience only. Table E compares the examination performance of Colorado examination candidates with NAAB accredited degrees to those without since 1983. The column labeled number of attempts indicates the number of times the licensee sat for the examination before passing all parts. The figures only include candidates whom eventually achieved passing scores on all divisions of the examination and obtained a Colorado license.

TABLE E

# of attempts	NAAB candidates	% of total	Non NAAB candidates	% of total
1	206	27.39	51	15.89
2	198	26.33	74	23.05
3	145	19.28	79	24.61
4	79	10.51	43	13.40
5	44	5.85	25	7.79
Total with 5 or less attempts	672	89.36	272	84.74
Over 5 attempts	80	10.64	49	15.26

There does appear to be a slight correlation between NAAB degrees and performance on the first examination attempt. However, the correlation is not significant past the first attempt. After the second attempt, candidates with a non NAAB degree actually outperform candidates with a NAAB degree. One NAAB degree candidate required 21 attempts to pass all nine divisions of the examination, the most attempts of any Colorado licensee.

Care must be exercised not to read too much into these statistics. The examination is only one factor used to license architects. However, NCARB has taken great pains to develop what they boast is the most comprehensive of any professional licensing program. Despite the concerns of academics and some professionals, it is obvious that a NAAB accredited degree is not necessary to pass the ARE. When this information is combined with the fact that licensees with NAAB degrees are no less likely than those without NAAB degrees to be disciplined by the Board, it must be concluded the NAAB degree should not be a mandatory consideration for licensure.

Architects frequently practice in multiple states. The trend in most states is to restrict the licensing of architects to those with NCARB approved degrees. This will limit the area some Colorado licensees will be able to practice in, negatively impacting their economic potential.

Architectural candidates are aware of the limitations non-NAAB degrees, or no degree at all, place on their ability to practice. The decision process by these candidates may be influenced by other economic choices. Five year NAAB accredited undergraduate degrees are expensive to obtain. At least one more year is required than necessary for some equivalent degrees. The ability to obtain licensure without formal education in Colorado appalls some members of the architectural profession. However, many prominent architects had little or no formal education, including Frank Lloyd Wright.

12-4-108

An extension of this issue is the NCARB model act that requires mandatory continuing education as a prerequisite for license renewal. Several states have adopted this requirement and it is supported by AIA. The Board does not support the requirement and opposed the inclusion of the language in the NCARB model act.

Professional organizations generally support mandatory continuing education programs. The reasons for this are twofold. First, the image of the profession is enhanced. Members of the profession that seriously want to improve their knowledge and skill in a particular area of the profession genuinely benefit from continuing education. Increasing skill levels of individual practitioners raises the overall standard of excellence in the profession.

Generally speaking, the second reason for professional organization support is economic. Mandatory continuing education programs spawn a cottage industry of program providers. The largest providers of continuing education programs are generally the professional organizations themselves. These programs serve to both generate revenue and increase membership. Which in turn enhances the ability of the professional organization to influence the public policy position of the organization.

There is very little evidence that mandatory continuing education is necessary to maintain a minimum level of competence. In fact, a study by the Office of Policy and Research in DORA found no benefit to most standard continuing education programs. Most programs give credit for attendance in various seminars or classes, selected at the discretion of the licensed professional. There are no needs assessment completed prior to attending the seminar, nor is there an evaluation of retained material at the conclusion of the seminar.

Without an evaluation of professional deficiency it is not known by regulatory agencies which areas of study would be most beneficial for the individual licensee. Without a valid measure of competency preceding, and following the educational program, there is no possible method to evaluate the benefit to the practitioner. That is not to say that continuing educational programs do not benefit individual professionals. Voluntary continuing education should be encouraged. Professionals that improve their individual level of competency will be rewarded by professional recognition by peers, and in the marketplace.

The Board has expressed concern over an apparent loophole in the renewal provision of the licensing law. Section 108(2) allows licensees two year after a license is expired to renew the license, effectively a two year grace period. If the architect continues to practice without renewing the license, there is little the Board can do. Most licensing programs do not allow such a generous grace period.

In conjunction with the renewal changes, the Board supports the creation of two new licensing categories, retired, and inactive. It is the position of the Board that because of the national and international nature of the practice of architecture, it is a burden for out of state licensees to maintain a Colorado license. An inactive status would allow out of state licensees to easily reactivate if they work on a Colorado project, without the hassle of maintaining a Colorado license. A retired license is basically a good will gesture for long term architects. Neither of these proposals provide additional public protection, or create a significant impediment for the Board to fulfill its regulatory obligation. However, professional engineers, among other professions, have this license category and the General Assembly has supported this concept in the past.

12-4-110

Another interesting policy decision to be made by the General Assembly is related to the issue of group practices by architects. Currently architects may practice in partnerships, professional corporations, and limited liability companies, either with other architects or in combination with architects and engineers. A licensed architect must supervise all architectural work. All business entities must comply with the appropriate registration standards. However, Colorado licenses only the individual practitioners, not the business firms.

Contained in the practice act (§12-4-110 (1.5)(d), C.R.S.) is a provision that all shareholders, members or partners in the business entity are jointly and severally liable for errors and omissions committed by any member, shareholder, partner or employee of the entity. This liability is waived if the entity maintains errors and omissions insurance meeting the requirements of section 110.

The AIA position is that individual architects should not be personally liable for the actions of employees or members of a business entity. Indeed, liability protection is one of the purposes of forming a legal business entity. AIA also argues that other professions have the ability to receive liability protection by forming legal entities. Law firms and accounting firms are specifically cited as professions with legal liability protections.

Members of the Board contacted for the review take a much different position. Since the Board licenses individual professionals, not firms or business entities, the Board position is that liability should not be waived even with liability insurance. In other words, licensed architects should always be liable for the actions of employees, shareholders or members in a business entity.

Colorado does not license many professional business entities. Most of those that are licensed or registered are allowed to obtain some relief from legal liability if insurance is maintained. However, most professions regulated by DORA do not provide for liability protection by forming a legal entity. In fact many, chiropractors for example, specifically require that a statement be contained in the corporate by-laws that all licensed professionals are jointly and severally liable for the actions of all members, shareholders, partners, or employees.

From a practice standpoint there are benefits to professional practice entities. There are economies of scale to be enjoyed for support services and administrative overhead. Larger entities can draw upon diverse expertise for specific projects, reducing the need to subcontract work. Reputations of individual partners or officers can generate a significant amount of business. It is reasonable to assume that clients of large practices expect a different level of service, expertise, and possibly quality, than can be obtained with a sole practitioner. It can be argued that the price of the potential benefits of a group practice is the potential risk associated with including other practitioners in the group.

Most professional corporations and limited liability companies are virtually judgment proof. That is to say, the assets available to satisfy a legal judgment are the individual property and assets of the shareholders, members, or partners. The legal entity itself generally leases space, and other assets consist of office and business equipment, furniture and possibly artwork or decorations. Unless the personal assets of the individual licensees, or adequate insurance, are available to satisfy a judgment the public has no recourse. Of course, in any situation the licensee is subject to discipline by the Board if the cause of the liability meets the criteria for disciplinary action. Disciplining a licensee will not make the client whole, but it may protect the public from future improper actions by the individual licensee.

Given the information provided by both the Board and AIA, this review does not recommend any change to the current requirements for insurance for business entities practicing architecture. The General Assembly may want to consider requesting an evaluation on professional business entity regulation in Colorado and recommendation on a standard model to be used for all professional licensing acts.

12-4-111

The Board makes an effort to impose fines in increments to match the severity of the offense. Section 111 limits the maximum fine to a level of \$2,000 for repeat offenders. The Board recommends increasing this amount to \$10,000. The AIA agrees with this position indicating the fee that architect's charge on large projects frequently exceed the amount of the current maximum fine.

The General Assembly has supported a policy of allowing Boards to impose fines on licensees in professions dealing with non health related fields. The drawback of this policy is small fines may be viewed by licensees as a cost of doing business, rather than a deterrent to a negligent, dangerous or unethical practice. Generally speaking, it is a better public policy to impose small fines for minor technical violations of a practice act. Severe violations, or a pattern of abuse, should result in license restrictions, suspensions, or revocations.

12-4-112

The Colorado chapter of the International Conference of Building Officials (ICBO) has approached the AIA with recommended changes to the exemptions contained in §12-4-112, C.R.S. These restrictions would further limit the type and size of structures that could be designed by individuals not licensed as architects. Ostensibly the additional limitations are intended to require any building with a load capacity of 50 or more people, to be designed or have remodel plans designed by an architect.

The Board has limited support for the ICBO proposal. The consensus of the Board is that there may be some additional public protection by limiting some exempted structures. However, the language proposed is too complex and would cause confusion to the general public.

Some building officials contacted for this report indicated there are a higher number of plan rejects on exempt structures designed by individuals not licensed as an architect or engineer. No documentation was provided to compare rejection rates for projects designed by non licensees. No evidence was presented by ICBO or AIA that the continuation of the current exemptions presented a significant harm to the public. In point of fact, due to the availability of pre-designed components from vendors and other design professionals, an argument could be made to expand, rather than contract, the types of structures exempted under section 112.

Most local governments have some type of building inspection program prior to issuing a certificate of occupancy. Some have only a fire protection inspection. However, since the exemption proposal by ICBO is based somewhat on fire protection load capacities, an inspection by a fire official to ensure exit compliance should serve to protect the public. Some home rule cities have adopted building codes more restrictive than the architecture statute, eliminating some or all of the exemptions. If local building officials believe the exemptions present a danger to the local population, a mechanism exists to require a different standard if approved by local elected officials. Therefore, this report does not recommend any change to the existing exemption provision.

12-4-113

The AIA recommends additions to section 113 of the statute to allow architects licensed in another jurisdiction in the United States to solicit business in Colorado, but not to perform any work until a Colorado license is granted. The Board has termed this practice “fishing” and does not support the change. Advertising for services itself does not constitute the practice of architecture. Until and unless an individual actually performs work, which could be considered the practice of architecture, the Board should not have any jurisdiction. However, the recommendation by AIA may not be the most effective solution to a minor problem. If the practice of architecture, as defined in the act, is interpreted in its narrowest sense, there is no question that an architect can solicit business without a license.

A second recommended addition to section 113 is closely related to recommendations for changes in section 115. Section 115 places prohibitions and restrictions on the use of the title architect or any derivative thereof. The AIA recommendations would further define the words and terms that may only be used by a licensed architect in a business title, or professional description. The recommended change to section 113 would require the architect's license number to be included in any advertisement for architectural services.

12-4-115

As discussed in the complaint section of the report, abuses of the title and derivative sections are a majority of the complaints reviewed by the Board. Many Board members and industry representatives believe requiring license numbers in advertisements will reduce the unlicensed practice of architecture. Newspapers and yellow page publishers have no restrictions on publishing advertisements by unlicensed practitioners. However, many individuals advertising services using a derivative of the word architect are providing legitimate services not covered by the architecture statute. The current statute prohibits holding out to the public as an architect unless actually licensed in Colorado.

No cases were reviewed where someone using a derivative harmed the public. The Board has indicated support for a recommendation to eliminate the derivative issue from the statute. Since no harm to the public can be documented, this position will be supported in the recommendation section of the report.

12-4-116

The Board, AIA and ICBO all support changes to the use of an architect's stamp contained in section 116. Changes to require the date plans are stamped to be included with the architects signature are clearly beneficial to building officials and the general public. When plans are stamped, it is an indication that the architect has been in responsible charge of the plans and has conducted a review to ensure compliance with building codes and other requirements in effect at the time of review. Placing a date on the documents alerts interested parties to research code changes subsequent to the date stamped.

Certain federal government contracts require an architects stamp on original reproducible documents. This conflicts with section 116. All interested parties support an addition to the section to allow compliance with federal contract requirements.

The AIA has proposed requirements that an architect retain possession of all original drawings and take steps to prevent the use of designs for projects not contracted for at the time of service. The Board does not support this requirement. The issue becomes one of design copyright. If a client contracts for a specific design for a project, who owns it, the architect doing the work, or the client paying for it? Some architects expressed concern that plans for a specific project could be used for additional projects, this could both compromise the integrity of additional projects, because the plans did not account for site variances, and take work away from the architect. This is a contractual issue to be resolved between the client and architect and should not be set in statute. If a client desires to maintain possession and rights to a design, the ability to negotiate that provision should be allowed.

Additional section

The final AIA recommendation is to require all architects to use a written contract before providing architectural services to a client. The proposed language for the written contract would be established in statute and mirrors boilerplate language recommended by AIA for its members. The Board does not support this recommendation. AIA argues a written contract protects the public by detailing expectations for both parties. In a practical sense, it is good business practice to establish business relationships in a professional manner. In most cases, this includes written documents, including contracts, for professional services. However, civil remedies are available for disputes between clients and professionals. Unless the actions of the architect are fraudulent or life safety issues exist, the Board and the statute should not address them.

Complaints & Enforcement

A review of any regulatory program must include an analysis of complaints, and any associated enforcement or disciplinary action. The Board may initiate investigations of licensees based on complaints by any individual or on its own motion. As discussed previously, the Board has limited jurisdiction over non licensees.

Complaints are received by the program administrator in the Division of Registrations. A letter detailing the nature of the complaint is sent to the respondent, requesting a response to any allegations raised by the complaining party. The original complaint, along with the response is presented to the Board at the first possible meeting. The administrator has the option of requesting an emergency meeting of the Board if the complaint appears to pose an imminent danger to the public health or safety.

The Board reviews complaints at its regular monthly meetings. Based on the information presented in the complaint and the response from the respondent, the Board has several options including: dismiss the complaint, initiate an investigation, refer to the Attorney General or District Attorney for prosecution, conduct a disciplinary hearing, or request more information.

The Board seldom receives complaints involving technical issues. When it does, it is common to obtain the opinion of an independent consultant. Very few complaints are received from the public. A significant percentage of the consumer complaints involve fee disputes and contractual issues outside of the jurisdiction of the Board to resolve.

Most complaints are generated from licensees regarding unlicensed practice or derivative issues. Of the 57 consumer complaints received since the last sunset, not one was as a result of a consumer being harmed by the use of a derivative. No documentation has been reviewed indicating that the unlicensed practice of architecture has caused public harm.

The Board has imposed fines on licensees for improper practices. These fines have been imposed by negotiated settlements, without requiring a formal hearing. Most Board enforcement actions occur against non licensees, without evidence of harm to public. Generally these fines are accepted by applicants for licensure who have committed a technical violation of the statute.

This gives rise to the question of who the statute is protecting, the public, or the profession. It should be noted that the Board is enforcing the statute as adopted by the General Assembly. If the General Assembly desires to continue this policy, no changes should be made to this area of the statute.

RECOMMENDATIONS

Recommendation 1: Continue Regulation of Architects by the Board of Examiners of Architects until the year 2005, with modifications to Board composition and duties.

Summary: Architects serve an important role in protecting the public through the safe design of buildings and structures. Because of the significant potential for public harm by the practice of architecture by untrained or unethical practitioners, the regulation of architects by the state should continue.

Discussion: To the lay person, the main function of an architect is designing buildings. In fact, architects can and do serve an important role as the generalist coordinating various specialists on complex projects. In making the recommendation to continue the regulation of architects, a finding of potential harm to the health, safety or welfare of the public must be established.

Unsafe structures have caused significant public harm throughout the United States. In Colorado, we have been fortunate that we have not endured a tragedy similar to the Hyatt hotel incident mentioned in this report. A strong licensing program for architects is a significant factor in the safety of public buildings in this state.

Having established that regulation is necessary, the next step is to determine the level of regulation. Licensing is the most restrictive of the state regulatory programs. It should be reserved for those professions and occupations that have a significant potential to harm the public. Because of the potential for public harm, this report recommends licensure as the appropriate level of regulation.

Architects may design small simple projects, or huge complex buildings. The potential harm to the public on small projects, such as a single family home, does exist however, it is not significant. The potential on a large hotel or office building is very significant. A few years ago a fire broke out in the MGM Grand hotel in Las Vegas. The hotel had several significant design flaws, among other problems. The result was an unnecessary loss of life and property. Appropriate disciplinary action was taken against the responsible parties. While this will not restore the lives of those who died in the fire, it will prevent the individuals responsible from repeating the incompetence that caused the accident.

The composition of the Board could use some refinement. In interviews conducted to discuss issues raised by AIA and the Board, it became obvious that engineers, architects, and building officials do not always agree on the role of the architect. The addition of a local government building official to the Board would serve to facilitate communication between these construction related professions. To maintain the desired numbers on the Board, an architect member should be replaced by a building official the next time a term expires.

Recommendation 2: Eliminate the prohibition against the use of a derivative of the term architect by non licensed architects.

Summary: The time and expense used by the Board to pursue non licensed persons using a derivative of the term architect cannot be justified for public protection purposes. The fact that most complaints are filed by licensed architects and not the public certainly gives the appearance the provision protects the profession, not the public.

Discussion: The Board spends an inordinate amount of time addressing complaints by licensees regarding the use of the word architect or a derivative thereof. No evidence was presented to document any public harm caused by the use of the title. There is a potential harm to the public in which a non licensed person holds him or herself out as an architect on an exempt project. In this situation, the client may be willing to pay a higher fee based on a false assumption of the qualifications of the practitioner.

This potential is somewhat remote. However, if harm does occur, the aggrieved party still has legal recourse, since defrauding the public by holding oneself out as an architect would still be a violation of the Act. There are no documentation of public harm caused by the use of a derivative of the term architect.

There are a many professions in Colorado that have both title protection and a practice act, but none as restrictive as the architecture prohibition. A classic example is the regulation of accountants. The state licenses Certified Public Accountants (CPA). Anyone can call themselves an accountant, but only those licensed by the state may perform certified audits. A non licensed accountant may prepare financial reports or tax returns, but unless the accountant is licensed by the state, the term Certified Public Accountant, or CPA may not appear on any documents prepared and signed by the preparer.

Recommendation 3: Amend the license renewal provisions contained in §12-4-108, C.R.S. to eliminate the two year renewal grace period.

Summary: In order for a licensing program to be effective, the practice of the profession must be regulated at all times. Allowing a lapsed license to be renewed for up to two years is a significant gap in public protection.

Discussion: When a determination is made that the practice of an occupation must be licensed to protect the public, the occupation should only be practiced by licensed individuals. Most licensing programs have clear criteria, an individual is either licensed, or not. Some licensing programs do allow a nominal grace period for licensees to send in renewal fees. This grace period is intended to allow licensees to wait until the last possible minute to pay the licensing fee.

The architect statute allows individuals two years to renew a license. This is an extremely generous grace period, clearly more than necessary to compensate for a licensee who forgot to mail a fee until the day after it was due. When an architect with an expired license continues to practice, there is little the Board can do to protect the public. If the architect engages in unsafe or unethical practices, there is no active license to discipline. The Board also has little recourse to pursue the architect for unlicensed practice, since as soon as notice is received that an investigation has been initiated, the architect can submit fees and renew the license. If the General Assembly desires to maintain some grace period, allow the Board to establish a grace period by regulation.

Recommendation 4: Increase the disciplinary options available to the Board.

Summary: There are two reasonable request made by the Board and AIA for increases to the to the disciplinary options in the architect licensing program. An increase in the fine amount for licensees would serve as a greater deterrent to violations of the Act. The ability to issue cease and desist orders to unlicensed persons actually engaged in the practice of architecture would enhance public protection.

Discussion: The Board has seldom implemented the full fine amount it is authorized to impose. This is because the Board has attempted to graduate the fines it imposes based upon the severity of the violation. The current statute limits the Board to \$1,000 for the first offense, and \$2,000 for the second offense. Given the fees an architect generates for even a moderate project, the fines are not significant.

There are two problems with establishing fines in statute. The first is that inflation can rapidly reduce the impact of fines over time. The second is that it is any change to the fine must be initiated by the legislature. On the other hand, the General Assembly must be concerned about delegating the ability to impose unlimited fines to a regulatory board.

The current statute requires a \$500 minimum fine for the first administrative offense. The recommendation would be to maintain a statutory minimum fine of \$1,000, to account for inflation since the fine authority was implemented to the next review. The maximum fine should be based on the cost of the project or the fee generated by the architect. A maximum fine of \$2,000 on a multi million dollar project generating fees in the range of \$250,000, is insignificant. The Board should, by regulation, establish the fining guidelines not to exceed the greater of \$50,000 or 25% of the estimated cost of the project that generated the complaint.

The Board, or the Board's designee, should be authorized to issue cease and desist orders to non licensees who are found to be holding out, or practicing architecture with out a license. Individuals violating the practicing architecture without a license can endanger the public. If an individual ignores an order of the administrator, it establishes some degree of intent to defraud the public and increases the likelihood of prosecution by a district attorney, as well as enhancing the civil option of the consumer.

Recommendation 5: Amend Section 12-4-116 C.R.S., to Require Architects to date all design plans that are stamped, and allow stamps

on reproducible documents if required by a Federal Government Contract.

Summary: When plans are submitted to a building department it is reasonable for the plan reviewer to assume that the architect complied with current building codes in the jurisdiction. There have been situations where plans designed by an architect have not been put to beneficial use by the client for several years. A date on the plans would alert building officials that the plans may not have been reviewed against the current building code.

Discussion: Changes to require the date plans are stamped to be included with the architects signature are clearly beneficial to building officials and the general public. When plans are stamped, it is an indication that the architect has been in responsible charge of the plans and has conducted a review to ensure compliance with building codes and other requirements in effect at the time of review. Placing a date on the documents alerts interested parties to research code changes subsequent to the date stamped.

Certain federal government contracts require an architects stamp on original reproducible documents. This conflicts with section 116 which prohibits architects from stamping reproducible documents. All interested parties support an exemption to the prohibition, only to allow compliance with federal contract requirements.

Recommendation 6: Remove all references to the Architects Roster from the Statute.

Summary: All licensing boards maintain information about the licensing status of the professions they regulate. A statutory requirement to publish and distribute a roster of licensees is unnecessary.

Discussion: The Board is required to publish a roster of licensees and distribute it to building departments, the Executive Director of DORA, and all licensees. Some building officials contacted for this report indicated they used the roster to verify the license of an architect, however, most did not.

The publication and distribution of the roster is an unnecessary expense for the program. Under the current statute, licensees in another state who may not have practiced in Colorado for several years must be sent a copy of the roster. There is no evidence that the majority of the licensed architects desire the continuation of the roster.

DORA is in the process of improving the public access to information on all professions licensed by the Division of Registrations. Placing requirements in individual licensing acts may prevent the efficient implementation of a Division wide information processing plan.

APPENDICES

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Statute

12-4-101. Regulatory authority - purpose.

The regulatory authority established by this article is necessary to safeguard the life, health, property, and public welfare of the people of this state and to protect them against unauthorized, unqualified, and improper practice of architecture.

12-4-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Architect" means a person licensed under the provisions of this article and entitled thereby to conduct a practice of architecture in the state of Colorado.

(2) "Board" means the Colorado state board of examiners of architects.

(3) "Buildings" means buildings of any type for public or private use, including the structural, mechanical, and electrical systems, utility services, and other facilities required for said buildings.

(4) "Dwellings" means private residences intended for permanent occupancy by one or more families but does not include apartment houses, lodging houses, hotels, or motels.

(5) The "practice of architecture" means the performance of the professional services of planning and design of buildings, preparation of construction contract documents including working drawings and specifications for the construction of buildings, observation of construction pursuant to an agreement between an architect and any other person, and administration of construction contracts for the construction of buildings, but not the performance of the construction of buildings.

(6) "Responsible charge" means control and direction of architectural work within an architect's scope of competence.

12-4-103. State board of examiners of architects - subject to termination - repeal of article.

(1) There is created in the division of registrations in the department of regulatory agencies a Colorado state board of examiners of architects, consisting of seven members, four of whom are licensed architects in the state of Colorado, are residents of the state of Colorado, and have been engaged in the practice of architecture for at least three years prior to their appointment, two of whom are residents but are not and have not been licensed architects in the state of Colorado or any other state or engaged in the practice of architecture in the state of Colorado, and one who is a licensed general building contractor in the state of Colorado and is a resident of the state of Colorado. Board members shall be appointed by the governor to serve for not more than two four-year terms of office, expiring February 15. Each board member shall hold office until the expiration of the appointed term or until a successor is duly appointed. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the remainder of an unexpired term. The governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

(2) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of examiners of architects created by this section.

(b) This article is repealed, effective July 1, 1998.

12-4-104. Board - powers.

(1) (a) In addition to all other powers and duties conferred or imposed upon the board by this article or by any other law, the board shall have the following powers:

(I) To elect annually from its membership a president, a vice-president, and a secretary; and

(II) To meet at such times as it deems necessary.

(b) A majority of the board shall constitute a quorum at any meeting or hearing.

(2) The board is authorized to:

(a) Adopt such rules and regulations as may be necessary to implement the provisions of this article, including rules for disciplining licensed architects;

(b) Adopt a seal, of which the secretary shall have the care and custody;

(c) Examine and license duly qualified applicants, and renew the licenses of duly qualified architects;

(d) Conduct hearings upon complaints concerning the conduct of architects;

(e) Cause the prosecution of all persons violating this article by the district attorney or by the attorney general pursuant to section 12-4-113;

(f) Require every licensed architect to have a stamp as prescribed by the board.

(3) The board or the administrative law judge may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, and records pursuant to an investigation or a hearing by the board. Any subpoena issued shall be served in the manner provided in the Colorado rules of civil procedure. If any person refuses to obey any subpoena so issued or to testify or produce any books, papers, or documents, the board may petition the district court having jurisdiction, setting forth the facts, and thereupon such district court, in a proper case, shall issue its subpoena. Failure to obey the court's subpoena shall constitute contempt of court and shall be punished as provided for in the Colorado rules of civil procedure. The board may direct the program administrator to sign any subpoena which has been authorized and issued on its behalf.

(4) Rules of disciplining licensed architects adopted by the board under subsection (2) (a) of this section shall be made available to each architect and applicant for licensure under this article and shall be published in the roster established under subsection (5) of this section. Publication shall constitute due notice to all architects. The board shall annually notify each architect in writing of revisions in the rules of disciplining.

(5) The board shall publish a complete roster annually. The roster shall contain:

(a) Statutes administered by the board;

(b) The name, last-known address, and place of business of each architect;

(c) The location of all technical publications purchased by the board which are made available to the public;

(d) Rules and regulations of the board;

(e) Such other pertinent information as the board deems necessary.

(6) A roster shall be filed with the executive director of the department of regulatory agencies and each county clerk and recorder and county building official. The roster shall be mailed to each architect who has remitted the renewal fee for that year and whose name appears in the roster and shall be made available to the public on request and upon payment of the fee established by the board.

12-4-104.5. Immunity.

Any member of the board, any person acting as a consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him for acts occurring while acting in his capacity as board member, consultant, witness, or complainant, respectively, if such individual was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter as to which he acted, and acted in the reasonable belief that the action taken by him was warranted by the facts.

12-4-105. Disposition of fees - expenses of board.

(1) All moneys collected under this article, except as provided in section 12-4-111 (5), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board.

(2) The division director may employ such technical, clerical, investigative, or other assistance as is necessary for the proper performance of the board's work, subject to the provisions of section 13 of article XII of the state constitution, and may make expenditures for any purpose which is reasonably necessary for the proper performance of the board's duties under this article.

(3) The board may charge fees for licensure by examination, reexamination, reciprocity, and recertification, and for the renewal and reinstatement of a license.

12-4-106. Records.

(1) The board shall keep a record of its proceedings, a register of all applications for licensing, and such other information as may be deemed necessary by the board in fulfilling its duties as prescribed in this article.

(2) The records of the board shall be public records as defined by article 72 of title 24, C.R.S. Copies of records and papers in the office of the board or the department of regulatory agencies relating to the administration of this article, when duly certified and authenticated by seal, shall be received as evidence in all courts equally and with like effect as the originals.

12-4-107. Licensure - application - education and experience.

(1) Application. An applicant shall submit an application that includes evidence of education and practical experience as required by this section and the rules and regulations of the board. Such application shall also include a signed statement that the applicant has never been denied licensure as an architect or been disciplined with regard to the practice of architecture or practiced architecture in violation of the law. If the board determines that any applicant has committed any of the acts specified as grounds for discipline under section 12-4-111 (2), it may deny an application for examination or licensure. In making such a determination, the board shall be governed by the provisions of section 24-5-101, C.R.S. If the applicant has not complied with the provisions of section 12-4-111 (7), the board shall deny an application for examination or licensure.

(2) Education and experience. The board shall set minimum educational and experience requirements for applicants within the following guidelines:

(a) The board may require:

(I) No more than three years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-4-112 (4) and either:

(A) A professional degree from a program accredited by the national architectural accrediting board; or

(B) Substantially equivalent education or experience approved by the board, with the board requiring no more than five years of such education and experience; or

(II) No more than ten years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-4-112 (4); or

(III) A combination of such practical experience and education, which combination shall not exceed ten years.

(b) Up to one year of the required experience may be in on-site building construction operations, physical analyses of existing buildings, or teaching or research in a program accredited by the national architectural accreditation board.

(c) Full credit shall be given for education obtained in four-year baccalaureate programs in architecture or environmental design.

(3) Examination. (a) An applicant shall pass an examination or examinations developed or adopted by the board. The board shall ensure that the passing score for any examination is set to measure the level of minimum competency.

(b) Beginning January 1, 1995, the examination shall be given at least twice a year. The board shall designate a time and location for examinations and notify applicants of this time and location in a timely fashion and, as necessary, may contract for assistance in administering the examination.

(c) (Deleted by amendment, L. 91, p. 1671, 1, effective July 1, 1991.)

(4) Other standards. The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements and equivalents of the national council of architectural registration boards to the extent that such examinations, procedures, and requirements and equivalents are not in conflict with the provisions of this article.

(5) Licensure by endorsement. An applicant for licensure by endorsement must hold a license in good standing in a jurisdiction requiring qualifications substantially equivalent to those currently required for licensure by examination as provided in subsections (1), (2), and (3) of this section and must file an application as prescribed by the board. The board shall provide procedures for an applicant to apply directly to the board. The board may also provide an alternative application procedure, so that an applicant may, at his option, instead apply to a national clearinghouse designated by the board, such as the national council of architectural registration boards; such national clearinghouse shall then forward the application to the board.

(6) Issuance of license. The board shall issue a license whenever an applicant for a license to practice architecture in Colorado successfully qualifies for such license as provided in this article.

12-4-108. License renewal - expiration - reinstatement.

(1) An architect may renew a license by paying to the board the license renewal fee established pursuant to section 24-34-105, C.R.S., and the board shall then issue a certificate of renewal.

(2) The license of any architect who fails to pay the license renewal fee shall expire. An expired license may be renewed within two years after expiration upon payment of all fees in arrears; thereafter, the board shall require payment of a reinstatement fee established pursuant to section 24-34-105, C.R.S., and may require reexamination, unless the architect has maintained an active architectural practice in another jurisdiction or otherwise satisfies the board of his continued competence.

12-4-109. Previous licenses - prior actions.

Any person holding a valid license to practice architecture in Colorado before July 1, 1986, shall be licensed under the provisions of this article without further application by said person. All official actions of the board made or taken before July 1, 1986, are expressly ratified.

12-4-110. Partnerships - professional corporations - limited liability companies - requirements.

(1) Except as otherwise provided in this section, no firm, partnership, entity, or group of persons may be licensed to practice architecture, but a partnership, entity, or group of persons may use the term "architects" in its business name if a majority of the officers and directors or members or partners are licensed architects.

(1.5) The practice of architecture by the following entities is permitted, subject to subsection (2) of this section:

(a) A corporation that complies with the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S.;

(b) A limited liability company that complies with the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S.;

(c) A registered limited liability partnership that has registered in accordance with section 7-60-144, C.R.S.

(2) An entity listed in subsection (1.5) of this section may practice architecture, but only if:

(a) The practice of architecture by such entity is under the direct supervision of an architect, licensed in the state of Colorado, who is an officer of the corporation, a member of the limited liability company, or a partner in the registered limited liability partnership;

(b) Such architect remains individually responsible to the board and the public for his or her professional acts and conduct;

(c) All architectural plans, designs, drawings, specifications, or reports which are involved in such practice, issued by or for such entity, bear the seal and signature of an architect in responsible charge of, and directly responsible for, such architectural work when issued; and

(d) (I) The articles of incorporation, operating agreement, or partnership agreement, as the case may be, of such entity provide and all shareholders, members, or partners of the entity agree that all shareholders, members, or partners of the entity are liable for all acts, errors, and omissions of the employees, members, and partners of the entity except during periods of time when the entity maintains in good standing professional liability insurance which meets the following minimum standards:

(A) The policy insures the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(B) The insurance is in a policy amount of at least seventy-five thousand dollars multiplied by the number of architects, up to a maximum of five hundred thousand dollars, or, if practicing with an entity composed of architects and professional engineers, by the number of architects and engineers, up to a maximum of five hundred thousand dollars.

(II) In addition, the policy may include:

(A) A provision that it shall not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or any stockholder, employee, member, or partner thereof; and the conduct of any business enterprise (as distinguished from the practice of architecture) engaged in by the insured entity or in which the insured entity may be a partner or which may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, any bodily injury to, or sickness, disease, or death of, any person, or any injury to or destruction of any tangible property, including the loss of use thereof;

(B) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(3) (Deleted by amendment, L. 95, p. 809, 26, effective May 24, 1995.)

(4) (a) Nothing in this article shall be construed as prohibiting a corporation, limited liability company, registered limited liability partnership, joint venture, partnership, or association between one or several architects or corporations meeting the requirements of subsection (2) of this section and one or several professional engineers, all duly licensed or registered under the respective provisions of the applicable laws of this state.

(b) It is lawful for such an entity to use in its title the words "architects and engineers".

(c) No identifying media used by any member of such entity shall mislead the public as to the fact that such member is licensed as an architect or as a registered professional engineer.

(5) No limited liability company, registered limited liability partnership, partnership, joint venture, or association shall continue to use, as a part of its firm name, the name of

any person for more than two years after such person has ceased to be a bona fide member of such firm.

(6) and (7) Repealed, L. 88, p. 470, 14, effective July 1, 1988.

12-4-111. Discipline.

(1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any licensee or other person which present grounds for disciplinary action as specified in this article.

(2) Grounds for disciplinary action include:

(a) Fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license; or

(b) Any act or omission which fails to meet the generally accepted standards of the practice of architecture as evidenced by conduct which endangers life, health, property, or the public welfare; or

(c) Mental incompetency; or

(d) Fraud or deceit in the practice of architecture; or

(e) Affixing a seal or allowing a seal to be affixed to any document of which the architect was neither the author nor in responsible charge of preparation; or

(f) Violation of or aiding or abetting in the violation of the provisions of this article or any adopted rule or regulation promulgated by the board in conformance with the provisions of this article or any order of the board issued in conformance with the provisions of this article; or

(g) (Deleted by amendment, L. 88, p. 466, 7, effective July 1, 1988.)

(h) Conviction of or pleading guilty to a felony in Colorado or to any crime outside Colorado that would constitute a felony in Colorado. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea in any hearing under this article; for the purposes of this paragraph (h), a plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction; however, the board shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea; or

(i) Use of false, deceptive, or misleading advertising; or

(j) Habitual intemperance with respect to or excessive use of any habit-forming drug, as defined in section 12-22-102 (13), any controlled substance, as defined in section 12-22-303 (7), or any alcoholic beverage, any of which renders him unfit to practice architecture; or

(k) Any use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.; or

(l) Failure to report to the board any architect known to have violated any provision of this article or any board order or rule or regulation; or

(m) Making or offering to make any gift (other than a gift of nominal value such as reasonable entertainment or hospitality), donation, payment, or other valuable consideration to influence a prospective or existing client or employer regarding the employment of the architect; except that nothing in this paragraph (m) shall restrict an employer's ability to reward an employee for work obtained or performed; or

(n) Failure to render adequate professional control of persons practicing architecture under the responsible charge of a licensed architect; or

(o) Performing services beyond one's competency, training, or education.

(2.5) Any disciplinary action in another state or jurisdiction on grounds substantially similar to those that would constitute a violation under this article shall be prima facie evidence of grounds for disciplinary action, including denial of licensure, under this section.

(3) (a) The board shall conduct disciplinary hearings in accordance with the provisions of article 4 of title 24, C.R.S. Upon proof of grounds for disciplinary action, the board may suspend the license of, place on probation, or limit the practice of a licensee or, with the concurrence of at least four board members, may revoke the license of a licensee.

(b) The board may issue a letter of admonition to a licensee without conducting a hearing as specified in paragraph (a) of this subsection (3). Such letter shall be sent to the licensee by certified mail and shall advise him that he may, within twenty days after receipt of the letter, make a written request to the board to institute formal disciplinary proceedings as provided in paragraph (a) of this subsection (3) in order to formally adjudicate the conduct or acts on which the letter was based.

(4) If, as a result of a proceeding held pursuant to article 4 of title 24, C.R.S., the board determines that a person licensed to practice architecture pursuant to this article has acted in such a manner as to be subject to disciplinary action, the board may, in lieu of or in addition to other forms of disciplinary action that may be authorized by this section, require a licensee to take courses of training or education relating to his profession. The board shall determine the conditions which may be imposed on such licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee shall be required to furnish satisfactory proof of completion of any such training or education.

(5) Fines. (a) In addition to the penalties provided for in subsection (3) of this section, any person violating any provision of this article or any standards or rules or regulations promulgated pursuant to this article may be punished upon a finding of misconduct by the board, made pursuant to article 4 of title 24, C.R.S., as follows:

(I) In the first administrative proceeding against a licensee, a fine of not less than five hundred dollars nor more than one thousand dollars;

(II) In any subsequent administrative proceeding against a licensee for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars nor more than two thousand dollars.

(b) All fines collected pursuant to this section shall be credited to the general fund.

(6) Reconsideration and review of action of board. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in this section, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(7) Reapplication after revocation of licensure. No licensee whose license is revoked shall be allowed to apply for licensure earlier than two years after the effective date of the revocation.

12-4-112. Exemptions.

(1) Nothing in this article shall prevent any person, firm, corporation, or association from preparing plans and specifications for, designing, planning, or administering the construction contracts for construction, alterations, remodeling, additions to, or repair of any of the following:

(a) One, two, three, and four family dwellings, including accessory buildings commonly associated with such dwellings;

(b) Garages, industrial buildings, offices, farm buildings, and buildings for the marketing, storage, or processing of farm products, and warehouses, which do not exceed one story in height, exclusive of a one-story basement, and which under applicable building code, or codes, are not designed for occupancy by more than ten persons;

(c) Additions, alterations, or repairs to the foregoing buildings which do not cause the completed buildings to exceed the applicable limitations set forth in this subsection (1);

(d) Nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building.

(2) Nothing in this article shall prevent, prohibit, or limit any municipality or county of this state, home rule or otherwise, from adopting such building codes as may, in the reasonable exercise of the police power of said governmental unit, be necessary for the protection of the inhabitants of said municipality or county.

(3) Nothing in this article shall be construed as curtailing or extending the rights of any other legally recognized profession or craft.

(4) Nothing in this article shall be construed as prohibiting the practice of architecture by any employee of the United States government or any bureau, division, or agency thereof while in the discharge of his official duties.

(5) Nothing in this article shall be construed to prevent the independent employment of a registered professional engineer practicing pursuant to part 1 of article 25 of this title.

12-4-113. Violations - penalties - injunctions.

(1) It is a class 3 misdemeanor for any person, including any corporation, association, or partnership, to:

(a) Sell or fraudulently obtain or furnish a license or renewal of a license to practice architecture; or

(b) Engage in conduct which is intended or reasonably might be expected to mislead the public into believing that such person is an architect; or

(c) Without having a license issued under this article:

(I) Advertise, represent, or hold himself out in any manner as an architect, unless practicing pursuant to section 12-4-112 (4);

(II) Engage in the practice of architecture, unless practicing pursuant to section 12-4-112 (4) or, if a corporation or partnership or group of persons, practicing pursuant to section 12-4-110;

(III) Use in connection with his name or business or otherwise assume, use, or advertise any title or description which will or reasonably might be expected to mislead the public into believing that he is an architect, unless practicing pursuant to section 12-4-112 (4) and, if a corporation or partnership or group of persons, meeting the requirements of section 12-4-110;

(IV) Engage in the practice of an architect as a corporation or partnership or group of persons, unless such entity meets the requirements of section 12-4-110.

(2) Such misdemeanor shall be prosecuted by the district attorney of the judicial district in which the offense was committed, or the attorney general of the state of Colorado, in the name of the people of the state of Colorado.

(3) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by this article. In order to obtain such injunction the board need not prove irreparable injury.

12-4-114. Judicial review.

Any person aggrieved by any final action or order of the board and affected thereby is entitled to judicial review pursuant to the provisions of section 24-4-106 (11), C.R.S.

12-4-115. Use of title.

(1) No person preparing plans and specifications for or construction contracts for the administration of any alteration, remodeling, or repair of any building shall use the title "architect", nor any derivative thereof, in connection therewith unless he has been licensed as an architect pursuant to this article.

(2) The word "architect" or any derivative of the word "architect" shall not be used alone, or in a phrase, in any offer or response to an offer to provide services defined as practice of architecture by section 12-4-102 (5) unless such person is an architect licensed under this article.

12-4-116. Architect's stamp.

(1) The use of an architect's stamp shall be subject to the following:

(a) The stamp and the signature of the architect whose name appears on the stamp shall be placed on reproductions of drawings to establish a record set of contract documents. The record set shall be prominently identified and shall be for the permanent record of the architect, the project owner, and the regulatory authorities who have jurisdiction over the project.

(b) The stamp shall be placed on each reproduction of drawings which is prepared under the direct supervision of the architect and on the cover, title page, and table of contents of specifications. Subsequent issues of addenda, revisions, clarifications, or other modifications shall be properly identified for the record set. Where consultant drawings and specifications are incorporated into the record set, they shall be clearly identified by consultant stamps or other means in accordance with law to distinguish proper reference to origination.

(c) The stamp shall not be placed on reproducible drawings which are used for multiple copies or on reproducible drawings which are transferred away from the architect's possession and supervision.

(d) The record set retained in possession of the architect shall be held for a minimum of three years following beneficial occupancy or beneficial use of the project by the owner or occupant.

12-4-117. Notification to board.

Each architect shall notify the board of any action or arbitration in which claims regarding the life safety of the occupants of the building are made. Such notification shall be made within ninety days of notice to the architect of such action or arbitration. Any action or arbitration in such claims pending on July 1, 1986, shall be reported to the board within ninety days of the issuance of the roster provided for in section 12-4-104 (5).