

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

Firm Practice

The State Architects Licensure Board (Board) amends §§ 9.161—9.164 by adding the requirements for registration as a limited liability company or limited liability partnership to read as set forth in Annex A.

A. *Effective Date*

The amendment will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The final-form rulemaking is authorized under sections 6(a) and 13(j) of the Architects Licensure Law (act) (63 P. S. §§ 34.6(a) and 34.13(j)).

C. *Background and Purpose*

Prior to 1998, section 13 of the act, regarding firm practice, listed the following entities permitted to engage in the practice of architecture: sole proprietorships, partnerships, professional associations, professional corporations and business corporations. In 1998, section 13 of the act was amended to include limited liability companies and limited liability partnerships as acceptable entities. The Board's regulations have not been updated to reflect the changes in the act relating to firm practice.

D. *Description of Amendment*

The Board amends § 9.161 (relating to compliance with applicable statutes) by adding limited liability companies and limited liability partnerships as entities permitted to engage in the practice of architecture and by requiring compliance with 15 Pa.C.S. Chapters 82 and 89 (relating to limited liability partnerships; and limited liability companies).

The amendment to § 9.162(2) (relating to firm practice) clarifies that its requirements apply to both general partnerships and limited liability partnerships. Section 9.162(5) adds the requirements for registering as a limited liability company by mirroring the requirements set forth in the act and by adding the additional requirement that at least one member or manager of the company must be a licensee of the Board.

Section 9.163 (relating to prior approval by the Board) requires that the applicant seeking registration for an entity permitted to practice architecture in this Commonwealth shall complete a formal application provided by the Board. At its June 12, 2003, meeting, the Board and representatives of the American Institute of Architects Pennsylvania discussed whether the original language of the regulation, "with the Board," which had been deleted in proposed rulemaking, should be reinserted in the final-form rulemaking. The Board agreed that without that language applicants could be confused as to where they would be required to send the application and additional documents. Therefore, to clarify the procedure, the Board voted to reinsert the original language of the regulation, with one minor change. The section now reads

"Written approval shall be sought by submitting a completed application on forms provided by the Board along with the following documents to the Board:".

Section 9.164 (relating to exception for two owners) adds limited liability companies and limited liability partnerships to the list of entities that may be wholly owned by only two persons.

E. *Comment and Regulatory Review of Proposed Rulemaking*

Publication of proposed rulemaking at 33 Pa.B. 1116 (March 1, 2003) was followed by a 30-day public comment period during which the Board received no public comments.

Following the close of the public comment period, the Board received a comment from the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The following is the comment submitted by IRRC and the Board's response:

IRRC questioned the proposed amendment to § 9.162(5), which sets forth the criteria that must be met for an architecture firm to register as a limited liability company. Paragraph (5)(iii) requires that "At least one member or manager is a licensee of the Board." However, section 13 of the act, which allows for limited liability partnerships and limited liability companies, does not contain this requirement. Therefore, IRRC asked the Board to explain why it included this requirement in paragraph (5)(iii).

The legislative commentary to the Limited Liability Companies Act, at 15 Pa.C.S. § 8921, indicates that the General Assembly intended to allow professions to be practiced under a limited liability company, but also in accord with the restrictions traditionally placed on the practice of such professions. Since 1987, the Board has interpreted sections 3, 6, 9, 13 and 18 of the act (63 P. S. §§ 34.3, 34.6, 34.9, 34.13 and 34.18), and their predecessors, as authorization for the Board to require a minimum number of corporate owners and officers to be licensees of the Board in regard to the prior permitted practice structures. Indeed, § 9.162(2)—(4) contains similar provisions for partnerships and professional association, professional corporations and business corporations, respectively.

Additionally, the requirement is also consistent with § 9.164. In this section, any business entity which is owned by only two people must have at least one of its owners licensed by the Board.

The General Assembly has not acted in any manner to suggest the Board's interpretation of the act is incorrect. Because the General Assembly has long acquiesced to this interpretation of the Board's authority, and the Board's interpretation of the 1998 amendments is consistent with these past practices, the Board's interpretation must be seen as an appropriate guide to legislative intent.

F. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the final-form rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

G. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the proposed rulemaking, published at 33 Pa.B. 1116, to IRRC, the SCP/PLC and the HPLC for review and comment.

In preparing the final-form rulemaking, the Board has considered any comments received from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), this final-form rulemaking was approved by the HPLC and the SCP/PLC on November 18, 2003. Under section 5.1(e) of the Regulatory Review Act, this final-form rulemaking was approved by IRRC on December 4, 2003.

I. *Contact Person*

Further information may be obtained by contacting Dorna Thorpe, Board Administrator, State Architects Licensure Board, P. O. Box 2649, Harrisburg, PA 17105-2649

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 33 Pa.B. 1116.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this preamble.

K. *Order*

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 9, are amended by amending §§ 9.161, 9.162 and 9.164 to read as set forth at 33 Pa.B. 1116; and by amending § 9.163 to read as set forth in Annex A.

(b) The Board shall submit this order, 33 Pa.B. 1116 and Annex A to the Office of General Counsel and to the Office of the Attorney General as required by law.

(c) The Board shall certify this order, 33 Pa.B. 1116 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

ANN SHEPARD HOUSTON,
President

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 33 Pa.B. 6376 (December 20, 2003).)

Fiscal Note: Fiscal Note 16A-417 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD

PROFESSIONAL AND CORPORATE PRACTICE

§ 9.163. Prior approval by the Board.

The practice of architecture may not be conducted in one of the business forms specified in § 9.162 (relating to firm practice) without first receiving the written approval of the Board. Written approval shall be sought by submitting a completed application on forms provided by the Board along with the following documents to the Board:

(1) A copy of the completed Fictitious Name Application, Articles of Incorporation, Articles of Association, Partnership Agreement, Certificate of Authority or other relevant agreement or contract of association. If none of these documents apply to the particular business structure, composition or name of the firm, the rest of the filing requirements in this section shall be complied with.

(2) A copy of the proposed letterhead, containing thereon the names of the principals, followed by credentials indicating their respective professions, as well as the word "architect" or some derivation thereof as part of the name of the business, or as a subtitle thereto. At least one of the principals listed shall be a licensee of the Board. For purpose of this paragraph, "principal" means an officer, principal stockholder or person having a substantial interest in or management responsibility for an architectural practice.

(3) A complete list of the names of the individuals interested in the business as proposed, with specification for each as to profession, license number and state of licensure, if applicable, and percent of ownership. The list shall contain or have appended to it certification that the referenced licensed professionals are currently licensed by and in good standing with their state of licensure.

(4) Certification in writing that the owners will notify the Board prior to changes in the proposed ownership of the business, whenever the changes are contemplated. Proposed changes shall be reviewed and approved in writing by the Board prior to their implementation.

[Pa.B. Doc. No. 04-52. Filed for public inspection January 9, 2004, 9:00 a.m.]