



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF THE STATE BOARD FOR LANDSCAPE ARCHITECTURE
Tel. 518-474-3817 Ext. 110
Fax 518-486-2981
E-mail: larchbd@nysed.gov

PRACTICE GUIDELINES FOR LANDSCAPE ARCHITECTS LICENSED AND REGISTERED IN NEW YORK

The New York State Education Department and the State Board for Landscape Architecture have produced practice guidelines to provide useful information on good and recommended practices in the profession of landscape architecture. While this information is **not** a substitute for an understanding of the law, rules and regulations governing the practice of landscape architecture in New York, it is a useful supplement that reflects common professional practice issues and concerns. These practice guidelines can help landscape architects to better understand what might lead to professional practice complaints and to take steps to eliminate or minimize those situations.

These practice guidelines reflect the collective experience of the members of the State Board for Landscape Architecture along with input from a variety of sources, including landscape architecture organizations and practitioners, landscape architecture educators, Office of the Professions' staff, and other State Boards for the Professions.

Practice guidelines provide licensees with general guidance to promote good practice and prevent instances of professional misconduct.¹ They can also benefit licensees and consumers by broadening their understanding of the law, rules and regulations that define professional practice, including professional misconduct and unprofessional conduct.

Practice guidelines do not have the force of law. They are not a substitute for, nor do they have the authority of, Education Law, Regents Rules, or Commissioner's Regulations. While the guidelines may be a resource in understanding good professional conduct in relation to the professional discipline process, they may not be used as the basis for a charge of or a defense against a charge of professional misconduct. A licensee can only be charged with professional misconduct if there is a violation of the Education Law or Regents Rules. Determinations of which complaints lead to professional misconduct charges are made on a case-by-case basis in accordance with Section 6510 of the Education Law.

¹ Practice guidelines are not intended to establish a standard for the evaluation of issues in civil liability lawsuits involving claims of negligence or malpractice. The intent is to provide a frame of reference to be used with other appropriate considerations for assessment of issues relating to professional misconduct and unprofessional conduct as defined by law, rules or regulations.

For a full understanding of the application of practice guidelines, please review the Deputy Commissioner's March 1999 memorandum regarding the purpose and use of practice guidelines contained in this packet.

Relevant sections of Education Law are available through the Office of the Professions website at <http://www.op.nysed.gov/title8/> . Part 29 of the Rules of the Board of Regents on Unprofessional Conduct is accessible at <http://www.op.nysed.gov/title8/part29.htm> . You may access all New York State Law at <http://leginfo.state.ny.us> .

We hope you find these Practice Guidelines useful. If in doubt about the appropriateness of specific practices, you should consult the actual laws, rules or regulations.

For further information and/or clarification, please contact the New York State Board for Landscape Architecture at <http://www.op.nysed.gov/prof/larch/> .



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PRACTICE GUIDELINES

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DEPUTY COMMISSIONER FOR THE PROFESSIONS
Office of the Professions
Tel. 518-474-3817 Ext. 470
Fax 518-473-2056

March 15, 1999

To: Professional State Board Members
From: Johanna Duncan-Poitier
Subject: Professional Practice Guidelines

I write to clarify the purpose and use of practice guidelines developed by Professional State Boards. Practice guidelines provide guidance regarding the implementation of Rules of the New York State Board of Regents to practitioners for the promotion of good practice. Because of questions recently posed about the meaning and use of these guidelines, the following is a more detailed description of the purpose, benefits and limitations of this important tool.

In accordance with Section 6504 of Title VIII of the Education Law:

“Admission to the practice of the professions and regulation of such practice shall be supervised by the board of regents and administered by the education department, assisted by a state board for each profession.”

The Board of Regents’ supervision and the State Education Department’s administration of professional regulation is guided by the Education, Law, Regents Rules and Commissioner’s Regulations. To meet their responsibility to assist in regulating the practice of the professions, several professional State Boards have developed practice guidelines to assist licensed professionals in understanding how to apply the law and accompanying rules and regulations in their daily practice. They are intended to provide licensees with guidance to promote good practice and prevent incidents of professional misconduct.¹

Practice guidelines can benefit licensees and consumers by broadening their understanding of statutory and regulatory language that defines professional practice, including professional misconduct and unprofessional conduct. They inform practitioners of the Office of the Professions’ and State Board’s perspective of what constitutes good practice in their profession. In the discipline process, practice guidelines can serve as one of many resources that may be referred to by a board member in consultations, early involvement meetings, and informal settlement conferences, all of which seek resolution of complaints. When combined with the board member’s education, experience, and prior activity in the profession and the disciplinary process, they can inform a board member’s recommendation when consulted upon a complaint.

Practice guidelines, however, are not a substitute for or have the authority of Education Law, Regents Rules, or Commissioner’s Regulations. They do not have the force of the law. Therefore, while the guidelines may be a resource in assessing conduct that underlies a violation, they may not be used as the basis for a charge of professional misconduct. Specifically, a professional cannot be charged with professional misconduct based upon a violation of or failure to comply with guidelines. A licensee can only be charged with professional misconduct if there is a violation of the Education Law or Regents Rules. Nor can conformance with guidelines be deemed to immunize a professional from potential charges of misconduct. Those determinations are to be made on a case by case basis by the Professional Conduct Officer in accordance with Section 6510 of the Education Law.

¹ It should also be understood that it is **not** the intent of the guidelines to establish a standard for the evaluation of issues in civil liability lawsuits involving claims of negligence or malpractice. The intent is to provide a frame of reference to be used with other appropriate considerations for assessment of issues relating to professional misconduct and unprofessional conduct as defined by statute, Regents Rule or Commissioner’s Regulations.

In formal disciplinary hearings, a guideline may not be used in deliberations unless the Administrative Officer determines that it is admissible. Unless guidelines have been legally admitted into evidence upon a motion to be decided by the administrative officer, a panel should not refer to guidelines because a determination should be based solely on the evidence of individual conduct in an individual case. We realize that a panel member may have discussed and contributed to the development of practice guidelines. That is part of the board member's perspective, formed by his or her professional background, education, experience, research, and discussions. When a board member serves on a hearing panel, due process requires that board member to disregard whatever knowledge or insight was developed during the development of the guidelines unless they have been admitted into evidence, as noted above.

A guideline cannot be part of the hearing record or considered as evidence of the respondent's guilt, unless it has been admitted into evidence. In analyzing and interpreting the evidence presented in the hearing record, panel members should not substitute any guideline for evidence or proof of any charge.

As an articulation of good practice, guidelines are a very important tool for the State Education Department in meeting its critical mission of promoting good practice.



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PRACTICE GUIDELINES

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct *only* if the conduct also violates pertinent law, rules and regulations.

A. SEAL AND SIGNATURE

1. Meaning of the Seal and Signature

The seal and signature of a landscape architect on a document indicates that a licensee has taken responsibility for the work and has been interpreted as an attestation that, to the best of the licensee's belief and information, the work represented in the document:

- is accurate, and
- conforms with governing codes applicable at the time of submission, and
- conforms with reasonable standards of practice and with a view to the safeguarding of life, health, property and public welfare

2. Application of the Seal and Signature

Section 7327 of the Education Law requires every landscape architect to have a seal and identifies when it must be applied. It does not specify the type of seal to be used, with an embossing seal, rubber stamp or electronic version all being acceptable to the State Education Department (the Department) and the State Board for Landscape Architecture (State Board).

Section 7327 also identifies when a landscape architect is required to sign and seal documents. In general, all working drawings and specifications, reports, or other landscape architectural documents required to be signed and sealed, prepared by the landscape architect relating to the setting, approaches or environment for structures or other improvements or under the supervision of such landscape architect, shall be stamped with such seal and signed on the original with the personal signature of the landscape architect when filed with public officials. In addition, Commissioner's Regulations Section 79-1.4 requires that whenever a document is signed and sealed, a stamp is required with appropriate wording warning that it is a violation of this law for any person to alter any document that bears the seal of a landscape architect, unless the person is acting under the direction of a licensed landscape architect. For information on changing documents signed and sealed by a landscape architect, refer to Practice Guideline A.4.

Whatever the means of production, on all documents on which a seal is required, there shall be visible the required image, satisfying the provisions of Education Law Section 7327 and the Commissioner's Regulations Section 79-1.4, and which clearly and legibly shows the landscape architect's name and license number. The documents are to be signed by the landscape architect whose name appears on the seal in such a manner that neither the name nor the number appearing on the seal is obscured in any way.

The requirements of the seal to be used in the State of New York is described in the Commissioner's Regulations Section 79-1.4. For those that are licensed on or after January 1, 1987, seals used by licensed landscape architects shall be circular in shape, approximately 1 3/4 inches in diameter, bearing the legend at the top of the outer band "Registered Landscape Architect" and at the bottom "State of New York". In the inner circle, the licensee's name is placed above the Great Seal of New York and the license number, with no other letters or numbers, is placed below the Great Seal.

3. Electronic Seal and Signature (E-Signature)

New York allows the use of an electronic signature with the same validity and effect as the use of a signature affixed by hand. An electronic signature is an electronically generated identifier that is unique to the person using it. The Electronic Signature and Records Act (ESRA) defines what constitutes an electronic signature in New York and describes its specific uses and limitations.

There is currently nothing in State Education Law that would prohibit the use of electronic seals or signatures by landscape architects. A landscape architect's electronic seal and signature may only be applied to documents by the landscape architect or with their direct authorization or supervision. The use of electronic signatures by both public and private entities is voluntary. A state or local municipality is not required to accept electronic signatures and may have specific requirements regarding signing and sealing of working drawings and specifications. The State Board for Landscape Architecture suggests that all licensees check with the particular municipality or Agency who has the responsibility for review and approval of such documents.

ESRA does not define a specific protocol to perform electronic signatures. It does describe the security level and performance requirements associated with the exchange and validation process. Therefore, before an electronic signature is transmitted, an agreement between both parties is required to permit a valid exchange of electronic information in a compatible manner.

The New York State Office for Technology Services has been designated by ESRA as the electronic facilitator responsible for promulgating rules and regulations for programs authorized by ESRA. Additional information related to ESRA may be found at <https://its.ny.gov/electronic-signatures-and-records-act-esra>

4. Alterations to Working Drawings and Specifications

As described in Practice Guideline A.2, all working drawings and specifications to which the seal of a landscape architect has been applied must also be stamped with appropriate wording warning that it is a violation of the law for any person to alter a document in any way, unless acting under the direction of a licensed landscape architect. If a document bearing the seal of a landscape architect is altered, the altering licensed landscape architect shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

5. Sealing and Signing of Work Prepared by Others

Unprofessional conduct in all professions regulated by the Board of Regents is addressed in the Rules of the Board of Regents Section 29.1. Unprofessional conduct within the design professions of landscape architecture, architecture, engineering, land surveying and geology is specifically addressed in Section 29.3. Paragraph 29.3(a)(3) specifically addresses the sealing and signing of work prepared by others and states that it is unprofessional conduct for a design professional to certify "by affixing the licensee's signature and seal to documents for which the professional services have not been performed by, or thoroughly reviewed by, the licensee; or failing to prepare and retain a written evaluation of the professional services represented by such documents in accordance with the" requirements specified in Paragraph 29.3(a)(3). This paragraph also states that "nothing in this paragraph shall be construed as authorizing the practice of a design profession in this State by persons other than those authorized to practice pursuant to the provisions of Article 145, 147 or 148 of the Education Law". Essentially, sealing and signing of work by others should not be misconstrued as allowing non-licensees to practice the profession of landscape architecture.

Situations where sealing and signing of work by others might be considered appropriate would include, but not be limited to:

- Documents prepared by an owner where the proposed project is to be built for the owner, not for a third party, and
- Documents prepared by or procured from an incapacitated or deceased practitioner

In those instances where an unauthorized individual or firm may have rendered or offered to render landscape architectural services in this state to a client, and a New York landscape architect subsequently becomes aware of the fact, such landscape architect should report the incident to the Department such that an investigation might be conducted. Pursuant to Paragraph 29.3(a)(1), practitioners must be aware that being associated in a professional capacity with a project or practice known by the licensee to be fraudulent or dishonest in character may be grounds for professional misconduct in New York.

Paragraph 29.3(a)(3) requires that when a licensee reviews work prepared by others, a thorough written evaluation of the work must be prepared and retained by the licensee for a period of not less than six years. This report shall include and address:

- A thorough written evaluation of working drawings and specifications; reports; design calculations and references to applicable codes and standards against which the work was checked.
- The evaluation shall identify the name of the project; owner of the project and/or the client; the preparer and source of the documents; date of evaluation; documents reviewed, and listing of dates of issue.
- Conformance with applicable codes including, but not limited to: building, state, town, city, federal, and zoning codes; appropriate professional standards within the profession.

In signing and sealing work prepared by others, the licensee may correct, alter, or add to the existing documents or prepare additional documents to address items found inappropriate or missing. When the documents meet the appropriate standards, they may then be sealed and signed by the licensee. A licensee who seals and signs the documents may be seen as accepting all responsibility for the work as though the licensee had personally prepared all documents.

Paragraph 29.3(a)(4) states that it is also unprofessional conduct if a licensee fails "to maintain for at least six years all preliminary and final plans, documents, computations, records and professional evaluations prepared by the licensee, or the licensee's employees, relating to the work to which the licensee has affixed his seal and signature".

When the scope of review is limited to individual aspects of the work, the licensee should indicate this by noting such on the sealed and signed working drawings or specifications. Refer to Practice Guideline A.4 for additional guidance.

Nothing prevents the public officials, to whom the documents are being submitted, from requesting a copy of the written evaluation of the landscape architect.

6. When a Landscape Architect Might “Pull” or Remove the Seal

Situations may arise when a landscape architect, having signed and sealed working drawings and specifications for a project and having submitted them to the local authority having jurisdiction, may wish to "pull" or remove the seal in an attempt to either disassociate himself/herself from the project, to delay the progress of the project.

As is stated in Practice Guideline A.1, the seal and signature on documents may be viewed as an attestation to the accuracy and appropriateness of the work represented therein making the landscape architect responsible for the work shown.

Attempting to withdraw a signature or seal from already completed and submitted working drawings and specifications is a serious matter. In many ways the seal of a design professional on documents can be compared to giving expert testimony in a court of law under oath. One might change testimony if one had made a mistake earlier, but

not for payment disputes, to delay the progress of the project, or some other disagreement developed with the party involved.

If circumstances justify a landscape architect having to “pull” or remove the seal, the licensee should contact the local authority to which the documents had been submitted and request that they be returned. Again, this might be warranted if the licensee determines that there was the possibility of an error in the documents or that they did not reflect appropriate or correct landscape architectural work. Another possible justification for the request might be if the client has put the project "on hold" for an indefinite period, and the site conditions or laws, regulations, or building code have changed so as to render the drawings obsolete or inaccurate.

Citations of Pertinent Law, Rules or Regulations:

- Education Law, Section 6509 – “*Definitions of professional misconduct*”
- Education Law, Section 6512 – “*Unauthorized practice a crime*”
- Education Law, Section 7321 – “*Definition of practice of landscape architecture*”
- Education Law, Section 7322 – “*Practice of landscape architecture and use of title ‘landscape architect’*”
- Education Law, Section 7327 – “*Special provisions*”
- Regents Rules, Section 29.1 – “*General provisions.*”
- Regents Rules, Section 29.3 – “*General provisions for design professions.*”
- Commissioner’s Regulation, Section 79-1.4 – “*Seals.*”



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B. PRACTICE

1. The Practice of Landscape Architecture in New York

Any landscape architecture services performed for a project or site located in New York, whether for a New York client or an out-of-state client, are subject to the laws of this State and must be performed by a person licensed and registered or otherwise authorized to practice in New York.

2. The Consequences of Engaging in Unlicensed or Unauthorized Practice

The laws of the State are clear in regard to unauthorized practice. Education Law Section 6512(1) makes it a class E felony for anyone not authorized to practice that practices or offers to practice or holds themselves out as being able to practice landscape architecture. Education Law Section 6509 defines professional misconduct as, among other things, permitting, aiding or abetting an unlicensed person to perform activities requiring a license. Furthermore, Education Law Section 6512(2) makes it a class E felony for *anyone*, including a public official, to knowingly aid or abet three or more unlicensed persons to practice a profession requiring a license.

3. Licensure and Registration Requirements

In New York, professional licensure and registration is required to practice landscape architecture and utilize the title "Landscape Architect". Upon satisfaction of the statutory requirements of Education Law Section 7324, a license may be awarded and is valid for the life of the holder unless revoked, annulled or suspended by the Board of Regents. To practice the profession, a current registration, renewable every three (3) years with the State Education Department, is required.

4. Persons Able to Provide Landscape Architecture Services

According to Education Law Section 7322, "Only a person licensed or otherwise authorized to practice under this article shall practice landscape architecture or use the title 'landscape architect.'" A "person licensed" is an individual who has been qualified by education, experience and examination and has been issued a New York landscape architecture license by the State Education Department.

Persons “otherwise authorized” may include an individual person licensed in another state that has applied for and received a limited permit to practice landscape architecture for a specific time period and on a specific project, within New York. Limited permits shall only be issued to individual persons and not to business entities or corporations of any kind. A limited permit only allows the individual permit holder to practice landscape architecture services in New York, and does not authorize a business entity to provide professional services. It allows an individual to practice landscape architecture in New York but only in connection with the specific project for which it is granted.

5. Permissible Forms of Practice

Landscape architecture services in New York may be offered (often referred to as “holding out” to be able to practice) and provided by a sole proprietorship or the below types of entities:

- professional partnerships
- domestic and foreign professional service corporations (PC)
- design professional service corporations (DPC)
- domestic and foreign professional service limited liability companies (PLLC)
- domestic and foreign registered limited liability partnerships (LLP/RLLP)
- “grandfathered” general business corporations formed on or prior to April 1, 1961 and authorized under Education Law Section 7327(4) (unless “grandfathered”, a general business corporation is not permitted to render, or offer to render, landscape architecture services in New York.)

Sole proprietorship – A sole proprietorship occurs when a licensed and registered New York landscape architect offers and renders landscape architecture services as an individual.

Professional Partnerships

Professional partnerships occur when two or more landscape architects form a partnership pursuant to the New York State partnership law. All partners in a professional partnership must be licensed and registered landscape architects in New York in order for the partnership to render, or offer to render, landscape architecture services in New York.

Professional Service Corporations (PC)

Landscape architecture services may be offered and provided by a professional service corporation (PC) authorized under Article 15 of the New York Business Corporation Law. Domestic PCs authorized under Article 15 are special corporations in which each of the shareholders, officers and directors must be licensed and registered in New York. Foreign PCs authorized under Article 15-A are required to have only the individual providing the professional service to be licensed and registered in New York although all of the officers, directors and shareholders must be licensed in some jurisdiction. The Department defines some jurisdiction as the jurisdiction in which the PC was originally formed.

Design Professional Service Corporations (DPC)

Business Corporation Law Section 1503 permits the incorporation of design professional service corporations (engineering, architecture, landscape architecture, land surveying, geology or any combination thereof) first organized on or after January 1, 2012, in which non-professionals may own less than 25 percent of the shares and may constitute less than 25 percent of director and officer positions. The shareholders of a design professional corporation may include employee stock ownership plans (ESOP) and employees of the corporation who are not licensed as design professionals, provided that:

- Greater than 75% of the outstanding shares of stock of the corporation are owned by design professionals;
- An ESOP, either in part or in its entirety, may not constitute part of the greater than 75% owned by design professionals;
- Greater than 75% of the directors are and were design professionals;
- Greater than 75% of the of the officers are and were design professionals;
- The president, the chairperson of the board of directors and the chief executive officer or officers are and were design professionals; and
- The single largest shareholder is and was either a design professional or an ESOP with greater than 75% of the plan's voting trustees being design professionals and greater than 75% of the plan's committee member's being design professionals.

Professional Service Limited Liability Companies (PLLC)

Landscape architecture services may be offered and provided by a professional service limited liability company authorized under the Limited Liability Company Law, Article 12 or 13. Domestic PLLCs authorized under Article 12 and foreign PLLCs authorized under Article 13 may provide landscape architecture services if and only if all members and/or managers are licensed and registered in New York. Each member and/or manager of a foreign professional service limited liability company must be licensed in the original jurisdiction of the PLLC's formation in addition to being licensed and registered in New York. Of important note is that domestic and foreign limited liability companies (as opposed to *professional service* limited liability companies), may not render, or offer to render, landscape architecture services in New York.

Registered Limited Liability Partnerships (LLP)

Landscape architectural services may be offered and provided by a registered limited liability partnership authorized under the New York Partnership Law, Article 8-B. Domestic and foreign LLPs authorized under Article 8-B may provide landscape architecture services if and only if all partners are licensed and registered in New York.

“Grandfathered” General Business Corporations

Although extremely rare, there is one last special class of corporations that may legally offer and provide landscape architecture services in New York. These are general business corporations that were formed on or before April 1, 1961 and have continuously and lawfully engaged in the practice of landscape architecture in New York and whose chief executive officer is and was a landscape architect under the laws of the State of New York (often referred to as “grandfathered” corporations). These

corporations must remain in full compliance of Education Law Section 7327(4) or risk losing their ability to offer landscape architecture services.

No other entity or individual except those described in the preceding may offer and provide landscape architecture services in New York. In particular, the fact that a general business corporation may be authorized under the laws of another state to practice there does not qualify the entity to offer and provide landscape architecture services in New York. It is also important to note that a person who is licensed (or otherwise authorized) to practice in New York and is an officer or employee of a general business corporation operating in New York or in a state other than New York cannot provide landscape architecture services in New York as an officer or employee of that firm.

Finally, in cases where an entity is not authorized to offer and provide landscape architecture services, such as a general contractor, that entity cannot subcontract with, or employ, a landscape architect in order to offer and provide landscape architecture services to a third party client. A landscape architect may not subcontract with an entity not authorized to provide landscape architecture services, for example a general contractor for the purposes of providing landscape architecture services.

The Offering of Multiple Design Services

Multiple professional design services (disciplines) may be practiced by a sole proprietorship (provided the sole proprietor is licensed in multiple disciplines), a professional partnership, a professional service corporation (PC), a design professional service corporation (DPC), a professional service limited liability company (PLLC), or a registered limited liability partnership (LLP). These disciplines are limited to the design professions licensed pursuant to Article 145, 147 and 148 (engineering, land surveying, geology, architecture, and landscape architecture).

- Sole proprietorship – If a sole proprietor is licensed in multiple disciplines, he or she may provide professional services only in the discipline(s) in which he or she is licensed and currently registered. For example, a sole proprietor who wishes to offer landscape architecture and architecture services would be required to be licensed and registered as a landscape architect and architect in New York. A sole proprietorship may not offer professional services outside the scope of practice of their licensed profession(s) nor employ others to do so.
- Professional Partnership – A professional partnership may offer or provide multiple services in the design professions provided there is a partner licensed and registered to practice each of the professions which the corporation is being organized to practice.
- PC – A domestic professional service corporation may offer or provide multiple services in the design professions provided that there is a shareholder, director, or officer licensed and currently registered in New York to practice each of the professions which the corporation is being organized to practice. In the case of a foreign professional service corporation that provides multiple services in the design professions, there must be a shareholder, director, or officer licensed and registered to practice each of the professions which the corporation is being organized to

practice in New York and some jurisdiction. The Department defines some jurisdiction as the jurisdiction that the PC was originally formed in.

- DPC – A design professional service corporation may offer or provide multiple services in the design professions provided that there is a shareholder, director, or officer licensed and registered in New York to practice each of the professions which the corporation is being organized to practice.
- PLLC – A professional service limited liability company may offer or provide multiple services in the design professions provided there is a member or manager licensed and registered in New York to practice every professional service offered by the PLLC. In the case of foreign PLLC offering services in multiple design professions, each manager/owner must be licensed and registered to practice said profession in New York and licensed in the original jurisdiction.
- LLP – A registered limited liability partnership may provide multiple services in the design professions provided that there is a partner licensed and registered in New York to practice every professional service offered by the LLP. In the case of a foreign LLP offering services in multiple design professions, each partner must be licensed and registered to practice said profession in New York and licensed in the original jurisdiction.

6. Landscape Architects Employed, or Retained by Contractors and Design Build

While there is nothing in Education Law that prohibits a landscape architect from being employed by a general contractor to perform non-professional services, the general contractor may not render, or offer to render, landscape architecture services in New York, typically referred to as “design-build”. The design-build delivery method may be seen as a violation of the Education Law. Typically, the CEO of the general contractor providing the services is not a landscape architect. Only a licensee may render, or offer to render, professional services. Such services may not be brokered by a third party. Additionally, the construction company is most likely a general business corporation. As such, it may not offer professional services. Even though in this scenario the professional services are being provided by a licensee, the services are being passed through an unlicensed corporation creating issues relating to illegal practice as well as unlawful profit sharing and fee splitting.

While the contracts between owner, landscape architect, and contractor may be memorialized into a single document for the design and construction of a project, the professional services and compensation of the landscape architect should flow directly between the owner and landscape architect. Pass through agreements, where professional services are offered through third parties, are generally unlawful in New York.

Nothing in this guideline shall prohibit a contractor from providing those services not requiring professional licensure under the Education Law Section 7326.

7. Health of Landscape Architect

In New York, practicing landscape architecture while the ability to practice is impaired by alcohol, drugs, physical disability, or mental disability is professional misconduct. However, the Professional Assistance Program provides assistance and an opportunity

for rehabilitation of a landscape architect. The landscape architect who has a substance abuse problem, but who has not harmed a client, may be referred to the Education Department – Office of the Professions’ Professional Assistance Program for confidential assistance as an alternative to a disciplinary proceeding. For additional information on the Professional Assistance Program, please see the State Education Department website at <http://www.op.nysed.gov/prof/pap.htm>

8. Appropriate Titles and Professional Designations

Many landscape architects confer titles on senior staff to recognize contributions to the firm. The title may be conferred on a firm owner or a non-owner; titles such as "Associate" or "Director of Marketing" or "Director of Human Resources", are frequently conferred on non-licensed individuals.

The State Education Department and the State Board for Landscape Architecture believe that appropriate titles may be granted to both licensed and unlicensed employees as long as the title does not imply that an unlicensed title holder is a landscape architect.

"Landscape Architect" is a protected title. Only a person licensed and registered in New York can call himself/herself a landscape architect and offer landscape architecture services in New York. Anyone else using the title "landscape architect" may be prosecuted for committing a Class A misdemeanor and anyone else offering to perform landscape architectural services in this State may be charged with a Class E felony.

Similarly, care should be exercised in using derivatives of the word “landscape architect.” For example, unlicensed persons are prohibited from using derivatives of the word "landscape architect" or "landscape architecture" in conjunction with unrestricted titles as this may be viewed as misleading to the public when it is implied that professional services are being offered, e.g., "landscape architectural designer.”

The Department and the State Board for Landscape Architecture view some titles or derivations of certain titles as inappropriate; for instance, corporate titles such as "Vice President" conferred on an unlicensed person may mislead the public into believing that the person is a landscape architect. The title of "Principal" in entities other than a design professional service corporation (DPC) may also be misleading and should not be conferred on an unlicensed person. The title of “Principal” may be bestowed upon an employee of a DPC, given that non-licensees may own less than 25% of a DPC. The title "Director of Landscape Architectural Design" is also inappropriate for use by a non-licensee. It is important when selecting titles to make sure that the public will not be confused or led to believe that a Vice President or Principal or Director of Design is a licensee who can offer landscape architectural services, when he/she is not a landscape architect.

Generally, the title "Associate" is acceptable for a non-licensee as long as the employee and the employer do not imply that the associate is a landscape architect. Again, the title Director of Computer Services is acceptable since that title would not confuse the public nor would a title such as Chief Financial Officer.

It is important that when the titled employee is unlicensed that the firm's promotional materials do not imply that the individual practices landscape architecture or provides landscape architecture services. Unacceptable phrases could include the following:

- "one of the nation's leading designers"
- "his/her projects"
- "the recipient of national awards for design excellence"
- "among his/her highly regarded site designs are"

Acceptable verbiage would be "_____ participated in the planning and design of the award winning site design under the direction of _____, firm principal."

Graduates may use their degree after their name or may use an association membership designation. However, the degree or membership designation may not be used along with promotional materials to imply the user is a landscape architect, when in fact no license has been issued to the individual.

For those who are gaining the landscape architectural work experience required to become a landscape architect, the use of either "landscape architectural intern" or "intern landscape architect" is acceptable.

9, Identification of Serious Code Violations

A landscape architect, who identifies a serious code violation on a project site with which he/she is, or might be associated in a professional capacity, should bring this situation to the attention of the appropriate parties. Appropriate steps to follow might include:

- The client, tenant or owner should be informed of such violations.
- Violations appearing to pose an imminent danger to the public's health, safety, or welfare, should be reported to the local authority having jurisdiction.
- A landscape architect has a professional obligation to document the violation to both the client/owner and the authority having jurisdiction even if informing the client/owner might jeopardize receipt of the associated commission.
- If the code violations are present in the area of a potential project, and the landscape architect is assigned the commission, he/she should endeavor to have such violations included as an integral part of the scope of the design solution.

10. Best Practices for Working Drawings and Specifications

On all drawings which are intended to convey landscape architecture information and services, a title block should be provided. The title block should contain:

- the name and location of the firm providing the landscape architecture services;
- the name of the project and project location;
- the client for whom the services have been provided;
- the date the work was completed.

In addition the title block may contain identification of those who prepared and checked the documents, as well as drawing numbers and such similar incidental items as are customary.

Similar information shall be provided on the title page of all specifications and reports.

Landscape architects should legibly indicate their name and business address on all landscape architecture documents. Landscape architecture documents which are issued for preliminary or conceptual use shall clearly note the intended purpose of such documents. When elements of the project are shown on a landscape architecture document only for information or clarification and the landscape architect does not intend to accept responsibility for the elements, the landscape architect shall clearly note on the documents the extent of his/her responsibility. Additionally, a landscape architect should cite the source of existing condition information provided by others on working drawings and specifications.

Landscape architects should clearly note on any preliminary landscape architecture documents that such documents are not in final form, but are being transmitted to the public agency for review, comments and interpretations. The documents may subsequently be revised by the landscape architect to reflect resolution of issues with the public agency prior to final action by the agency. Changes, revisions and modifications to a project may prompt additional document submittal for agency approval action on the same project.

11. Shop Drawings, Submittals and Delegation

The design professional responsible for construction administration must review all shop drawings and submittals for their compliance with the contract documents. The design professional will generally use a stamp containing a signature block which he or she will sign, or at a minimum initial. The stamp and a signed transmittal noting approval is adequate evidence that the submission "....conforms to the overall project design and can be integrated into such design....", all as required by the Regents.

Some shop drawings and submittals will also require the signature and certification of the licensed New York design professional who prepared that submission. When preparing contract documents, the design professional must require the component fabricator to have their submissions certified and signed by a New York licensed professional. Examples of such shop drawings and submittals include, but are not limited to:

- Pre-fabricated structures
- Railing systems
- Fencing
- Lighting standards
- Flagpoles
- Sign or kiosk post and panel systems
- Stormwater management devices
- Playground structure systems
- Fountains and aquatic features
- Irrigation systems
- Green wall systems

- Segmental retaining walls
- Public Art Installations

During the construction administration phase of a project, many submittals, samples, catalogue cuts, etc. will not require the fabricator's certification. These will generally be for "off the shelf" items that represent standardized products or systems. In these instances, the design professional should be able to rely on the manufacturer's certification that the submittal meets the design criteria, standardized tests, and/or association standards. The design professional must still "review and approve" these submittals, but the signature and certification by the manufacturer's designer is not required. The manufacturer confirms to the contractor and the design professional the quantity and the quality of the product and that the contractor has the installation drawings.

Some submittals, often in the form of shop drawings indicating the interface of standard systems, are issued to the design professional for confirmation of design intent. For instance, the design professional puts together a performance specification for a railing system for a walkway that includes a stairway and ramp; the specifications describes loads, profiles, component materials, and finishes, etc., but does not list standard manufacturer's systems in order to keep competition open. In essence, the design professional has left the detail up to the successful low bidder. In this instance, the successful bidder must use a New York licensee to prepare, sign and certify the shop drawings. Following this, the design professional must "review and approve" those drawings and, in doing so, accept responsibility that the design conforms to the performance specifications, the overall project design and that it can be integrated into the project system. See also Practice Guideline B.12.

Definitions:

Shop Drawings: Drawings prepared by other than the project's design professional which show all or some of the following:

- the detailed construction of a design component or system to be incorporated into the construction
- the component or system's interface with another system or systems
- the component or system's methods or means of erection
- the material, joinery, color, pattern, or other changes within the component or system; such that the design professional's design intent is confirmed

Submittals: Actual material samples, brochures, cut sheets, mockups -- whether full scale or miniaturized -- or such other materials or samples required by the design professionals to confirm the quality of the design intent.

12. Design Delegation

Under certain conditions, a primary design professional may delegate certain responsibilities to others, such as fabricators, manufacturers of system components, product manufacturers, etc. This "design delegation" may only occur under a protocol established by the Board of Regents. "Design delegation" allows the primary design

professional to rely upon project components that are ancillary to the main components of the projects such as fabricator or manufacturer-designed systems or products to be designed by others without breaching the rules of unprofessional conduct. However, "design delegation" can only occur when the primary design professional specifies in writing all parameters which the design must satisfy, issues performance criteria for manufactured-designed systems or products that must be designed by New York design professionals, and then reviews and approves the design for conformance with the established design specifications and parameters.

It is critical to note that primary design professionals cannot abdicate their responsibility for the design of their work by delegating to others. The Regents require design professionals to sign and certify their design. The primary design professional is still required to "review and approve" the fabricator's submission even though the fabricators' design professional signs and certifies his/her design.

Throughout the construction process, from the first meeting of client and primary design professional through completion of the project, all parties should know what is involved in the project and where the responsibilities lie in relationship to the work required by the Construction Contract Documents. The primary design firm should convey, in a manner they deem most appropriate, to the project owner, the contractor and the subcontractors, the full scope and nature of the project and those elements being delegated for design by another licensee. For the items being delegated that involve those design services for which a license is required, it should be stated clearly that those delegated design functions shall be performed by design professionals currently licensed and registered or otherwise authorized by the State Education Department.

The following protocol as defined in the Rules of the Board of Regents Paragraph 29.3(b)(2) and Paragraph 29.3(b)(3) shall serve as a guide to design delegation in accordance with New York State Law, Commissioner's Regulations, and the Rules of the Board of Regents:

1. A primary design professional (delegator) may delegate through, or a design professional (delegatee) may accept delegation from, a contractor or subcontractor (intermediate entity) for the design of specifically defined ancillary components or systems under the following circumstances:
 - a. The primary design professional (delegator) must provide sufficient information, in writing, for the delegatee (the licensee to whom the work is delegated) to understand the scope and nature of the delegated work and its connection to the general design. The information that is required to perform the delegated design functions shall be commensurate with the nature of the project, and may include, but not be limited to, technical data, loads, references to the American Society for Testing and Materials and other performance standards, and other relevant and related conditions as appropriate and contained in the construction contract documents. (Subparagraph 29.3.b(2)(ii))

- b. The primary design professional (the delegator) shall provide performance specifications in writing for the delegated components or systems. The design professional to whom the design function has been delegated (the delegatee) shall design the component or system in accordance with the performance specifications. The delegatee should request any needed clarification in writing from the principal design professional through the Contractor/Subcontractor. (Subparagraph 29.3.b(2)(iii))
- c. The person responsible for the design of the component or system shall be a New York licensee, or otherwise authorized, and shall sign and certify his/her design work. (Subparagraph 29.3.b(2)(iv))
- d. The Construction Contract documents must specify how the designs will be certified as meeting the specifications and standards of practice expected of licensees in New York for projects of similar size and complexity. The delegatee will be professionally responsible for the delegated design work; therefore, before signing and certifying the work, a professional judgment should be made about the reliability and quality of the work. (Subparagraph 29.3(b)(2)(v))
- e. The primary design professional must review and determine that the delegated component or system design conforms to the performance specifications and any subsequent amendments; to the overall project design; and that it can be integrated into the design of the project. The primary design professional is required to provide written notification of the decision or the submittal may be so marked (e.g. Approved; Disapproved; Revise/Resubmit). If not approved, a clear explanation should be provided. (Subparagraph 29.3(b)(2)(vi))

Citations of Pertinent Law, Rules or Regulations:

- Education Law, Section 6509 – “*Definitions of professional misconduct*”
- Education Law, Section 6512 – “*Unauthorized practice a crime*”
- Education Law, Section 6513 – “*Unauthorized use of a professional title a crime*”
- Education Law, Section 7321 – “*Definition of practice of landscape architecture*”
- Education Law, Section 7322 – “*Practice of landscape architecture and use of title ‘landscape architect’*”
- Education Law, Section 7324 – “*Requirements for a professional license*”
- Education Law, Section 7325 – “*Limited permits*”
- Education Law, Section 7326 – “*Exempt persons*”
- Education Law, Section 7327 – “*Special provisions*”

- Regents Rules, Section 29.1 – “*General provisions.*”
- Regents Rules, Section 29.3 – “*General provisions for design professions.*”



PRACTICE GUIDELINES

Law, rules and regulations, not Guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this Guideline may be interpreted as professional misconduct *only* if the conduct also violates pertinent law, rules and regulations.

C. CLIENT RELATIONS

1. Defining the Terms for Providing Professional Services

As a landscape architect, you are required to practice within your authorized scope of practice, as defined in the Education Law, Commissioner's Regulations and Rules of the Board of Regents. It is your responsibility to be knowledgeable of any restrictions that are based on law or regulation, as well as those that relate specifically to your area of professional competence.

The Rules of the Board of Regents define as unprofessional conduct any practice by a landscape architect that is beyond the licensee's scope of professional competence. Therefore, if you are not competent to provide a service, even one that falls within the legal scope of practice for your profession, you may not provide that service. As a licensed and registered professional, it is your responsibility to practice within the scope of your abilities and expertise. If you practice beyond your personal scope of competence, you can be charged with professional misconduct.

At the outset of service, you should provide your client with information regarding the services that you or your firm can provide to clients, all fees and relevant business procedures, contractual requirements, and the expectations required of clients receiving these services. You should involve your clients in the development and implementation of any project to the fullest extent of their abilities.

2. Scope of Services

The practice of landscape architecture is defined as the performance of services in connection to the development of land areas where the dominant purpose of those services is the preservation, enhancement, or determination of:

- Proper land uses
- Natural land features
- Ground cover and planting
- Naturalistic and aesthetic values
- The settings, approaches or environment for structures or other improvements
- Natural drainage

- The consideration and determination of inherent problems of the land relating to the erosion, wear and tear, blight or other hazards

The practice of landscape architecture also includes the location and arrangement of tangible objects and features that are incidental and necessary to the services previously noted, but shall not include:

- The design of structures or facilities with separate and self-contained purposes such as those ordinarily included in the practice of engineering or architecture
- The making of land surveys or final land plats for official approval or recording

Persons and/or entities that practice landscape architecture who, by verbal claim, signature, advertisement, website, letterhead, or card, or in any other way, represent themselves to be landscape architects or, through the use of some other title, imply that they are landscape architects, or who hold themselves out as able to perform, or does perform, any landscape architecture service, work or any other service designated by the practitioners which is recognized as landscape architecture, shall be construed to practice or offer to practice landscape architecture within the meaning and intent of Section 7322 of the Education Law.

Anyone who aids or abets three or more persons, who use a professional title despite no authority to do so, shall be guilty of a class E felony. Anyone who employs three or more persons who use a professional title in the course of such employment, when not authorized to use such title, shall be guilty of a class E felony.

3. Consumers' Rights

All consumers of services offered by New York licensed professionals have the legal right to:

- receive competent professional services;
- verify the credentials of licensed professionals and to know the names and titles of licensed professionals who provide service;
- receive clear explanations of the services being offered or provided and how much they cost;
- refuse any service offered;
- know what client records will be maintained and how to obtain copies; recognizing that personally identifiable information normally cannot be revealed without the client's consent;
- file a complaint with the State Education Department about a licensed professional or an unlicensed practitioner; and
- request and be provided a reasonable accommodation to access professional services, if a person with a disability.

4. Representation of Qualifications and Experience

A landscape architect, professional partnership, professional service corporation, design professional service corporation, professional service limited liability company,

registered limited liability partnership, or grandfathered business corporation rendering, or offering to render, landscape architecture services should not mislead a client or the general public or misrepresent their competence or qualifications (Rules of the Board of Regents Paragraph 29.1(b)(12)).

A landscape architect who has been an employee of a landscape architecture firm should not claim unconditional credit for projects contracted for in the name of the previous employer. To avoid misrepresentation of facts, the landscape architect might:

- identify the project,
- the nature and extent of the involvement and experience gained in connection with the project, and
- that the experience was acquired as an employee of another firm which should be identified.

A landscape architect, who was formerly a principal in a firm, may make additional claims provided they are accurately documented and explained. Similarly when a principal or landscape architect leaves a firm, that firm has an obligation to accurately represent the experiences and capabilities of the remaining staff only.

Projects listed as "credits" which remain unconstructed, should be identified as "unbuilt" or given a similar designation.

5. Reasonable Expectations of a Client

When retaining the services of a landscape architect, the client will expect quality in the services received and the manner in which they are delivered. Assuming the client lives up to his/her contractual responsibilities, reasonable expectations for quality landscape architecture services might include:

- documents that serve the purpose for which they are intended
- documents that are approvable by the municipality to which they are submitted
- documents, possibly with modifications, that represent a project which can be built within the agreed upon budget
- documents that are prepared by qualified professionals and personnel
- work is performed in a timely manner
- a landscape architect who listens to the client concerning the program and expectations of the project

Additional consumer information is available on this site, or by emailing the State Board for Landscape Architecture at larchbd@nysed.gov or calling the State Board at 518-474-3817, ext. 110.

Citations of Pertinent Law, Rules or Regulations:

- Education Law, Section 6509 – “*Definitions of professional misconduct*”
- Education Law, Section 6512 – “*Unauthorized practice a crime*”
- Education Law, Section 7321 – “*Definition of practice of landscape architecture*”

- Education Law, Section 7322 – “*Practice of landscape architecture and use of title ‘landscape architect’*”
- Regents Rules, Section 29.1 – “*General provisions.*”
- Regents Rules, Section 29.3 – “*General provisions for design professions.*”