



**REGULATORY ENFORCEMENT
COMMITTEE MEETING
AUGUST 1, 2019**



Committee Members

Robert C. Pearman, Chair
Sylvia Kwan, Vice Chair
Fred Cullum
Cheryl DeMarco
Robert Ho
Gary L. McGavin
Sheran Voigt

NOTICE OF MEETING

Regulatory and Enforcement Committee

August 1, 2019

**Sequoia Room
2420 Del Paso Road, Suite 109A
Sacramento, CA 95834
(916) 574-7220 (Board Office)**

The Regulatory and Enforcement Committee (REC) will hold a meeting as noted above.

AGENDA

10:00 a.m. to 2:00 p.m.
(or until completion of business)

Action may be taken on any item listed below on the agenda.

- A. Call to Order / Roll Call / Establishment of a Quorum
- B. Chair's Procedural Remarks and Committee Member Introductory Comments
- C. Public Comment on Items Not on the Agenda

The Committee may not discuss or act on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting (Government Code sections 11125 and 11125.7(a)).

- D. Review and Possible Action on August 23, 2018 REC Meeting Minutes
- E. Enforcement Program Update
- F. Discuss and Possible Action on 2017/2018 Strategic Plan Objective to Update the Building Official Information Guide to Better Educate Local Building Officials on the Architects Practice Act
- G. Discuss and Possible Action on 2019-2021 Strategic Plan Objectives to:

(Continued)

1. Educate Architects Regarding Their Responsibilities under Business and Professions Code Section 5535.1 (Responsible Control) and California Code of Regulations (CCR) Section 151 (Aiding and Abetting) to Protect Consumers From Unlicensed Practice
2. Research and Evaluate Categories of Criminal Convictions as They Relate to the Practice of Architecture and Amend Disciplinary Guidelines and Rehabilitation Criteria to Comply With the Requirements of Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018)
3. Collaborate With Websites to Restrict Advertisements From Unlicensed Entities

H. Legislative Update:

1. AB 1076 (Ting, 2019) Criminal Records: Automatic Relief
2. Senate Bill (SB) 608 (Glazer, 2019) Architects and Landscape Architects
3. SB 721 (Hill, Chapter 445, Statutes of 2018) Building Standards: Decks and Balconies: Inspection

I. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Committee Chair and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the *Bagley-Keene Open Meeting Act*, all meetings of the Committee are open to the public. This meeting will not be webcast. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Committee prior to it taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at their discretion, apportion available time among those who wish to speak. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125 and 11125.7(a)).

(Continued)

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting:

Person: Michael Sganga

Telephone: (916) 575-7203

Email: michael.sganga@dca.ca.gov

Telecommunications Relay Service: Dial 711

Mailing Address:

California Architects Board

2420 Del Paso Road, Suite 105

Sacramento, CA 95834

Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (Business and Professions Code section 5510.15).

AGENDA ITEM A: CALL TO ORDER / ROLL CALL / ESTABLISHMENT OF A QUORUM

Roll will be called by the Regulatory and Enforcement Committee Vice Chair, or in her absence, by a member designated by the Chair.

REGULATORY AND ENFORCEMENT COMMITTEE ROSTER

Robert C. Pearman, Chair

Sylvia Kwan, Vice Chair

Fred Cullum

Cheryl DeMarco

Robert Ho

Gary L. McGavin

Sheran Voigt

AGENDA ITEM B: CHAIR'S PROCEDURAL REMARKS AND COMMITTEE MEMBER INTRODUCTORY COMMENTS

The Regulatory and Enforcement Committee (Committee) Chair will review the scheduled Committee's actions and make appropriate announcements. Committee members will then make their introductory comments, if any.

AGENDA ITEM C: PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

The Committee may not discuss or act on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting (Government Code sections 11125 and 11125.7(a)).

AGENDA ITEM D: REVIEW AND POSSIBLE ACTION ON AUGUST 23, 2018 REC MEETING MINUTES

Background Summary

The Committee is asked to review and take possible action on the minutes of the August 23, 2018 REC meeting.

Action Requested

Approval of the August 23, 2018 REC meeting minutes.

Attachment(s)

1. August 23, 2018 REC Meeting Minutes (Draft)



**DRAFT MEETING MINUTES
CALIFORNIA ARCHITECTS BOARD
REGULATORY AND ENFORCEMENT COMMITTEE**

AUGUST 23, 2018
SACRAMENTO

2420 Del Paso Road, Sequoia Room, Suite 109, Sacramento, CA 95834

Committee Members Present

Barry L. Williams, Chair
Robert C. Pearman, Jr., Vice Chair
Gary McGavin
Matthew McGuinness
Michael Merino
Sheran Voigt

Committee Members Absent

Fred Cullum
Robert De Pietro
Robert Ho

Board Staff Present

Laura Zuniga, Executive Officer
Vickie Mayer, Assistant Executive Officer
Alicia Hegje, Program Manager, Administration/Enforcement Units
Kristin Walker, Enforcement Analyst
Katie Wiley, Enforcement Analyst
Stacy Townsend, Enforcement Analyst, Landscape Architects Technical Committee (LATC)

Guests

Mark Christian, Director of Government Relations, The American Institute of Architects, California Council (AIACC)

A. Call to Order / Roll Call / Establishment of a Quorum

Regulatory and Enforcement Committee (REC) Chair Barry L. Williams called the meeting to order at 10:00 a.m. Mr. Williams welcomed everyone and requested members provide self-introductions. Mark Christian of AIACC and Board staff introduced themselves.

Robert C. Pearman, Jr. called the roll. There being six members present at the time of roll, a quorum was established.

B. Public Comment on Items Not on the Agenda

Mr. Williams opened the floor for public comment regarding items not specified on the meeting agenda. No comments were received.

C. Review and Possible Action on August 24, 2017 Committee Meeting Minutes

Mr. Williams asked if there were any questions, comments, or changes to the August 24, 2017 REC Meeting Minutes. There were none.

Michael Merino moved to approve the August 24, 2017 REC Meeting Minutes.

Sheran Voigt seconded the motion.

Members Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. Members McGavin and McGuinness abstained. The motion passed 4-0-2.

D. Update and Possible Action on Board's Enforcement Program and Complaint, Citation, and Disciplinary Action Statistical Data and Information

Alicia Hegje provided the Enforcement Program update and highlighted items of interest to the REC, including the status of the Board's pursuit of a collection agency contract, which has been a Strategic Plan objective since 2015-2016 and is planned to be executed by early 2019, and the continuing education (CE) audits and actions taken for noncompliance. Ms. Hegje reported that this year to date, there have been approximately 1,900 licensees audited, 333 licensees of those audits have not been in compliance, and that has resulted in 132 citations issued for noncompliance and for a violation of Business and Professions Code (BPC) section 5600.05.

Matthew McGuinness stated he did not understand the comment in the meeting packet indicating the high percentage of citations for CE violations where it stated that they are primarily due to the redirection of staffing as a result of vacancies in the Enforcement Unit. Mr. McGuinness questioned how the percentage of CE violations could increase if the percentage of licensees being audited remained the same. Vickie Mayer replied that due to vacant enforcement analyst positions, CE violations account for a higher percentage of overall violations that resulted in citations. She advised that these cases are being processed in priority order and the current quantity of CE cases is actually lower because we are in a non-renewal year. Mr. Merino voiced his concern that it appears the Board is more aggressively

pursuing CE violations and asked if staff intends to audit a higher percentage of license renewal applications. Ms. Mayer indicated that CE is currently staffed, but there are other analyst vacancies in the Enforcement Unit, so it appears a greater number of CE citations are being processed. Laura Zuniga explained that the number of other non-CE citations should balance out once the other vacancies are filled. Mr. Merino appreciates the change in staff; however, on behalf of consumer protection he would rather see the focus be on unlicensed practice. Mr. Merino emphasized that he would rather see the focus on illegal activity versus a licensee without CE because there is a more dangerous threat to consumers on CE. Ms. Zuniga pointed out that there is a report due to the Legislature on January 1, 2019, as such the Board must juggle existing workload and staff to continue to audit CE and present accurate data. Mr. Merino stated that the Board has always focused on consumer protection, health, and welfare and he cannot see the equivalency between the two types of violations. Mr. Williams agreed with Mr. Merino and explained that there are two types of issues, one being driven by the Legislature to show we are doing this because it is a requirement, and the other by being proactive about unlicensed activity. Mr. Merino explained that prioritization within the Board should not be driven by legislative emphasis it should be about consumer protection, and not outside issues. Gary McGavin also agreed and suggested placing a notice on the Board's website, so the licensees do not believe they are being targeted as opposed to unlicensed individuals. Mr. Merino interjected that when he read the language within the staff report it conveys a shift in emphasis that really is not the staff's intent. Ms. Mayer added that the Board does not want to give the impression that we are not working cases, it is just a matter of balancing limited staff with the workload and the report can be reworded. Ms. Hegje pointed out that the Board has recently lost two-thirds of the enforcement analysts who process typical complaints. She further explained the CE position has not changed, and the CE staff person cannot be redirected to work on the other cases because the higher-level of work required for licensed or unlicensed complaints are outside the civil service classification and job description.

Mr. Merino stated there is an unintended message that the Board is targeting licensees internally. Ms. Mayer suggested removing the term "redirecting" in the footnote of the report. Ms. Hegje stated that the number will start to shift due to the non-renewal year.

Mr. McGavin offered to prepare the notice for the website as to not add to the enforcement staff's workload. Mr. Williams noted that about 20 percent of the CE violations are from out of state licensees. Ms. Mayer explained that the law has been in effect since 2009, information is provided in the Board's newsletter, and licensees are given a 90-day notice.

Ms. Hegje pointed out that several new items of legislation have been authored since the last REC meeting, staff is currently monitoring to see how each bill will impact the Board, licensees, and consumers, if approved. She indicated the Enforcement Report highlights the changes in types of complaints; this year advertising cases decreased about 12 percent, unlicensed practice decreased about 5 percent, willful misconduct increased about 5 percent, and CE has remained about the same. She also advised the number of days a complaint case is pending has increased due to staff vacancies. Mr. Williams asked when the approval for new staff will be received. Ms. Mayer responded that there is tentative approval to fill one analyst position, and staff are working on approval for the second position. She indicated the office technician position had to be re-advertised a couple times as part of the civil service process.

Mr. McGavin commented that Senate Bill (SB) 721 (Hill) [Building standards: decks and balconies: inspection] was introduced on February 17, 2017, and Mr. Christian with AIACC confirmed that the bill passed the Legislature and is on its way to the Governor. Mr. McGavin provided detail about the language requiring special inspection, special detailing, approval of the building official, ongoing inspection of decks, and changing the terminology to “exterior elevated elements,” and it does not address unintended consequences; if the balcony deteriorates who is going to be at fault – the inspector, the contractor who put it in, or the architect. Mr. Williams interjected that the Board was against the bill for a lot of those reasons. He opined as architects we know that a lot of times decks get overloaded, and there are water proofing issues, and other damage that you cannot see from inspection unless you tear into it. Mr. McGavin added the language that is in the next iteration of both the existing building code and the standard building code regardless what the bill does.

REC discussed that the building code language still has 45 days for review and the Building Standards Commission needs to approve it. The time for the stakeholders to comment has passed, it is now up to individuals to comment within the 45-day open period. Mr. Merino added that there was a resultant design restriction because of an opening for residential projects where an unlicensed individual can design without a licensee’s stamp and questioned if there would be modification of the language. Mr. McGuinness responded that the current language is “building official approval of design” and there was no language in the bill modifying this upon his review.

Further REC discussion occurred in which Mr. Merino suggested the design component should be addressed after the bill is finalized. Mr. McGuinness reiterated that individuals, not stakeholders can oppose bill after 45 days. Mr. Williams suggested adding an occupant load limit on balconies.

Michael Merino moved to receive and file staff's report on the Board's Enforcement Program and Complaint, Citation, and Disciplinary Action Statistical Data and Information.

Gary McGavin seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

E. Discuss and Possible Action on the Following 2017-2018 Strategic Plan Objectives to:

1. Update the *Building Official Information Guide* to Better Educate Local Building Officials on the Architects Practice Act

Kristin Walker presented this agenda item and reminded the REC that it reviewed and discussed the 2000 edition of the Board's *Building Official Information Guide* at its August 24, 2017 meeting. She stated staff and the architect consultants identified necessary updates and revisions to the content of the *Guide*, and she asked the REC to review the proposed revisions contained in the meeting packet and provide feedback to staff. She also indicated that following the meeting, staff will work with Department of Consumer Affairs (DCA) legal counsel on the proposed revisions and a final draft of the *Guide* will be presented to the REC for review and approval at its next meeting.

Mr. McGuinness asked why the information regarding swimming pools was removed from the *Guide* in the proposed revisions. Ms. Walker responded that the architect consultants recommended removing that information from the *Guide* because the design of swimming pools is not considered to be the practice of architecture and is generally outside of the Board's jurisdiction. Ms. Voigt questioned why the word "measures" was removed from the phrase "safety measures in, on, or about the site" in the response to question three under "Architects Scope of Practice." Ms. Walker replied that the change was made for consistency with the actual language of BPC section 5536.25(c), which does not include the word "measures."

Mr. Merino inquired about the removal of the section regarding mechanics liens and commented that the information should remain in the *Guide*, as mechanics lien laws tend to be confusing to architects, consumers, and building officials. Mr. Merino asked whether mechanics lien laws should be added to the *Act* or otherwise reconsider removing that section and revising it to fit situations when a design professional uses a mechanics lien. Ms. Walker explained that this section was deleted on advice of the Board's architect consultants, who are not

present today. Ms. Zuniga noted the Board does not enforce mechanics lien laws but offered to include guidance where to obtain information regarding mechanics liens in that section of the *Guide*. Ms. Mayer asked if the Committee wanted page 34 to be struck from the *Guide* and suggested that the language can be revised. Mr. Williams added that mechanics lien laws are very complex and navigating the process is difficult. Mr. Merino reiterated that the Board must provide information and guidance to building officials about the *Act* and other issues of interest regarding architecture.

Mr. Christian pointed out that once the work of improvements begins, an architect can do a mechanics lien, prior to that the design professional can exercise the right to a lien subject to specific conditions being met.

Mr. Merino commented that sometimes an architect will file a mechanics lien during the design process which is incorrect because during the design process there is nothing to lien because no improvement has taken place. He advised the architect feels that have provided a creative service and a set of documents, but if the owner never makes the improvement, there is nothing for the architect to lien, which creates a gray area on this topic.

Mr. McGavin added that the way to protect instruments of service is by copyright. The REC discussed the fact that the instruments of service can be protected without a copyright symbol. Mr. Merino also suggested that a section about copyrighting be added to the *Guide*, to explain that the architect can retain their creative ownership of the ideas within the documents and the consumer has the right to use the plans but not the right to possess them. He advised this distinction might be helpful when dealing with a building official. Mr. Williams added that any changes must go through the architect; the client cannot use the plans for other projects, but this is not necessarily under the umbrella of the copyright. Mr. Merino stated that California Code of Regulations (CCR), title 24 clarifies the right of reuse issue.

Mr. Christian referenced the California Education Code section 17316 which describes the ability of a school board to use an architect's plans for later revisions without transferring the architect's copyright.

Michael Merion made a motion to accept the proposed revisions to the Building Official Information Guide except for the edit to strike the mechanics lien language and bring the Guide back to the REC at its next meeting.

Sheran Voigt seconded the motion.

The Committee discussed the motion and voiced concerns the action might limit modifications needed to the *Guide*.

Michael Merino amended the motion to receive and file the Guide and take note of the discussion regarding the mechanic's lien language.

Sheran Voigt accepted the amendment and seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

2. Educate Consumers on the Standard of Care so They Understand What to Expect From an Architect When Choosing to Hire One

Ms. Walker presented this agenda item and reminded the REC that it extensively discussed the use of the term "Standard of Care" within the Strategic Plan objective at its August 24, 2017 meeting. She reminded the members that they expressed concern over legal implications and wanted to research and clarify the Board's intent. She indicated rather than the Board seeking to define the "Standard of Care" the Board wanted the REC to educate the public on what to expect from their architect and how to identify problems. She advised at the prior meeting, Board staff provided suggestions to update and expand the consumer section of the website, develop more consumer-oriented materials to share through social media, as well as promote the architect consultant's education and information program where consumers can call or email with questions about their ongoing projects. Ms. Walker asked that the REC review and discuss this objective to provide feedback.

Mr. Merino explained that this question would be extremely difficult on the fly because it would take a lot of care and time for consideration. He suggested a subcommittee of one to three members that will work with the staff to bring findings back to the REC. Ms. Voigt indicated that consumers should be informed that the Board provides architectural experts for questions or concerns. The REC discussed whether the National Council of Architectural Registration Boards (NCARB) provides a definition for the "Standard of Care." Mr. Merino stated there has been recent litigation on this topic and whether, for example, an architect's instruments of service must be perfect or whether they must be sufficient for a contractor to work from, with additional input from the architect. He recommended to discuss the topic with prior REC member architect attorney Phyllis Newton as a resource. Mr. Christian added that "Standard of Care" is a legal issue and agreed that attorneys should be involved. Ms. Zuniga suggested that additional research be performed on the term, history, and case law and then work with a subcommittee. The REC suggested contacting state architect

Chet Widom as a resource to the Board based on his 50 years of wide-based practice and his understanding of legal ramifications. The REC discussed using AIA's definition if they already have one and suggested reaching out to NCARB for their definition as well.

3. Measure the Effectiveness of the Board's Citation Collection Methods as a Means of Protecting Future Consumers

Ms. Walker reminded the REC of the current methods used by the Board to collect unpaid administrative fines from licensees and unlicensed individuals. She explained if a licensee fails to pay an administrative fine, a hold is placed on the license preventing it from being renewed without payment of both the renewal fee and fine pursuant to BPC section 125.9(b)(5). Ms. Walker stated the Board is currently utilizing the Franchise Tax Board Intercept Program as an additional tool to collect unpaid fines from unlicensed individuals, but the potential sources of recovery are limited to state tax refunds, lottery proceeds, and unclaimed property. She noted staff is in the process of securing a contract with a collection agency and expects the Board's citation collection rate to improve after the contract is executed. She informed the REC that the Board's overall citation collection rate over the past five fiscal years is approximately 59 percent, with collection rates of 81 percent for licensees and 43 percent for unlicensed individuals. She also indicated the Board's collection rate had increased five percent since the last REC meeting.

Mr. Merino commented that the Board's citation collection rate is higher than he had anticipated, particularly for unlicensed individuals, and stated he expects the rate to increase further after the collection agency contract is in place.

Michael Merino moved to recommend to the Board that the 2017-2018 Strategic Plan objective to measure the effectiveness of the Board's citation collection methods as a means of protecting future consumers be carried over to the next Strategic Plan.

Sheran Voigt seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

4. Develop Educational Materials for Newly Licensed Architects to Provide More Information About the Requirements in Order to Avoid Future Violations

Ms. Walker presented this agenda item and described the *New Licensee Information Guide* for new and experienced architects which includes a requirement overview checklist and a more detailed guide to laws and regulations that apply to architects. She advised the *Guide* is currently in draft form and will require DCA legal counsel to formally approve. She asked the REC to review the *Guide* and make a recommendation to the Board.

Ms. Voigt advised she was impressed with the document and felt it was informative and well thought out. Mr. Merino stated the *Guide* was well done and will be very helpful for architects to review. Mr. McGavin added that this would have been very helpful when he was younger instead of relying on mentors and asked if he could share the *Guide* in draft form with a professional practice instructor at California Polytechnic State University, San Luis Obispo. He indicated he felt it is something that architectural students who look forward to being licensed could benefit from also. Other Committee members discussed and agreed with this request. Mr. McGuinness encouraged that the *Guide* be provided to all new Board members.

Mr. Christian suggested that the table found under Agenda Item E.4 on page six regarding License Renewal Process be updated to include “in the odd number of years” to the statement “Licenses expire at midnight on the last day of the licensee’s birth month...” Committee members agreed with this change.

Michael Merino moved to approve the draft New Licensee Information Guide, direct staff to work with DCA legal counsel to obtain approval, and present the document to the Board at its next meeting.

Sheran Voigt seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

5. Determine the Necessity and Implementation Alternatives of a Licensure Fingerprint Requirement as a Means of Protecting Consumers

Ms. Walker presented a slideshow to address the Board’s 2017-2018 Strategic Plan objective to determine the necessity and implementation alternatives of a licensure fingerprint requirement as a means of protecting consumers. She

indicated the objective was under the Enforcement Goal of the Plan which is to protect consumers by preventing violations and enforcing laws, codes, and standards when violations occur. Ms. Walker advised the Board last considered a fingerprint requirement in 2012. She noted that at the time, the Board anticipated a low number of arrest and prosecution records and determined there would be little increased benefit to the public's health, safety, and welfare. It was also noted that current law requires fingerprinting of architects for school projects when the architects would be on campus with students present. The Board also considered there would be an increased cost to licensees and candidates to fulfill this requirement.

Ms. Walker explained that the relevant provisions of law pertaining to convictions that allow the Board to take action against licensees and applicants if a crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued or applied for are: BPC sections 480 (Applicant's Grounds for Denial), 490 (Conviction of Crime), 5552 (Qualifications of Applicant), 5553 (Denial of License; Grounds; Conduct of Proceedings), and 5577 (Conviction of a Crime Substantially Related to the Qualifications, Functions, and Duties of an Architect).

Ms. Walker described the Board's substantial relationship criteria specifically defines what that means; we have a regulation that defines that. She explained, specifically, a crime or act is considered to be substantially related if a substantial degree of evidence is present of the potential unfitness of an architect to perform the functions authorized by their license in a manner consistent with the public health, safety, and welfare. She advised such crimes and acts would specifically include Chapter 3, Division 3, of the BPC which is the *Architects Practice Act (Act)*.

Mr. Pearman mentioned Assembly Bill (AB) 2138 (Chiu) [Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction] if passed will only allow going back five years. Ms. Zuniga responded that it seems quite likely that this bill would pass because it is becoming harder for licensing boards to deny a license based on prior convictions. She advised the sponsors of this legislation think that once someone has served their time and been rehabilitated then they should not be further penalized by a board from employment. She indicated the bill would also prohibit licensing boards from asking applicants to disclose information.

Mr. Pearman added that the Board would not be able to ask for the prior convictions but could discover this information from the fingerprinting. Ms. Zuniga advised the Board could no longer ask for the convictions but could receive the criminal record. She further indicated the applicant would no longer be responsible for the court documents; the Board would need to request and incur the cost for these documents.

Mr. Merino asked whether this could be unconstitutional and may be a violation of the underlying rights of an individual's privacy. He suggested that an applicant may be forced to violate his own right to prevent self-incrimination. Ms. Zuniga advised she had not heard that argument but could be part of the reasoning. Mr. Merino questioned if this had been vetted and worth the Committee's time to take any action.

Ms. Walker indicated that the provisions of AB 2138, assuming that it passes, should be part of the REC discussion considering the necessity of a fingerprint requirement. She stated when the Board receives applications with convictions there is a set of criteria for rehabilitation that needs to be considered which is standard among all boards and takes into account the nature and severity of that act or crime, evidence of any subsequent acts, time that has elapsed since the act or crime, extent to which applicant has complied with their sentence, along with any evidence of rehabilitation that the applicant submits.

Ms. Walker further explained the criteria for rehabilitation of a licensee are very similar and include the nature and severity, total criminal record, time that has elapsed, whether licensee has complied with their sentence, evidence of expungement proceeding pursuant to Penal Code section 1203.4, and any evidence of rehabilitation that the licensee submits.

Ms. Walker noted the way the Board currently finds out about convictions is from applicant and licensee applications and renewals submitted to the Board; in which individuals certify under penalty of perjury whether they have been convicted of a crime. She further explained after those are received, the Enforcement Unit reviews the application along with the conviction information to determine if the applicant/licensee needs to be contacted, if the Enforcement Unit needs certified copies of records, or whether the conviction is related to the practice of architecture. She advised other DCA boards have general statutory

authority for fingerprinting under BPC section 144(a); the Board is not included with such authority.

Ms. Walker explained that Criminal Offender Record Information (CORI) is obtained through fingerprinting; in-state applicants/licensees use Live Scan and visit a Live Scan site such as a police station or another agency to have their fingerprints taken and electronically submitted. She further explained the applicant will pay the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) fee directly to the site and will potentially pay a rolling fee which varies by the site location. Ms. Walker added that out-of-state applicants/licensees unable to visit California to use a Live Scan site will use a fingerprint card at a police station to have fingerprints taken and then the card will be provided to the Board which is then forwarded to DOJ along with the fee for processing.

Ms. Walker pointed out that once Live Scan fingerprints are submitted to DOJ/FBI for a background check, usually a “clear” result will be provided within 48-72 hours if there is no matching record returned. She advised if there is a criminal record it can take up to 30 days or longer due to the fact that the record must be manually reviewed by a technician to ensure a disposition for each arrest.

Ms. Walker indicated that a delay can occur if a record is returned due to incomplete information or if there are issues with the quality of the fingerprint. She further explained an individual may be sent back to be re-fingerprinted; if the fingerprint quality remains unusable then a background check with the individual's name will be done.

Ms. Walker noted that the Board; LATC; Bureau of Automotive Repair; Board of Barbering and Cosmetology; Bureau of Household Goods and Services (formerly the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation); and Bureau for Private Postsecondary Education are the six boards and bureaus that do not have fingerprinting authority.

Mr. Merino asked if fingerprinting was required by the Contractors State License Board (CSLB) and Ms. Zuniga confirmed they did. Ms. Zuniga explained that CSLB has approximately 300,000 licensees and started fingerprinting in 2005. She advised they did not do retroactive fingerprinting on existing licensees; only

new applicants were fingerprinted. She explained CSLB gets a considerable amount of criminal records, but the license denials are very low. Ms. Zuniga further stated they receive subsequent arrest information on licensees that are already fingerprinted, and a separate enforcement unit investigates those cases to determine whether they need to take action against those licensees. The REC discussed the fact that CSLB would get a lot more applicants than the Board would.

Ms. Walker explained most of the boards and bureaus that require fingerprinting include new applicants and all licensees; however, the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), Bureau of Cannabis Control (BCC), CSLB, and Court Reporters Board only fingerprint new applicants. She advised the BCC only has new licensees and applicants at this time.

Ms. Walker highlighted that approximately 17 percent of CSLB applicants have a criminal history record; about 1 percent of those were denied licensure due to criminal convictions, and another 1.6 percent were issued probationary licenses in lieu of denial. She surmised it is a small percentage of those that are received that result in any kind of action.

Ms. Walker advised that the CSLB 2014 Sunset Review adopted a policy opposing retroactive fingerprinting as CSLB believes such a program is unnecessary, costly, and would negatively impact the industry. She acknowledged they only fingerprint new licensees or when a new application is filed.

Ms. Walker stated that BPELSG has an applicant fingerprint requirement; they only fingerprint new applicants or when an application is filed to change to a different branch of engineering. She advised BPELSG issues approximately 2,000 civil engineer licenses per year and only 2 resulted in denial; a very low denial rate.

Ms. Walker noted the Board issues about 700 licenses per year and only denies approximately 1 to 2 of the applications; the majority are not being denied due to any type of criminal record.

Ms. Walker explained that to implement fingerprinting at BPELSG, a Budget Change Proposal (BCP) was approved and they were granted one Office Technician position for the increased workload. She advised they were first given the statutory authority to be able to fingerprint, then they established regulations to provide specific authority to collect fingerprints from applicants and to obtain state and federal criminal history information. She further advised in 2015, they experienced implementation delays to upgrading their computer systems due to DCA resources allocated to BreEZe (online licensing and enforcement system at DCA) at that time.

Ms. Walker examined the fingerprinting practices of architectural boards in other states and found that only the Texas Board of Architectural Examiners required fingerprinting for all their active-status registrants which began on January 1, 2014. Ms. Voigt asked if this was done just once. Ms. Walker responded that you fulfil the requirement once and then you are in the system and then the Board would continue to receive updates. Ms. Walker noted that the Pennsylvania State Architects Licensure Board does not require fingerprinting; however, it requires a criminal background check for each state lived in for the past five years—some states require fingerprinting for the background check.

Ms. Walker stated that the items for the REC to consider today are the necessity of a fingerprint requirement to the protection of the public health, safety, and welfare, and preventing consumer harm, and the limitations of the way we are currently receiving the information. She advised this applies mostly to licensees because there are licensees actively practicing but are not required to notify the Board of a conviction until license renewal which could be up to two years. She suggested the REC consider the impact on candidates and licensees given the low percentage that are actually denied, and the potential impact on the Board's workload and budget. She outlined three potential implementation options: 1) fingerprint all applicants and apply the requirement retroactively to licensees at time of renewal over a specific time; 2) require future applicants only and grandfather existing licensees; or 3) keep the status quo and not require fingerprinting.

Ms. Walker further noted that implementation requirements would include obtaining statutory authority by amending BPC section 144, developing and adopting regulatory changes, seeking approval of a BCP for additional staff/resources, upgrading the system to track criminal information received, and

the staff having access to the data would need to be fingerprinted, along with a background check, and training. Ms. Walker then turned the issue over to the REC to discuss.

Mr. McGuinness wanted to clarify how the Board currently is made aware of criminal records. Ms. Mayer responded that sometimes the Board is notified by other agencies such as another state, but usually at the time of license renewal when the licensee answers “yes” to the conviction question.

Ms. Zuniga discussed the CSLB and how they capture their convictions. She advised once a contractor is arrested or convicted the Board received notification based on the fingerprinting on file.

Mr. Pearman asked what real harm the Board is trying to prevent; do we need to find architects who have committed a violation and who lie about their record? He wondered what the value is if the number is so low. Mr. Merino asked Ms. Zuniga what value was added to CSLB by fingerprinting. Ms. Zuniga explained that she was not employed at CSLB in 2005 when fingerprinting first started but thought the argument was consumer protection because you are allowing licensees access into your home or when a contract is a high dollar amount then consumers want to know about financial crimes or convictions. She advised not all individuals being fingerprinted go into the homes. She explained CSLB licenses a contractor entity which about 50 percent of licensees are sole proprietors, but the others are often a large corporation where the licensee is not the person who is interacting with the client. She also stated CSLB does license home improvement sales people.

Mr. Merino stated this consumer protection concern supports why fingerprinting is valid for the Board because an architect is more likely to enter the home and interact with family members.

Mr. McGuinness stated that this presupposes that everyone is bad when it is a minuscule percentage.

Mr. Williams asked for a past example when fingerprinting would have been helpful with a case by having the fingerprint requirement. Ms. Walker described a case where a licensee was convicted of a crime that involved worker’s compensation fraud and diverting funds from his employees in his role as a

contractor which is very related to architecture and he was convicted of multiple felonies. She advised that a member of the public notified the Board about the conviction and asked why the Board had not done anything to the licensee which triggered a Board investigation. Later, she advised the Board filed an accusation against his license but given the amount of time that had passed from when the conviction occurred to the hearing date the licensee was able to expunge the record and that weakened the case. She indicated the Board was still successful, but the argument was if the Board knew about the conviction earlier, then the Board could have started working on the case faster and perhaps had a stronger case. She acknowledged the licensee was not out of compliance because his renewal was not due until the year following the conviction.

Ms. Walker explained that by not fingerprinting there is a delay until finding out about the convictions and the Board is relying on honesty.

Mr. McGavin mentioned that out of 30,000 licensed architects there is only one example where fingerprinting may have been useful. Mr. Mayer responded that this is the only case the Board knows about, there may be others. She advised the Board has discovered that licensees have falsified their renewal applications and the Board will later find out about it. Ms. Mayer explained there is exposure to potential consumers where there is a risk.

Mr. McGavin does not think there are enough offenses to justify the requirement and feels that option three for the Board to take no action is appropriate.

Mr. Merino questioned what type of crime would trigger a Board investigation. Ms. Walker explained that is done on a case by case basis and Ms. Mayer added it would depend on the circumstances and if the individual was convicted, and if the conviction was substantially related to the practice of architecture. Ms. Zuniga commented that the regulations would define this. Mr. Merino asked if a licensee was convicted of an assault/altercation with a client would that result in an action against the licensee. REC discussion indicated that if the licensee was convicted of assault then most likely an action would occur. Mr. Merino questioned if we let one individual slip through, because we continue to allow the licensee to practice - is that one case too many?

Mr. McGuinness added that on a positive note, if a licensee is convicted of a crime then the Board would be alerted because of the fingerprinting requirement.

The REC discussed the statistics further.

Mr. McGuinness commented that architects are already professionals, we are never going to get rid of all the bad guys. He stated he believes there is a reasonable question included on the renewal application, "Have you been convicted...?"

Ms. Walker clarified that the fingerprint record stays in the system and the Board would immediately receive a notification for any subsequent arrest or conviction.

Ms. Mayer commented that self-reporting may go away if the bill passes. She advised the Board could be prohibited from even asking the question about prior convictions on applications. REC discussion indicated that if the bill passes then it may be illegal to request this conviction information.

Ms. Mayer added that the new law will reduce what convictions the Board may take action on, but it will not take it away completely. She explained it will amend criteria to be used up to seven years. Ms. Zuniga confirmed that the bill may limit that number of convictions that can be used to take action to deny a license.

Ms. Voigt advised she has two jobs that require fingerprinting; real estate broker and notary business. She explained notary fingerprinting is required every four years and she has very smooth fingertips, so this can be a hassle when it cannot be read. Ms. Mayer added that an architect would only need to be fingerprinted once. Ms. Voigt added the fingerprinting is beneficial because it would protect the Board and show that the Board has gone the extra step to protect our citizens. Mr. McGuinness commented the Board would be building up staff and more money would be spent by the Board and licensees.

Mr. McGavin added that as a school architect he is required to be fingerprinted and that it makes sense because he is on campus with students. Mr. Merino questioned why, when school architects are being fingerprinted; why not use caution across the spectrum of the profession and fingerprint everybody? Mr. Merino argued that architects work in a home where children can be present.

Mr. McGavin stated that we cannot protect people from everything; we are just building a bigger bureaucracy without any statistics to support the need. He

argued that even CSLB with a huge number of contractors did not have big statistics to prove the need for fingerprinting. He added that he had a pretty big firm and that often he sent unlicensed individuals to meet with clients.

Mr. Christian commented that he has not talked to AIACC leadership about this topic; but if there is an increased cost for licensees then there needs to be good justification, with benefits to the public, to infringe on the licensee privacy and rights. He used SB 721 as an example, once a tragic event occurred in Berkeley and a balcony fell, strict new legislation was proposed to test every exterior elevated element.

Mr. Merino commented that fingerprinting dissuades a licensee from doing something they should not be doing; and gives licensees a second thought before acting.

Mr. Williams questioned why only new applicants should be fingerprinted, it should apply to all licensees; everyone has the potential to be arrested or convicted.

REC discussed that working 8-12 years to obtain a license in this industry should be enough of a deterrent not to commit a crime.

Ms. Mayer commented that everything the Board's Enforcement Program does is based around consumer protection and the resultant number of accusations and denials is low in comparison to the size of the program and license population. She added we are one of a few boards within DCA that do not require fingerprinting. She cautioned with all the current criminal activity, fingerprinting would help prevent someone from slipping through such as Mr. Merino suggested.

Mr. Pearman supports fingerprinting because the potential cost to the Board by not implementing it could be far costlier from a lawyer's perspective. Mr. Merino added there is a little bit of cost, but it only takes one architect to slip through. Mr. Pearman suggests minimizing the cost by only fingerprinting new applicants. Mr. Williams added that would be short-changing by only fingerprinting new applicants and not all licensees.

Mr. McGuinness commented that we need to consider delays; indeterminate amount of time to receive the criminal record because of DOJ or otherwise. Ms. Mayer suggested implementing fingerprinting during the eligibility check point and then by the time the applicant was applying for licensure the Board would be aware of any criminal record. Ms. Zuniga added that we would need to review other boards' processes to avoid delays. Ms. Mayer suggested giving the applicant the choice of when to submit payment for fingerprinting where they can pay at the very end, but it may delay the issuance of the license.

Mr. McGuinness reiterated that over 30 boards in California require fingerprinting, but the other 48 states do not.

Ms. Zuniga stated that the Legislature's viewpoint has shifted more recently to focus on what is being done to the applicant and not making it any harder on them. She advised if the Board supports fingerprinting, it would need to go to the Legislature for approval.

REC discussion showed that there is a benefit to fingerprinting, but they were unsure if the benefit is significant enough because all the other states do not require it.

Gary McGavin moved to continue with our current Board processes and react to any new legislation when it is introduced.

Matthew McGuinness seconded the motion.

Members McGavin, McGuinness, Merino, Voigt, and Committee Chair Williams voted in favor of the motion. Member Pearman abstained. The motion passed 5-0-1.

F. Discuss and Possible Action on Alternative Methods of Disclosure to Consumers That Architects are Licensed and Regulated by the Board

Ms. Walker presented this agenda item and reminded the REC that the Board's 2015-2016 Strategic Plan included an objective to identify and pursue needed statutory and regulatory changes so laws and regulations were consistent with current architectural practice, including amending the written contract requirement (BPC section 5536.22). She advised there are several proposed additions to the written contract requirement and most recently staff had brought forward adding a

statement identifying the ownership of the use of instruments of service prepared by the architect as well as a notification to the client that the architect is licensed by the Board in that language. She reminded the members that at the November 2016 REC meeting, the REC recommended to the Board that it approve the proposed language with the words, “concerns about” instead of “complaints concerning” within that language. She advised the highlighted language in Attachment 3 was discussed at the December 15, 2016 Board meeting where the Board approved the proposed language to amend BPC section 5536.22 with the exception of the proposed subsection (a)(9); the Board returned the subsection (a)(9) to the REC for further study and consideration. She further explained the Board was concerned that this subsection would apply to all contracts including public agencies and it might not be the right vehicle for disclosure. Ms. Walker then turned this item over to the REC for discussion with a recommendation that the Board either pursue additional methods of disclosures to consumers or keep the status quo with the regulation.

Mr. Pearman explained the language directs the consumers where to complain about their architect. He suggested including language that states the architect is licensed by CAB and provide the Board’s address.

Mr. McGuinness stated that he is opposed because he receives a lot of electronic contracts where he can only strike lines and sign; there is no additional space for comments. He indicated if he had to add such information later to contracts, it would draw a huge amount of attention to the language. In addition, he advised these consumers who use electronic contracts are well educated about the Board.

Mr. McGavin asked if those contracts could be converted to PDF and make the changes in Acrobat or print the contract and make the changes by hand.

Mr. McGuinness asked if this will be a battle with every single contract; how are we protecting the consumer when a burden is placed on the architect to provide information that should already be public knowledge.

Ms. Mayer stated that LATC has an exclusion regarding a public agency contract (BPC section 5616 Landscape Architecture Contract – Contents, Notice Requirements).

Ms. Walker added that LATC and BPELSG have a written contract provision, subdivision (a) which outlines what needs to be in the contract and subdivision (b) outlines when you do not need to meet that requirement. She advised there is an exemption while dealing with a public agency, that is not in our proposed language.

Mr. Merino commented that subsection (a)(9) highlights the anticipation for problems and the option to initiate a complaint against an architect which could have been handled otherwise.

Mr. McGuinness commented that many members of the public are not aware of the Board.

Mr. Merino stated that he is most concerned about the wording “Any questions or concerns about” an architect may be referred to the California Architects Board and suggested replacing it with “located at” to simply show where the person is licensed.

Ms. Mayer added that the revised language currently includes “any questions or concerns about” instead of “complaints.” Ms. Mayer also recommended to add a provision for a public agency.

Mr. Christian clarified that subsection (b) in the written contract does not apply to public contracts.

Mr. Merino stated that most public entities provide the architect with the contract.

Ms. Zuniga commented that there has not been a problem with this language. Ms. Walker added that during the review of a settlement report regarding a written contract some of the provisions of (a) might be missing such as a license number or architect’s address. She advised this is a violation, but we do not commonly cite for it; usually it results in an advisory letter to the licensee.

Ms. Mayer explained that public agency contracts are sometimes forced upon an architect and the architect would have to add an addendum for any revisions.

Michael Merino moved to recommend to the Board that it amend the language in (a)(9) to remove “Any questions or concerns about an architect may be referred to the California Architects Board,” and replace with “located at” and refer to the Board to consider adding an exclusion for public agency contracts.

*[The proposed language for subsection (a)(9) would read:
“Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834.”]*

Sheran Voigt seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

G. Adjournment

The meeting adjourned at 12:16 p.m.

AGENDA ITEM E: ENFORCEMENT PROGRAM UPDATE

Background Summary

Attached is the Enforcement Program Update, which is a synopsis of California Architects Board (Board) and Enforcement Program activities and projects of interest to the Regulatory and Enforcement Committee (REC).

Also included in this item are the Enforcement Program Report (fiscal years [FY] 2016/17 through 2018/19) and an overview of Citations and Disciplinary Actions from August 1, 2018 through June 30, 2019 (reporting period since the last REC meeting).

Attachment(s)

1. Enforcement Program Update (August 2018 through June 2019)
2. Citations (August 1, 2018 through June 30, 2019)
3. Disciplinary Actions (August 1, 2018 through June 30, 2019)

ENFORCEMENT PROGRAM UPDATE

August 2018 through June 2019

Update on the New Licensee Information Guide Background Summary

The California Architects Board's 2017-2018 Strategic Plan contained an objective assigned to the Regulatory and Enforcement Committee (REC) to develop educational materials for newly licensed architects to provide more information about the requirements to avoid future violations.

In order to further educate new licensees about the *Architects Practice Act (Act)*, staff created a *New Licensee Information Guide (Guide)* outlining the: license renewal process and coursework provisions; mailing address and business entity reporting requirements; stamp and signature requirement; notification requirements for convictions, disciplinary actions, and judgments, settlements, or arbitration awards; most common violations of the *Act*; and architect consultants' education and information program.

Staff worked with the Department of Consumer Affairs Office of Publications, Design & Editing on the graphic design and format of the publication.

The Board's *Guide* was published in April 2019. This *Guide* is distributed to each newly licensed architect with the initial license and posted on the Board's website under *Publications*.

Contract with Cedars Business Services, LLC for Debt Collection Services

The Board's 2017-2018 Strategic Plan contained an objective to "measure the effectiveness of the Board's citation collection methods as a means of protecting future consumers." Staff worked collaboratively with the Department of Consumer Affairs' Business Services Office to develop a scope of work to be performed by the debt collection agency that fits our needs. Additionally, a breakdown of the estimated administrative fines, cost recoveries, and potential litigation services were provided for bidding purposes.

A Request for Quote with an invitation to bid was sent to seven California small business debt collection vendors on the Department of General Services approved vendor list. Three vendors responded with quotes and the lowest bidder, Cedars Business Services, LLC was selected according to small business preference guidelines. The collection agency contract is a combined contract in which the agency will be providing debt collection services to collect outstanding administrative fines and cost recoveries for both Landscape Architect Technical Committee (LATC) and the Board. The contract was approved and is effective April 9, 2019 through April 8, 2022. Staff are working with Cedars to clarify the expectations as outlined in the contract, receive training on the collection agency portal, and provide all required data for outstanding accounts. The Board will be provided future updates on the effectiveness of the collection efforts.

Outreach

On February 15, 2019, the Board's architect consultants made a presentation at the 2019 American Institute of Architects (AIA) San Diego Large Firm Roundtable and discussed how they provide a bridge between the *Act* and real world of practice. The consultants further explained they respond to practice related questions from licensees, candidates building officials, consumers, attorneys, and Board staff; serve as expert witnesses; and assist Deputy Attorneys General in hearings before Administrative Law Judges. On February 28, 2019, Board staff Timothy Rodda, Examination/Licensing Analyst, and Robert Chase, Architect Consultant, also provided a presentation to the AIA, Central Valley Chapter at Cosumnes River College. They explained the Board's licensing requirements and the role of an architect. More than 30 individuals attended both presentations.

The 2019 Annual Business Meeting (ABM) of the California Building Officials Association (CALBO) was held the week of March 17, 2019, at the Mission Bay Spa and Marina in San Diego. This was the 57th annual meeting of the organization. As we have for the past 20 years, the Board sponsored a vendor table as part of the Vendor/Exhibitor's Program that was held during the key meeting days of the event. The Board's architect consultants Bob Chase and Bob Carter staffed the Board's table. This year's program followed the new shortened format adopted at the 2013 ABM that worked very well for all the vendors.

The official attendance roster listed 270 attendees representing various building departments from throughout the state. In addition, there were service vendors that provide staff and support to various agencies and jurisdictions. The Board had over 25 documented direct contacts that included in depth conversations and numerous quick visits with attendees. Once again, the CALBO leadership came by our table to give us, the Board, a special thank you for participating and continuing our history of support to the organization.

We did not receive formal requests for chapter visitations but discussed the prospect of such with several attendees. There were three requests for a supply of our *Consumer's Guide to Hiring an Architect* and the *Consumer Tips for Design Projects* for use on their public counters. One box, consisting of 300 each, were requested and sent to each city: Burbank, La Quinta, and Palm Springs.

On May 3, 2019, the Board's enforcement staff attended a Senior Scam Stopper meeting in Paradise. The town of Paradise was destroyed in November 2018 by a natural wildfire named Camp Fire and has been declared as the Deadliest Wildfire in California. During this meeting staff discussed how the community can protect themselves from unlicensed practice and the role of a licensed architect. The Board's enforcement staff disseminated various Board publications such as the: *Consumer's Guide to Hiring an Architect*, *Consumer Tips for Design Projects*, and other consumer related materials. The meeting was a collaborative effort with the Contractors State License Board.

Subject Matter Expert Contract

The California Architects Board (Board) began recruitment efforts for Subject Matter Expert (SME) on July 5, 2019, to provide case review, technical evaluation, and courtroom testimony as needed for the Board's Enforcement program. Existing Board staff and departmental investigators require technical assistance to handle the complex complaints and inquiries.

The Enforcement Unit has received approximately 50 applications from interested parties. It is anticipated that numerous SME's throughout the state will be retained under a three-year contract. The SME hourly rate will be fixed at \$90 per hour for case review and \$110 per hour for courtroom testimony. The contracted SME will assist Board staff evaluate consumer complaints, provide guidance to the Division of Investigation and Attorney General in technical matters, act as an expert witness, and testify at disciplinary hearings and criminal cases regarding matters within the jurisdiction of the [Architects Practice Act](#).

The SME candidate must meet the following minimum qualifications: 1.) reside in California; 2.) possess an active license to practice architecture in California, and have no history of enforcement and/or administrative actions; 3.) have been in practice, as defined in BPC section 5500.1, within California for the last five years; 4.) have experience preparing expert analysis for, or testifying in a minimum of three architecture-related civil or administrative law matters; and 5.) be available to respond to technical inquiries from Board staff approximately one hour per week and perform a timely review (typically within 30 days) of at least three cases per year.

If awarded a contract, the SME shall agree not to: 1.) use their status as a Board expert in any advertising or sales promotion; 2.) solicit for completion of any work that they investigate as a Board expert; 4.) falsify any official documents; 5.) give false or incomplete testimony; 6.) release confidential Board information; and 7.) accept employment with another state agency.

The Board SME program is being managed by Alicia Hegje and Michael Sganga.

Regulatory Proposals

CCR section 152.5 (Contest of Citations, Informal Conference) - Staff developed proposed regulatory language to amend CCR section 152.5 to allow the Executive Officer (EO) to delegate to a designee, such as the Assistant Executive Officer or the Enforcement Program Manager, the authority to hold an informal conference with a cited person and make a decision to affirm, modify, or dismiss a citation. The proposed regulatory language also contains additional revisions to CCR section 152.5, including: changing the deadline for requesting an informal conference for consistency with the deadline for requesting a formal administrative hearing; authorizing the EO or a designee to extend the 60-day period for holding the informal conference for good cause; and clarifying that the decision to affirm, modify, or dismiss a citation is made following (rather than at the conclusion of) an informal conference, and a copy of the decision will be transmitted to the cited person within 30 days after the conference. Staff

submitted this language for inclusion in Senate Bill (SB) 608, the Board's sunset bill, rather than proceeding with regulations.

CCR section 154 (Disciplinary Guidelines) - The Board's 2013 and 2014 Strategic Plans included an objective to review and update the Board's *Disciplinary Guidelines*. The REC reviewed recommended updates to the *Disciplinary Guidelines* in 2013 and 2014. Additionally, at the request of the REC, staff consulted with a representative of American Institute of Architects California Council (AIACC) to address a proposed modification to the "Obey All Laws" condition of probation. The Board approved the proposed regulatory language to amend CCR section 154 at its June 10, 2015 meeting and delegated the authority to the EO to adopt the regulation, provided no adverse comments are received during the public comment period, and to make minor technical or non-substantive changes, if needed.

At its March 1, 2018 meeting, the Board reviewed and approved the proposed regulatory changes to the *Disciplinary Guidelines* and CCR section 154 as modified, directed the EO to make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and, if no adverse comments are received during the 45-day comment period and no hearing is requested, adopt the proposed regulatory changes, as modified.

As a result of guidance from DCA, staff made additional changes to the *Disciplinary Guidelines* due to the passage of AB 2138 as well as proposed changes to CCR sections 110 (Substantial Relationship Criteria) and 110.1 (Criteria for Rehabilitation) including two options. The Board adopted the proposed recommended changes for CCR section 110 and option 1 of section 110.1 and approved the revised *Disciplinary Guidelines* at its February 27, 2019 meeting. On March 8, 2019, the proposed regulation was submitted to DCA Legal for an initial analysis as part of the regulatory proposal process. Staff is proceeding with the regulatory proposal process and in August 2019 the regulatory change package will be submitted to DCA Legal for pre-review.

Written Contract (BPC section 5536.22)

The Board previously approved a legislative proposal to amend BPC section 5536.22 sought to clarify that the following elements are needed in architects' written contracts with clients for professional services: 1) a description of the project; 2) the project address; and 3) a description of the procedure to accommodate contract changes. The Senate Business, Professions and Economic Development Committee (BP&ED) staff determined that the proposal was substantive and, as such, would need to be included in another bill. The Board subsequently approved a revision to one suggested amendment, as well as an exemption from the written contract requirements for public contracts.

The Board's proposal to amend BPC section 5536.22 was presented to the Legislature for consideration via the "New Issues" section of the Sunset Review Report, and the proposed changes are included in SB 608.

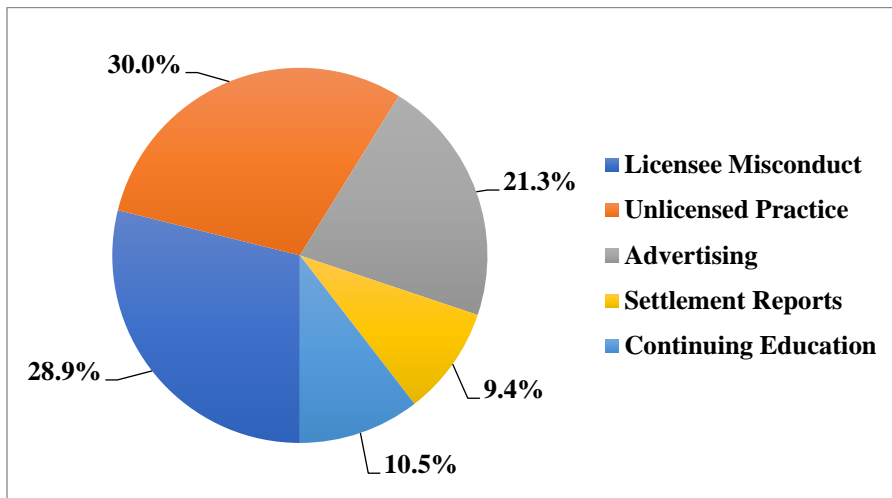
<u>Enforcement Statistics</u>	<u>Current</u> June 2019	<u>Prior Month</u> May 2019	<u>FYTD</u> 2018/19	<u>Prior FY</u> 2017/18
Complaints				
Received/Opened	51 (0)	38 (0)	310 (2)	380 (2)
Closed:	47	44	314	334
Average Days to Close:	62 days	165 days	188 days	97 days
Pending:	144	140	150*	161
Average Age of Pending:	248 days	243 days	230 days*	161 days
Citations				
Issued:	1	5	48	65
Pending:	2	2	32*	0
Pending AG: †	0	1	3*	0
Final:	8	1	55	58
Disciplinary Actions				
Pending AG:	4	4	6*	4
Pending DA:	0	0	1*	1
Final:	0	0	1	3
Continuing Education (\$5600.05)**				
Received/Opened:	11	11	35	32
Closed:	8	2	24	30
Pending:	3	9	11*	10
Settlement Reports (\$5588)**				
Received/Opened:	2	5	24	14
Closed:	2	3	15	14
Pending:	5	7	9*	0

* Calculated as a monthly average of pending cases.

** Also included within "Complaints" information.

† Also included within "Pending Citations."

Types of Complaints Received FYTD 2018/19 (as of June 30, 2019)



Closure of Complaints by FY

Type of Closure	FYTD 2018/19*	FY 2017/18	FY 2016/17
Cease/Desist Compliance	10	9	67
Citation Issued	43	64	30
Complaint Withdrawn	10	8	6
Insufficient Evidence	16	14	8
Letter of Advisement	120	157	99
No Jurisdiction	13	15	13
No Violation	74	40	52
Referred for Disciplinary Action	4	5	4
Other (i.e., Duplicate, Mediated, etc.)	30	25	12

* FYTD reflects data as of June 30, 2019.

Most Common Violations The majority of complaints received are filed by consumers for allegations such as unlicensed practice, professional misconduct, negligence, and contract violations, or initiated by the Board upon the failure of a coursework audit.

During FY 2018/19 (as of June 30, 2019), 48 citations with administrative fines became final with 67 violations of the provisions of the Act and/or Board regulations. The most common violations that resulted in enforcement action during the current and previous two fiscal years are listed below.

Business and Professions Code (BPC) Section or California Code of Regulations (CCR) Section	FYTD 2018/19*	FY 2017/18	FY 2016/17
BPC § 5536(a) and/or (b) – Practice Without License or Holding Self Out as Architect	25.4%	8.1%	38.0%
BPC § 5536.1(c) – Unauthorized Practice	0%	3.2%	0%
BPC § 5536.22(a) – Written Contract	6%	1.6%	14.0%
BPC § 5584 – Negligence or Willful Misconduct	6%	1.6%	4.0%
BPC § 5600.05(a)(1) and/or (b) – License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements**	37.3%	77.4%	16.0%
CCR § 160(b)(2) – Failure to Respond to Board Investigation	7.5%	4.8%	6.0%

* FYTD reflects data as of June 30, 2019.

** Assembly Bill 1746 (Chapter 240, Statutes of 2010) became effective January 1, 2011 and amended the coursework provisions of BPC section 5600.05 by requiring an audit of license renewals beginning with the 2013 renewal cycle and adding a citation and disciplinary action provision for licensees who provide false or misleading information.

Final Citations

August 2018 – June 30, 2019

Ronald A. Jones

San Francisco—The Board issued a one-count citation that included a \$500 administrative fine to Ronald A. Jones, architect license number C-25629, for an alleged violation of Business and Professions Code section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Jones certified false or misleading information on his 2018 License Renewal Application. Jones paid the fine, satisfying the citation. The citation became final on August 31, 2018.

Kirk Edward Van Cleave

Rancho Mission Viejo—The Board issued a one-count citation that included a \$500 administrative fine to Kirk Edward Van Cleave, architect license number C-25012, for an alleged violation of BPC section 5600.05(b) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Van Cleave failed to maintain records of completion of the required coursework for two years from the date of license renewal and failed to make those records available to the Board for auditing upon request. The citation became final on September 5, 2018.

Scott J. Glass

Brooklyn, New York—The Board issued a one-count citation that included a \$500 administrative fine to Scott J. Glass, architect license number C-31542, for an alleged violation of Business and Professions Code (BPC) section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Glass certified false or misleading information on his 2018 License Renewal Application. Glass paid the fine, satisfying the citation. The citation became final on September 14, 2018.

Jeffrey Scott Coffman

Fullerton—The Board issued a one-count citation that included a \$750 administrative fine to Jeffrey Scott Coffman, architect license number C-25115, for an alleged violation of BPC section 5600.05(b) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Coffman failed to maintain records of completion of the required coursework for two years from the date of license renewal and failed to make those records available to the Board for auditing upon request. The citation became final on October 2, 2018.

Wade Donovan Ellenberger

Brentwood—The Board issued a two-count citation that included a \$1,500 administrative fine to Wade Donovan Ellenberger, architect license number C-29201, for alleged violations of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False

or Misleading Information on Coursework on Disability Access Requirements) and California Code of Regulations, title 16, section 160(b)(2) (Rules of Professional Conduct). The action alleged that Ellenberger failed to provide documentation to the Board from the course provider upon a Board audit and failed to respond to the Board's requests for information regarding an investigation within 30 days. The citation became final on October 2, 2018.

Johnnie P. Loy

Orlando, Florida—The Board issued a one-count citation that included a \$750 administrative fine to Johnnie P. Loy, architect license number C-29990, for an alleged violation of BPC section 5600.05(b) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Loy failed to maintain records of completion of the required coursework for two years from the date of license renewal and failed to make those records available to the Board for auditing upon request. The citation became final on October 2, 2018.

Richard Anthony Barnes

Bonita Springs, Florida—The Board issued a one-count citation that included a \$750 administrative fine to Richard Anthony Barnes, architect license number C-14049, for an alleged violation of Business and Professions Code (BPC) section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Barnes failed to provide documentation to the Board from the course provider upon an audit of his 2017 License Renewal Application. The citation became final on October 12, 2018.

John Carabin Braly

Los Angeles—The Board issued a one-count citation that included a \$1,000 administrative fine to John Carabin Braly, dba Instructures Design and Build, Inc., an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that on or about December 4, 2017, Braly's company website, instructuresco.com, offered "Architectural Design & Planning for Remodeling and New Construction" and "precise Architectural, Structural, and MEP drawings." In addition, on or about July 20, 2018, through his various advertisements on the Internet at angieslist.com, getfave.com, manta.com, superpages.com, yelp.com, and youtube.com, Braly described his business as "architects," "Architectural Designer," and "Professional Architect"; described his services and specialties as "Architectural Design," "Architectural Design Service," "Architectural Designer," "custom architectural design," "Professional Architect," and "Professional Building Inspector Architect"; and listed his business under the categories "Architect," "Architects," "Architects and Builders Services," "Architects and Engineers," and "Architectural Design Service." The citation became final on October 12, 2018.

Sonia Ekmakji

Woodland Hills—The Board issued a one-count citation that included a \$1,000 administrative fine to Sonia Ekmakji, dba Archi Tec, Archi.Tec, Archi-Tec, ArchiTec, and Architec1, an unlicensed individual, for alleged violations of BPC section 5536(a)

(Practice Without License or Holding Self Out as Architect) and California Code of Regulations (CCR), title 16, section 134(a) (Use of the Term Architect). The action alleged that on or about October 5, 2017, Ekmakji prepared a proposal to provide plans for a residential project in Valencia, California, which identified her business name as “ARCHI-TEC.” Ekmakji subsequently prepared a set of drawings for the project that were submitted to the City of Santa Clarita Building and Safety Division in or around December 2017 to obtain a building permit. Ekmakji’s title block on the drawings stated “ARCHITEC DESIGN & REMODEL” and included the email address “ARCHITEC1@YAHOO.COM.” In addition, on or about January 5, 2018, Ekmakji was issued a business tax registration by the City of Los Angeles under the business name “ARCHI TEC” and on or about January 10, 2018, Ekmakji submitted her business card to the Board, which included the business name “ARCHI.TEC” and the email address “ARCHITEC1@YAHOO.COM.” Furthermore, on or about July 20, 2018, Ekmakji’s advertisement on the Internet at yellowpages.com under the business name “Architec1 - Sonia Ekmakji” was categorized under “Architectural Designers.” Ekmakji also used the business names “Archi Tec,” “Archi.Tec,” “Archi-Tec,” “ArchiTec,” and “Architec1,” which include an abbreviation or confusingly similar variation of the term “architect,” without an architect who is in management control of the services that are offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. Ekmakji paid the fine, satisfying the citation. The citation became final on November 5, 2018.

Geoffrey George Fujimoto

Sacramento—The Board issued a one-count citation that included a \$1,500 administrative fine to Geoffrey George Fujimoto, dba GFD & Associates, an unlicensed individual, for alleged violations of BPC section 5536(a) and (b) (Practice Without License or Holding Self Out as Architect) and CCR, title 16, section 134(a) (Use of the Term Architect). The action alleged that on or about February 25, 2018, Fujimoto executed a written contract to provide construction documents for a commercial project located in Sacramento, California. The written contract: included “ARCHITECTURAL SERVICES” and “ENVIRONMENTAL DESIGN/ARCHITECTURE” in Fujimoto’s letterhead for his firm, GFD & Associates; stated “SERVICES PROVIDED: ENVIRONMENTAL DESIGN/ARCHITECTURE”; referenced a “STAMP ON SUBMITTAL”; and listed fictitious “CONSULTANT LIC. G1726478” above his signature. On or about April 2, 2018, the drawings Fujimoto prepared for the project were submitted to the City of Sacramento Community Development Department with a planning entitlement application. The title block of the drawings included the term “ARCHITECTURE” in the logo for Respondent’s firm, GFD & Associates, and stated “-----, ARCHITECT,” “C -----,” and “CONTACT: GEOFF FUJIMOTO.” Fujimoto also affixed a stamp to the drawings, which read: “INDENDED ARCHITURE (sic);” “GEOFFREY FUJIMOTO”; “G-1720479”; “RENEWAL DATE 04/30/2018”; and “STATE OF CALIFORNIA.” The stamp was circular in shape and of a design used by California licensed architects pursuant to CCR, title 16, section 136. In addition, on or about May 29, 2018, Fujimoto submitted his business card to the Board, which stated “Environmental Design/Architecture” below his name, with the term “Architecture” crossed out. Furthermore, on or about July 26, 2018, Fujimoto’s LinkedIn profile described him as an “Associate Architect” and stated his skills include “Architects,”

“Architectural Drawings,” and “Computer Architectural Design.” Fujimoto also used the business name “GFD & Associates,” which included the terms “architectural” and “architecture” in its description of services, without an architect who is in management control of the services that are offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. The citation became final on November 5, 2018.

Eric Edward Merlo

Stockton—The Board issued a one-count citation that included a \$500 administrative fine to Eric Edward Merlo, architect license number C-15361, for an alleged violation of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Merlo certified false or misleading information on his 2017 License Renewal Application. Merlo paid the fine, satisfying the citation. The citation became final on November 15, 2018.

Robert Francis Huddy

Studio City—The Board issued a one-count citation that included a \$1,500 administrative fine to Robert Francis Huddy, architect license number C-20474, for an alleged violation of BPC section 5584 (Negligence). The action alleged that after executing a written contract to provide schematic design, design development, and construction documents for a commercial project located in Los Angeles, California, Huddy failed to respond to his client’s requests for information regarding the project and misrepresented the level of completion of his architectural drawings. The citation became final on November 19, 2018.

Marshall Balfe

Sebastopol—The Board issued a one-count citation that included a \$1,000 administrative fine to Marshall Balfe, architect license number C-9674, for an alleged violation of Business and Professions Code (BPC) sections 5583 (Fraud and Deceit) and 5584 (Willful Misconduct). The action alleged that Balfe executed a written contract with a consulting architect wherein the consulting architect agreed to provide consultation and drafting services to Balfe for various projects at an hourly rate. However, Balfe failed to comply with the terms of the written contract, pay the consulting architect in full for services rendered in support of Balfe’s three projects, and adhere to his proposed payment plans. The citation became final on November 27, 2018.

Fedros Samadani

Los Gatos—The Board issued a two-count citation that included a \$1,500 administrative fine to Fedros Samadani, architect license number C-25068, for alleged violations of BPC sections 5536.22(a) and (a)(3), (4), and (5) (Written Contract) and 5584 (Willful Misconduct) and CCR, title 16, section 160(b)(2) (Rules of Professional Conduct). The action alleged that Samadani failed to execute a written contract with his client prior to commencing professional services for a residential project located in San Bruno, California, and failed to include his license number, a description of the procedure that he and the client will use to accommodate additional services, and a description of the

procedure to be used by either party to terminate the contract, in the written contract he prepared for the project. Samadani received a total of \$5,120 in prepaid fees from the client for structural engineering services and made one payment of \$800 to a structural engineer to review and provide input on conceptual plans, leaving a balance of \$4,320 in prepaid structural design fees. However, after the structural engineer passed away, Samadani failed to either provide the client with the structural engineering services for which he was paid or refund the prepaid fees for those services to the client. Samadani also failed to respond to the Board's requests for information regarding an investigation within 30 days. The citation became final on November 27, 2018.

Masum Mohammad Aziz

Newport Beach—The Board issued a one-count modified citation that included a \$500 administrative fine to Masum Mohammad Aziz, architect license number C-24129, for an alleged violation of Business and Professions Code (BPC) section 5536.22(a) (Written Contract). The action alleged that on or about June 29, 2015, Aziz failed to execute a written contract with his client prior to commencing professional services for a residential project located in Newport Beach, California. Aziz paid the fine, satisfying the citation. The citation became final on January 24, 2019.

William R. Edwards

Newport Beach—The Board issued a three-count citation that included a \$3,000 administrative fine to William R. Edwards, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect) and California Code of Regulations (CCR), title 16, section 134(a) (Use of the Term Architect). On or about May 31, 2013, Edwards' architect license number C-18607 expired. The action alleged that while Edwards' license was expired, he maintained a business card, contract, billing invoices, and website with a business name, "Edwards Architectural Company," and wherein he described his services as "Architecture." Edwards also used the business name "Edwards Architectural Co." without having a California licensed architect who was in management control of the services that were offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. The citation became final on January 24, 2019.

Nilton M. Acosta

South Gate—The Board issued a one-count modified citation that included a \$750 administrative fine to Nilton M. Acosta, dba Property & Home Design, Inc., an unlicensed individual, for alleged violations of Business and Professions Code (BPC) section 5536(a) (Practice Without License or Holding Self Out as Architect) and California Code of Regulations (CCR), title 16, section 134(a) (Use of the Term Architect; Responsible Control within Business Entity). The action alleges Acosta presented his client with a contract, an invoice, and an employee company email signature block that included "ARCHITECTURE+ENGINEERING" in the logo and described the company's services as "Architectural Plans, Engineering, and Title 24." Acosta's business card, letterhead, storefront sign, and banner offered "Architecture Design Engineering" services for residential, commercial, and industrial projects and included "ARCHITECTURE+ENGINEERING" in his company's logo. Acosta advertised

with Facebook, LinkedIn, and Yelp profiles wherein he identified himself as an “architect,” described his company’s services as “architectural,” “architectural design,” “architecture,” and “arquitectura,” and categorized his company under “Architects.” Acosta also used the business name “Property & Home Design, Inc.,” without having an architect who was in management control of the services that were offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. Acosta paid the fine, satisfying the citation. The citation became final on February 5, 2019.

Analiza Fuentes

Commack, NY—The Board issued a one-count citation that included a \$1,000 administrative fine to Analiza Fuentes, dba Studio7, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that on or about August 16, 2018, Fuentes’ Levo profile described her as providing “architecture + photography,” included the word “architectural” to describe her services and provided the title of “Project Architect.” In addition, Fuentes’ Buildshop profile was categorized under “Architects” and included “Architects” under Services Offered. Fuentes’ Houzz profile was also categorized under “Architects” and her Behance and Poplar profiles were categorized under “Architect.” Furthermore, on or about September 5, 2018, Fuentes’ LinkedIn profile described her as a “Project Architect,” stated she is an “Experienced Architectural Designer and Project Manager with a demonstrated history of working in the architecture & planning industry,” and stated her specialties include “Architectural Design,” “Architecture,” and “Interior Architecture.” The citation became final on February 13, 2019.

Eric Lee

Los Angeles—The Board issued a one-count citation that included a \$1,500 administrative fine to Eric Lee, dba Kahn Design & Development, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect) and CCR, title 16, section 134(a) (Use of the Term Architect; Responsible Control within Business Entity). The action alleged that Lee and his company Kahn Design & Development provided a “Work Authorization Agreement” to clients for a single-family residential project located in Los Angeles. The services offered in the agreement included “architectural design and drawing, architectural & structure design review process, prepare architectural and consultation documents with calculations and drawings, and city & permit process of the architectural design review” and included hourly rates provided by the “Principal Architect” and “Project Architect.” On or about December 6, 2017, the client provided Lee with a check in the amount of \$3,000 as a retainer fee at the time of the contract for the “existing house reinforce drawing and permit processing,” which included architectural design and drawings. Additionally, Lee used the business name “Kahn Design & Development,” which included the term “architectural” in its description of services, without having an architect who was in management control of the services that were offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. The citation became final on February 14, 2019.

Marios A. Savopoulos

San Clemente—The Board issued a one-count citation that included a \$500 administrative fine to Marios A. Savopoulos, architect license number C-24460, for an alleged violation of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Savopoulos certified false or misleading information on his 2018 License Renewal Application. The citation became final on February 25, 2019.

Millard Arterberry

Sausalito—The Board issued a one-count modified citation that included a \$750 administrative fine to Millard Arterberry, dba Arterberry Design, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect; Misdemeanor) and CCR, title 16, section 134(a) (Use of the Term Architect; Responsible Control within Business Entity). The action alleges Arterberry executed an “Agreement for Services,” which included statements that “Architectural Services Include” and “Arterberry Design agrees to provide all architectural services as described above” for the remodeling of an existing single-family residence located in Sausalito, California. In Arterberry’s Nextdoor profile, he described himself as a “Local Architect” and included the statement, “I am a local architect living in Hurricane Gulch [Sausalito, California],” and provided the title of “Architect.” Arterberry’s two personal LinkedIn profiles included the terms “Architectural Design” and “Architecture” under Featured Skills & Endorsements, his Archinect profile included “Architecture” under Areas of Specialization; and his Houzz profile under the business name Millard Arterberry Custom Home Design categorized him under “Architects” and included “Architectural Design” and “Architectural Drawings” under Services Provided. Arterberry used the business name “Arterberry Design,” which included the term “architectural” in its description of services, without having an architect who was in management control of the services that were offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. Arterberry paid the fine, satisfying the citation. The citation became final on February 26, 2019.

Stuart A. Royalty

Sherman Oaks—The Board issued a two-count citation that included a \$750 administrative fine to Stuart A. Royalty, architect license number C-25881, for alleged violations of BPC section 5600.05, subdivisions (a)(1) and (b) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Royalty certified false or misleading information on his 2017 License Renewal Application and failed to maintain records of completion of the required coursework for two years from the date of license renewal and failed to make those records available to the Board for auditing upon request. Royalty paid the fine, satisfying the citation. The citation became final on March 13, 2019.

Ronald P. Sorce

Arlington Heights, IL—The Board issued a one-count citation that included a \$500 administrative fine to Ronald P. Sorce, architect license number C-13311, for an alleged violation of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action

alleged that Sorce certified false or misleading information on his 2017 License Renewal Application. Sorce paid the fine, satisfying the citation. The citation became final on March 18, 2019.

Shawn M. Tibor

Sacramento—The Board issued a one-count citation that included a \$500 administrative fine to Shawn M. Tibor, architect license number C-22284, for an alleged violation of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Tibor certified false or misleading information on his 2017 License Renewal Application. Tibor paid the fine, satisfying the citation. The citation became final on March 18, 2019.

Timothy Wendell Wuethrich

Sacramento—The Board issued a one-count citation that included a \$750 administrative fine to Timothy Wendell Wuethrich, architect license number C-14415, for an alleged violation of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Wuethrich certified false or misleading information on his 2017 License Renewal Application. Wuethrich paid the fine, satisfying the citation. The citation became final on March 20, 2019.

Donna Alconcel

Daly City—The Board issued a two-count citation that included a \$2,000 administrative fine to Donna Alconcel, dba Donna Alconcel Designs, an unlicensed individual, for an alleged violation of Business and Professions Code (BPC) sections 5536(a) (Practice Without License or Holding Self Out as Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Alconcel executed a Proposal for a Residential Remodel (Proposal) offering to provide professional services for a residence located in San Francisco. The Proposal stated, “3rd Floor: Add bedroom and bathroom on 3rd level” and that the project will include “Two (2) sets of the necessary architectural drawings required for construction and presentation to the Building Department.” The three-story residential project is not an exempt building described in BPC section 5537(a). Alconcel’s preparation of design plans for the non-exempt third-story residence wherein the plans contained a title block stating, “Donna Alconcel Designs” constitutes the practice of architecture as defined in BPC section 5500.1. Alconcel used the business name “Donna Alconcel Design,” which included the term “architectural” in its description of services, without having an architect who was in management control of the services that were offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. The citation became final on March 25, 2019.

Sammie Tabrizi

Woodland Hills—The Board issued a one-count citation that included a \$500 administrative fine to Sammie Tabrizi, architect license number C-34954, for an alleged violation of BPC section 5600.05(a)(1) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action

alleged that Tabrizi certified false or misleading information on her 2019 License Renewal Application. Tabrizi paid the fine, satisfying the citation. The citation became final on March 25, 2019.

Sara Olson

Beverly Hills—The Board issued a one-count citation that included a \$1,000 administrative fine to Sara Olson, dba Beverly Hills One, an unlicensed individual, for an alleged violation of Business and Professions Code section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that on or about February 7, 2019, Olson’s personal Facebook and LinkedIn profiles identified her as an “Architect” and her LinkedIn profile included “Architecture” under her *Industry Knowledge*. The citation became final on April 3, 2019.

Irena Stepanova

Los Altos—The Board issued a one-count citation that included a \$1,500 administrative fine to Irena Stepanova, architect license number C-33609, for an alleged violation of Business and Professions Code section 5536.22(a) (Written Contract). The action alleged that Stepanova failed to execute a written contract with her client prior to commencing professional services for a residential project located in Belmont, California. Stepanova paid the fine, satisfying the citation. The citation became final on April 3, 2019.

Xia Youwei

Baldwin Park—The Board issued a modified one-count citation that included a \$750 administrative fine to Xia Youwei, dba Richard Construction & Design, an unlicensed individual, for an alleged violation of Business and Professions Code (BPC) section 5536(a) (Practice Without License or Holding Self Out as Architect) and California Code of Regulations section 134(a) (Use of the Term Architect). The action alleged that Youwei executed a contract with his client on or about November 24, 2017, wherein the client paid a deposit in the amount of \$500. The contract was identified as an “Architectural Contract” and included the terms “Architect” and “Architectural” to describe himself and his company’s services. Youwei’s business card offered “Architectural Design” services for residential and commercial projects. These devices might indicate to the public that Youwei is an architect or qualified to engage in the practice of architecture in California. Board records reflect that Youwei is not a licensed architect, and Youwei used the business name “Richard Construction and Design,” which included the terms “architectural” and “architects” in its description of services, without an architect who is in management control of the services that are offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity as required under BPC section 5558. Youwei paid the fine, satisfying the citation. The citation became final on April 12, 2019.

Frank Joseph Mungia

Fresno—The Board issued a two-count citation that included a \$2,000 administrative fine to Frank Joseph Mungia, architect license number C-12995, for alleged violations of Business and Professions Code (BPC) section 5579 (Fraud in Obtaining a License). The action alleged that Mungia submitted false statements under penalty of perjury on

both of his 2015 and 2017 License Renewal Applications when he answered “no” to the following question: “In the preceding renewal period, have you been disciplined by a public agency or have you been convicted of a crime in any state, the USA and its territories, federal jurisdiction, military court, or other country, which involved a plea or verdict of guilty or a conviction following a plea of nolo contendere?” On May 15, 2015, a Stipulated Settlement and Disciplinary Order for the Board for Professional Engineers, Land Surveyors, and Geologists became effective, based on an Accusation filed on April 18, 2014, against Mungia for violations of negligence, breach of contract and criminal conviction. Mungia paid the fine, satisfying the citation. The citation became final on April 29, 2019.

Eran Gispan

Sherman Oaks—The Board issued a one-count citation that included a \$1,500 administrative fine to Eran Gispan, dba NE Designs, Inc., an unlicensed individual, for alleged violations of Business and Professions Code (BPC) section 5536.1(c) (Signature and Stamp on Plans and Documents; Unauthorized Practice; Misdemeanor). The action alleged that Gispan prepared plans for a four-story residence, not a two-story as agreed upon, and the plans were not stamped by a licensed professional. The plans prepared by Gispan indicated four distinct living levels in the house, which is not a building exempt from the requirements of the Architects Practice Act pursuant to BPC sections 5537(a) and 5538, constituting the practice of architecture as defined in BPC section 5500.1. Gispan paid the fine, satisfying the citation. The citation became final on May 10, 2019.

Carl Maletic

Morongo Valley—The Board issued a two-count citation that included a \$2,000 administrative fine to Carl Maletic, architect license number C-24044, for alleged violations of Business and Professions Code section 5536.22(a) (Failure to Execute Written Contract Prior to Commencing Work) and California Code of Regulations, title 16, section 160(b)(2) (Willful Misconduct; Failure to Respond to Board Investigation). The first cause for citation alleged that on or about May 2, 2018, Maletic failed to execute a written contract with his client prior to commencing professional services for a residential project located in Palm Springs, California. The second cause for citation alleged that Maletic failed to respond to the Board’s requests for information regarding an investigation within 30 days. The citation became final on June 3, 2019.

Brian R. Regehr

Turnwater, WA—The Board issued a two-count citation that included a \$1,500 administrative fine to Brian R. Regehr, an unlicensed individual, for alleged violations of Business and Professions Code section 5536(a) (Practice Without License or Holding Self Out as Architect) and California Code of Regulations, title 16, section 134(a) (Use of the Term Architect). On or about January 31, 1995, Regehr’s architect license number C-9580 expired and may not be renewed, restored, reissued, or reinstated.

The first cause for citation alleged that Regehr’s business card for RoundDwell, business name “Regehr & Associates/Architect,” billing invoices, and website, wherein

Regehr used “architect” multiple times and described his services as “architectural,” show that he offered and stated that he performed services that required a license and engaged in the practice of architecture in California without a license.

The second cause for citation alleged that Regehr used the business names “RoundDwell” and “Regehr & Associates/Architect,” which included the terms “architect” and “architecture” in the title and description of services, without a California licensed architect who is in management control of the services that were offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. The citation became final on June 3, 2019.

Jesus Manuel “Jesse” Guardado

Los Angeles—The Board issued a one-count citation that included a \$1,000 administrative fine to Jesus Manuel “Jesse” Guardado, an unlicensed individual, for an alleged violation of Business and Professions Code section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that on or about February 26, 2016, Guardado presented his client with a “Proposal for Architectural and Engineering plans,” which included the term “Architectural” to describe his company’s services, and offered “Architectural and Engineering services,” “Architectural/Design” development, and structural analysis of the “architectural design.” The citation became final on June 11, 2019.

Disciplinary Actions August 2018 – June 30, 2019

Jacob Slater Bunting (Penryn) Effective April 5, 2019, Jacob Slater Bunting's architect license number C-33928, was surrendered, and he thereby loses all rights and privileges of an architect in California. The action was a result of a Stipulated Surrender of License and Order, which was adopted by the Board.

An Accusation was filed against Bunting for alleged violations of Business and Professions Code (BPC) sections 5577 (Conviction of Certain Crimes) and 490 (Conviction of Crime).

The Accusation alleged that on or about May 25, 2016, in the criminal proceeding titled *People vs. Jacob Slater Bunting*, Slater was convicted by the Placer County Superior Court, on his plea of nolo contendere, of violating one count of Penal Code (PC) section 288.4(b) (meeting with minor for lewd and lascivious act), a felony, one count of PC section 288a(b)(1) (oral copulation of person under 18 years old), a felony, and two counts of PC section 261.5(c) (unlawful sexual intercourse with a minor), a felony, with an enhancement under PC section 12022.1(b) (secondary offense while released from custody on primary offense). On or about July 6, 2016, Bunting was sentenced to six years and four months in state prison and was ordered to register as a sex offender pursuant to PC section 290.

On or about February 5, 2019, Deputy Attorney General (DAG) Anahita S. Crawford submitted a Stipulated Surrender of License and Order to the Board for its consideration. The Stipulated Surrender of License and Order include terms and conditions that are consistent with the Board's Disciplinary Guidelines.

On March 6, 2019, the Board adopted the Stipulated Surrender of License and Order, which became effective on April 5, 2019.

AGENDA ITEM F: DISCUSS AND POSSIBLE ACTION ON 2017/2018 STRATEGIC PLAN OBJECTIVE TO UPDATE THE *BUILDING OFFICIAL INFORMATION GUIDE* TO BETTER EDUCATE LOCAL BUILDING OFFICIALS ON THE *ARCHITECTS PRACTICE ACT*

Background Summary

The California Architects Board's 2017-2018 Strategic Plan contained an objective assigned to the Regulatory and Enforcement Committee (REC) to update the Board's *Building Official Information Guide* (*Guide*) to better educate local building officials on the *Architects Practice Act*.

The Board's *Building Official Information Guide* was last published in 2000 and is a compilation of responses to questions the Board has received from building officials and other items of interest to those who enforce local building standards.

The Board's architect consultants and staff reviewed the 2000 edition of the *Guide*, as well as the building official information guides published by the Board for Professional Engineers, Land Surveyors, and Geologists, and the Contractors State License Board, and made necessary updates and revisions to the content of the Board's *Guide*.

At the August 2018 REC meeting, members discussed the updated *Guide* and recommended to include a summary about mechanic's liens and how to obtain additional information about the process.

Following the August 2018 meeting, staff consulted with the Department of Consumer Affairs legal counsel regarding the proposed revisions and feedback provided by the REC. A final draft of the *Guide* is included for the Committee's review.

Recommendation(s)

Consider making a recommendation to the Board for approval of the *Building Official Information Guide*.

Action Requested

The REC is asked to review and discuss the proposed revisions to the content of the *Guide*.

Attachment(s)

Board's *Building Official Information Guide* (draft with proposed revisions)

CALIFORNIA ARCHITECTS BOARD

BUILDING OFFICIAL INFORMATION GUIDE (WITH PROPOSED REVISIONS)

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Purpose

This guide for building officials is provided by the California Architects Board (~~CAB~~[Board](#)) to aid you in understanding and enforcing the laws and regulations governing the practice of architecture [and landscape architecture](#) in California.

The guide is a compilation of responses to questions that the ~~CAB~~[Board](#) has received from building officials and ~~of~~ other items of interest to those who must enforce local building standards. It is intended as a source of basic information and does not attempt to address all the questions that could arise covering the practice of architecture in this large, diverse state.

Some of the items covered herein are interpretations of the Architects Practice Act and ~~of~~ the ~~CAB's~~[Board's](#) rules and regulations. Other items are explanatory and/or advisory.

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Introduction

Each day, millions of Californians work and live in environments designed by licensed architects. The decisions of architects about materials and methods of construction impact not only the health, safety, and welfare of the present users, but of future generations as well.

To reduce the possibility of building failure, encourage energy conscious design, provide disability access, and safeguard the public health and welfare, those who represent themselves as skilled in the design of complex structures must meet minimum standards of competency. It is equally necessary that those who cannot meet minimum standards by way of education, experience, and examination be prevented from misrepresenting themselves to the public.

The California Architects Board ([CABBoard](#)) was created by the California Legislature in 1901 to safeguard the public's health, safety, and welfare. It is one of the boards, bureaus, commissions and committees within the Department of Consumer Affairs ([Department](#)), which is part of the [State and Business, Consumer Services and Housing Agency](#) under the aegis of the Governor. The Department is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services.

Effective January 1, 1998, the [CABBoard](#) assumed administrative responsibility for regulating landscape architects. Under current law, a Landscape Architects Technical Committee (LATC) acts in an advisory capacity to the [CABBoard](#). The LATC, which consists of five professional members, performs such duties and functions which have been delegated to it by the [CABBoard](#).

The [CABBoard](#) is presently composed of ten members of whom, by law, five are public members and five are architects. Five architect members and three of the public members are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint a public member to the [CABBoard](#).

The [CABBoard](#) attempts to ensure that all who practice architecture are licensed and qualified to practice. To become licensed as an architect, a candidate must successfully complete a written and California Supplemental Examination, as well as provide evidence of at least eight years of education and/or experience.

The [CABBoard](#) attempts through its [eEnforcement pProgram](#) to ensure that its licensees are competent to practice architecture and that the laws governing the practice of architecture are enforced in a fair and judicious manner. The [CABBoard](#) has the power, duty, and authority to investigate violations of the Architects Practice Act [and the Landscape Architects Practice Act](#) and to ~~discipline~~ [take disciplinary or enforcement action against](#) violators accordingly.

Building officials, on the other hand, enforce building code requirements, which are also designed to protect the public health and safety. Many building departments depend on licensed design professionals (architects and engineers) to deliver structures that meet code standards. So, while the building officials rely on licensing boards to ensure that architects and engineers are competent, the licensing boards rely on the building officials to ensure that only properly licensed

or registered professionals prepare, stamp, and sign plans and specifications for non-exempt structures.

In order to protect California consumers, the Board encourages building officials and their staff to promptly report suspected violations of the Architects Practice Act and Landscape Architects Practice Act, such as advertising violations, unlicensed practice, fraudulent stamps, and aiding or abetting, to the Board's Enforcement Unit. This information may be submitted anonymously.

This guide is provided to aid building officials in understanding the laws and regulations governing the practice of architecture in California and better enable them to carry out their difficult jobs.

Advertising of Architectural Services

1. May an unlicensed person advertise architectural services?

No. An individual not licensed by the [CAB Board](#) may not advertise or practice architecture in California. An unlicensed person cannot "...[advertise or](#) put out any sign, ~~or~~ card, or other device ~~which~~[that](#) might indicate to the public that he or she is an architect, ~~or~~ that he or she is qualified to engage in the practice of architecture, or [that he or she](#) is an architectural designer."

An unlicensed individual may not offer architectural services or advertise [on the Internet or](#) in the yellow pages or business directories under ~~the~~ headings ~~of~~[such as](#) "architect," "architectural design" or "architectural drafting."

(Ref.: Business ~~&~~[and](#) Professions ~~(B&P)~~ Code [\(BPC\)](#) Section 5536[\(a\)](#))

~~2. How must architectural businesses advertise?~~

~~When advertising and/or using any business card, or letterhead, or sign, or title block or any other "advertising" device, an architectural business whose name, or description of services, includes the word "architect", "architecture", or "architectural" must also list the name of a licensed architect followed by the word "architect." The following architectural business name criteria are excerpted from the Architects Practice Act, California Code of Regulations Section 134.~~

~~If an architectural business name includes as part of its title or description of services the term "architect," "architecture," or "architectural," then that business name must include the following when the business is a:~~

- ~~▪ **Sole Proprietorship:** the name as licensed with the CAB of the architect and the fact that he or she is an architect.~~
- ~~▪ **Partnership:** the name as licensed with the CAB of at least one general partner and the fact that he or she is an architect.
Partnership exception: ~~If the business name contains the surnames of general partners licensed by the CAB, there is no further requirement to designate a licensee.~~~~
- ~~▪ **Corporation** (which is not a Professional Architectural Corporation): the name as licensed with the CAB of a licensed architect who is either an officer or an employee of the corporation and the fact that such person is an architect.~~
- ~~▪ **Professional Architectural Corporation:** refer to B&PC Section 5610 and the California Corporations Code for the specific requirements of this class of corporation.~~

~~(Ref.: B&P Code Section 5536 and California Code of Regulations (CCR) Section 134)~~

Aiding and Abetting Unlicensed Practice

1. What constitutes aiding and abetting?

Aiding and abetting occurs when a California licensed architect:

- Assists unlicensed individuals to circumvent the Architects Practice Act, ~~B&P Code~~[BPC](#) Section 5500 et seq.
- Stamps and signs documents which have not been prepared by the architect ~~or in the architect's office,~~ or under the architect's responsible control.
- Permits his or her name to be used for the purpose of assisting any person, not an architect, to evade the provisions of the Architects Practice Act.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5582, ~~and~~ 5582.1 and [California Code of Regulations \(CCR\), Title 16](#), Sections ~~135 and~~ 151)

Architects Scope of Practice

1. Who may refer to himself or herself as an architect?

Only ~~an individual~~s who holds a current license issued by the ~~CAB~~Board may refer to ~~himself or herself~~themselves as an architect or use any term ~~confusingly~~ similar to the word architect to describe themselves, their qualifications, or the services they provide.

(Ref.: ~~B&P Code~~BPC Section 5536-(a))

2. What may an architect design?

The Architects Practice Act defines the practice of architecture as including "...the planning of sites, and the design, in whole or in part, of buildings, or groups of buildings and structures." Therefore, an architect may design any building type and all components therein. An exception is the structural design of a hospital that must be done by a structural engineer pursuant toby the ~~State Health &~~and Safety Code.

(Ref.: ~~B&P Code~~BPC Sections 5500.1, and 6737 and Health and Safety (~~H&S~~)-Code (HSC) Section 129805)

3. What is the ~~CAB's~~Board's definition of construction observation services?

"Construction observation services" means periodic observation of completed work (*in progress*) to determine general compliance with the plans, specifications, reports or other contract documents. "Construction observation services" does not mean the superintendence (*supervision*) of construction processes, site conditions, operations, equipment, or personnel, or the maintenance of a safe place to work or any safety ~~measures~~-in, on, or about the site.

(Ref.: ~~B&P Code~~BPC Section 5536.25-(c))

4. May architects design bridges?

In conjunction with the planning of a site and/or the design of a building, or groups of buildings, the Architects Practice Act and the Professional Engineers Act exemption allow an architect to design all on-site improvements, including a structure such as a bridge.

Exception: If on-site improvements such as roads, bridges, etc. are being submitted subject to the Subdivision Map Act, they must be designed by appropriate engineers.

(Ref.: ~~B&P Code~~BPC Sections 5500.1 and 6737 and Government Code Section 66410 et seq.)

5. If the architect has not agreed to provide construction phase services for the owner of the project, can the building official require the architect to review project shop drawings?

No. The architect has no obligation to provide such services either to the owner of the project or to a local building jurisdiction.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.25)

6. May an architect act as a general contractor for the owner and hire subcontractors for the construction phase of a project under his architectural license?

No. An architect would also need to be licensed as a contractor to perform such services. The Contractors' State License~~ing~~ Law (CSLL) does not exempt architects unless they are acting solely within their professional capacity, which does not include contracting [construction](#) work for others.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5500.1 and 7051)

7. Does an architect's license entitle an architect to build an exempt building without a contractor's license?

No. The construction of buildings is governed by the CSLL (commencing with ~~B&P Code~~[BPC](#) Section 7000). The CSLL has an exemption ~~which~~[that](#) allows a person who is not a licensed contractor to construct a single-family residential structure provided they meet certain requirements. Questions concerning this exemption should be directed to the Contractors' State License Board.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5500.1 and 7000 [et seq.](#))

~~**8. May architects provide design/build services?**~~

~~Yes, but there are certain restrictions. The architect designs projects, but the construction of the project must normally be done by a licensed contractor. For example, an architect may also be a licensed contractor, or an architectural firm may have a subsidiary that is licensed as a contractor, or an architect may be associated with a licensed contractor.~~

~~(Ref.: ~~B&P Code~~ Section 5500.1)~~

89. May architects prepare, stamp, and sign mechanical, electrical, and plumbing drawings?

Yes. The Architects Practice Act allows architects to prepare, stamp, and sign [mechanical, electrical, and plumbing](#) drawings since the definition for scope of architectural practice includes "...the design, in whole or in part, of buildings..."

(Ref.: ~~B&P Code~~[BPC](#) Sections 5500.1 and 6737)

910. May architects certify elevations of structures on a site when such certifications are required by building officials?

Yes. However, the certification must be based on survey data furnished by licensed [land](#) surveyors or appropriately registered civil engineers.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5500.1, [5536.26](#), and 8700)

1011. Are there any height restrictions or limitations imposed by the ~~CAB~~Board as to an architect's structural design ~~capabilities~~authority?

No.

(Ref.: ~~B&P Code~~BPC Section 5500.1)

1112. May an architect prepare, stamp and sign landscape drawings without a landscape architect's license?

Yes. Insofar as the architect is responsible for the planning of a site, the architect is exempt from the Landscape Architects' ~~Licensing Law~~ Practice Act and, therefore, may prepare, stamp, and sign landscape drawings for the site.

(Ref.: ~~B&P Code~~BPC Sections 5500.1 and 5641.3)

~~13. Are architects required to have liability insurance or to be bonded?~~

~~No. However, a professional architectural corporation and a limited liability partnership are required to provide adequate security for claims against it by insurance or other means.~~

~~(Ref.: B&P Code Section 5610 and CCR Sections 16101, 16953, 16956, and 16959)~~

~~14. May architects prepare and sign mechanical and plumbing drawings normally prepared by mechanical engineers?~~

~~Yes. The Architects Practice Act allows architects to prepare, stamp and sign mechanical and plumbing drawings since the definition for scope of architectural practice includes "...the design, in whole or part, of buildings..."~~

~~(Ref.: B&P Code Sections 5500.1 and 6737)~~

1215. May an architect prepare designs for site retaining walls, culverts, and other fixed works on a site if the architect is not responsible for the site planning of a project and the work is not considered a "phase of architecture" under the Professional Engineers ~~Law~~Act exemption?

No, given the situation where the architect is not responsible for the planning of the site or the "fixed works" are not associated with the design of a building or groups of buildings. Under such circumstances the "fixed works" would be considered civil engineering, and the architect would not qualify for the exemption under the Professional Engineers Act.

(Ref.: ~~B&P Code~~BPC Sections 5500.1 and 6737)

1316. May architects prepare, stamp, and sign site grading and drainage plans?

Yes. An architect is allowed under the Architects Practice Act and the Professional Engineers Act exemption to prepare, stamp, and sign site grading and drainage plans, except where such plans are submitted pursuant to the Subdivision Map Act. Cities or counties may not prohibit an architect from engaging in the preparation of plans for site grading, which is a function of the practice of architecture as defined in ~~Business and Professions Code~~ [BPC](#) Section 5500.1.

(Ref.: ~~B&P Code~~ [BPC](#) Sections 460, 5500.1, [and](#) 6737 and Government Code Section 66410 et seq.)

1417. May local building officials insist that civil engineers prepare and sign site grading and site drainage drawings ~~as required by the Uniform Building Code~~ as a condition for permit issuance even though an architect prepares the site plan and the grading and drainage plans?

No. Architects are allowed by the Architects Practice Act to prepare, stamp, and sign such drawings as part of their services. State licensure of architects supersedes any local code or ordinance that might restrict an architect licensed by the ~~s~~State from performing services.

(Ref.: ~~Previous~~ [Response to](#) question #~~16~~[13](#) and ~~B&P Code~~ [BPC](#) Sections 460 and 5500.1)

1518. Are architects authorized to perform soil tests?

No. Such tests are not considered to be part of the practice of architecture.

(Ref.: ~~B&P Code~~ [BPC](#) Section 5500.1)

1619. Does an architect's license entitle an architect to perform special inspections as specified in the ~~Uniform~~ [California Building Standards](#) Code without demonstrating their ability to perform such services to the satisfaction of a building official?

No. Special inspections are not considered to be part of the practice of architecture. Therefore, an architect would have to comply with a building official's requirement to demonstrate such ability before being permitted to perform required special inspections.

(Ref.: ~~B&P Code~~ [BPC](#) Section 5500.1)

1720. May architects prepare, stamp and sign structural calculations and structural drawings?

Yes. The Architects Practice Act allows architects to prepare, stamp, and sign structural calculations and structural drawings since the definition for scope of architectural practice includes "...the design, in whole or in part, of buildings..." except for the structural calculations and structural drawings for a hospital, [which must be prepared by a structural engineer](#).

(Ref.: ~~B&P Code~~ [BPC](#) Sections 5500.1, [and](#) 6737 and ~~H&S Code~~ [HSC](#) Section 129805)

~~21. May architects design swimming pools?~~

~~In conjunction with the planning of a site and/or the design of a building, or groups of buildings, the Architects Practice Act and the Professional Engineers Act exemption allow an architect to design a structure such as a swimming pool.~~

~~(Ref.: B&P Code Sections 5500.1 and 6737)~~

~~22. Must below grade swimming pool drawings be prepared and signed by an architect or engineer?~~

~~Under both the Architects Practice Act and the Professional Engineers Act, below grade swimming pools would be considered non-exempt “fixed works” or structures requiring the stamp and signature of a licensed architect or registered engineer.~~

~~(Ref.: B&P Code Sections 5500.1 and 6737)~~

1823. Are architects authorized to perform surveys without a land surveyor’s license or civil engineer registration?

No.

(Ref.: ~~B&P Code~~[BPC](#) Section 5500.1)

1924. When a licensed architect working on a project quits or is discharged, may another architect sign the original licensee’s plans or instruments?

Provided both architects are licensed in California, and the supplanting architect completely reviews the plans of the original architect, making necessary, or client-directed changes, the supplanting architect has “prepared” the plans for purposes of ~~Business and Professions Code~~[BPC](#) Section 5582.1 and may stamp and sign them, absent fraud, deception or dishonesty.

(Ref.: [CCR, Title 16, Section 151](#))

Building Designers

1. Are building designers licensed by the state?

No. At one time, the state recognized “registered building designers”; however, that category was eliminated in 1985.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536(b) ~~&~~[and](#) (c))

2. May individuals advertise as building designers?

Yes. However, they cannot refer to themselves as “registered” building designers or otherwise indicate that they are licensed or registered by the state.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536(b) ~~&~~[and](#) (c))

3. What services can a building designer provide?

Refer to the section titled “Unlicensed Individuals,” ~~that~~[which](#) can be found elsewhere in this guide.

Building Official's Responsibility With Respect to Architects Practice Act

1. Are building officials required to verify whether the individual who prepares and submits permit documents for non-exempt projects has a current license?

Yes. If a building permit is required, building officials are required to verify that an individual who prepares and submits permit documents for non-exempt projects has a current license. The building official must require a signed statement that the person who prepared the plans and specifications is licensed under the Architects Practice Act or is otherwise licensed in this state to prepare the plans and specifications. An architect's signature and stamp on plans and specifications will satisfy the signed statement requirement. ~~The CAB's biennial "Roster of Licensed Architects" may be used to verify licensure of an architect. If the architect is listed and the expiration date is current, no further action by the building official is necessary. If the architect is listed and the expiration date has passed, the building official should contact the CAB for verification of status.~~ If the person submitting the plans purports to be an architect and is not listed ~~in~~ on the ~~CAB's Board's roster~~ [license verification website](#), the building official should contact the ~~CAB~~ [Board](#) for verification.

(Ref.: ~~B&P Code~~ [BPC](#) Section 5536.2)

2. When plans have been filed by the original architect of record, may a building official accept changes to those plans ~~which~~ that are submitted by the supplanting architect or engineer?

A building official is only required to verify that the appropriate stamp and signature is on the documents before a permit is issued and that design changes are made and approved by the appropriate person.

(Ref.: ~~B&P Code~~ [BPC](#) Section 5536.25, [CCR, Title 16, Section 151](#), and [California Building Standards Code \(CBSC\), Title 24, §Section 106.4.4.1](#))

3. Is a building official required to notify an architect of record when another architect/engineer takes over a project, uses that architect's drawings, or makes changes?

No. The Architects Practice Act does not require this notification.

4. Is a building official liable if he or she informs the ~~CAB~~ [Board](#) of possible aiding and abetting ~~which~~ that later turns out to be unfounded and the architect takes legal action against the building official?

The law grants a qualified privilege to individuals who communicate, in good faith, to an official administrative agency concerning a possible violation of law. Further information on this subject should be obtained from the legal advisor for the building department.

(Ref.: Civil Code Section 47)

~~5. In some cases, the architect who designed a project may be located in another part of the state or out of state. If the architect does not wish to submit a minor design change in person, what procedure should the building official follow so as not to delay the project?~~

~~The Architects Practice Act does not address this situation. An architect will not be responsible for damage caused by changes which are not approved by the architect to his or her plans made by local government agencies. This question should be addressed by the legal advisor for the building department.~~

~~(Ref.: B&P Code Section 5536.25)~~

56. Sometimes an owner has separate contracts with an architect and the structural, civil, mechanical, and electrical engineers. No one discipline has overall coordination of the project, and a design change is required that will affect the work of all disciplines. May a building official require the project architect to ~~make and~~ sign for changes on his own work as well as others? Can the architect coordinate the work of the others?

No. The architect is only required to stamp and sign and take responsibility for his or her own documents. The same shall apply to each design professional. The building official should notify the owner that such coordination is required, and it is the owner's responsibility to arrange for proper coordination. An architect can coordinate the services and documents of others if he or she accepts the responsibility.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.1)

67. May an architect certify that the construction of a project is in conformance with the design documents?

Yes, the architect may certify that the construction is in conformance, but the architect may choose not to do so.

(Ref.: [BPC Section 5536.26](#))

~~8. If a corrections list is returned by a building official to the owner of a structure and the owner makes the corrections, is this acceptable?~~

~~The statute does not specify who can make changes to the documents. If the changes relate to non-exempt projects, they should be made and signed by an appropriately licensed person before a permit for construction is issued. For changes to exempt projects, building officials should consult with the legal advisor to their department regarding potential problems.~~

~~(Ref.: B&P Code Section 5536.25)~~

79. If an architect asks or requests by telephone that a building official make required design changes ~~which that~~ the architect will approve later, should the building official make such changes?

No, not without prior written confirmation. It is not the building official's responsibility to make design changes.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.25)

~~10. What procedure should a building official follow when the original architect is no longer the architect of record and design changes or corrections are required before a permit will be issued?~~

~~Notify the owner of the project. It is the owner's responsibility to notify the building official of a change in Architect of Record and to hire another qualified design professional to make, stamp and sign the design changes.~~

~~(Ref.: B&P Code Section 5536.25)~~

811. Is a building official liable if he or she approves the plan submittal and later learns that the architect who submitted the plans has a revoked or suspended license?

The ~~CAB~~[Board](#) does not determine liability. This is a question of civil law. Building officials should discuss this issue with their legal advisors. To avoid such problems, the law requires the building department to verify licensure prior to issuing any permit.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.2)

912. Should a building official make a design change to a drawing that requires design changes?

If a building official makes design changes to drawings without the authorization or approval of the architect, the architect will not be responsible for damages caused by those changes. The building official ~~would~~[could](#) be responsible for damage caused by his or her unauthorized changes. Building officials should discuss this issue with the legal advisor for their building department before undertaking any such action.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.25)

1013. Are building departments required to maintain record copies of permitted drawings?

Yes, under certain circumstances. Refer to ~~Health and Safety Code~~[HSC](#) Section 19850, ~~which~~ ~~This code section~~ requires that drawings of certain categories of buildings be retained by local building departments.

1114. Are building officials required to give a copy of record documents to anyone who asks for them?

No. See ~~Health and Safety Code~~[HSC](#) Section 19851, which specifies who may obtain copies of drawings and under what conditions.

1215. Do building officials need to verify licensure of persons signing plans for exempt projects?

~~No.~~ Only if plans are being submitted or prepared by a licensed design professional.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.2)

1316. When should verification of licensure be made?

Verification of licensure should be done at the time of initial submittal of the plans and specifications.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.2)

~~17.— What is a building official required to do when an architect has a dispute with an owner and the architect wants to withdraw plans previously submitted for plan check or notifies the building official that he or she disclaims any responsibility for the project and wants to remove his or her name from the submitted documents?~~

~~Consult the legal advisor for the building department as to what procedures to follow.~~

Business Associations

1. ~~What must an architect do when entering into an association with an unlicensed individual to jointly offer architectural services?~~

~~Prior to offering architectural services through such an association, the architect must agree in writing to be responsible for all architectural services offered and/or performed during the life of the association. The written agreement must provide the following information:~~

- ~~▪ The date when the association will begin.~~
- ~~▪ The approximate date when the association will be dissolved if such association is not to be a continuing relationship. The fact that the relationship is to be a continuing one, if applicable.~~
- ~~▪ The identity of the project for which the association is being formed if the relationship is not a continuing one.~~
- ~~▪ The name, address, telephone number, license number and signature of the architect.~~
- ~~▪ The name, address, telephone number and signature of the unlicensed individual(s) with whom the architect is associated.~~

~~Prior to engaging in the design phase of the project, the architect shall send a copy of the written agreement of association to the CAB.~~

~~All plans, specifications and other instruments of service and records resulting from the association shall be retained by the architect and made available for review for ten years from the completion date of the project.~~

~~Forms for filing the agreement of association are available by writing or calling the CAB office.~~

~~(Ref.: CCR Section 135)~~

Complaint Procedures

1. How is a complaint filed?

Anyone who believes there has been a violation of the Architects Practice Act may file a complaint with the [CAB Board](#). All complaints should be filed in writing. A complaint form is ~~included on page 63 or is~~ available ~~upon request on the Board's website, cab.ca.gov,~~ or the complainant may ~~write~~ [send](#) a letter ~~or email~~ to the [CAB Board](#) detailing the event(s) that led to the complaint ~~and attach~~ [with](#) copies of all documentation (plans, contracts, business cards, correspondence, etc.) to substantiate the complaint.

~~2. Is there an informal process available to building officials to address issues concerning documents submitted by a specific architect for plan check review and construction permitting?~~

~~On December 4, 1998, the CAB adopted a Plan Check Review Process & Evaluation Program that allows building officials to bring to the CAB's attention concerns they have regarding practice issues of a specific Architect without the filing of a formal complaint. A copy of the Review Request Form, which includes a complete description of the Program, is included on page 65.~~

23. How does someone find out if there is a complaint against an architect or an unlicensed individual?

Contact the [CAB Board](#). [Pursuant to its regulation on public information disclosure, The CAB the Board](#) will disclose ~~the number of pending complaints which have been reviewed by the CAB staff and indicate a probable violation of the CAB's licensing laws and/or regulations has occurred and are under investigation. The CAB will also disclose closed complaints which resulted in any~~ [disciplinary or enforcement actions taken against the person, including \(i.e., citations, accusations, statements of issues, stipulated settlement and disciplinary decisions\).](#) [The Board may only disclose complaint information if it is determined to have a direct effect on public safety.](#)

[\(Ref.: CCR, Title 16, Section 137\)](#)

~~4. What should architects or building officials do if they know that someone may be violating the Architects Practice Act?~~

~~Gather evidence to substantiate the accusation and forward all evidence to the CAB with a written complaint.~~

~~5. Does the CAB process complaints between architects and clients regarding contract or fee disputes?~~

~~Only if the dispute involves an alleged violation by the architect of the CAB's licensing laws and/or regulations. Otherwise the complainant is advised to seek legal counsel.~~

Contractors

1. Are contractors exempt from the Architects Practice Act?

A contractor may design what an unlicensed person may design under ~~B&P Code~~[BPC](#) Sections 5537 (exempt structures) and ~~B&P Code Section~~ 5538 as determined by the local building official.

On non-exempt structures, the contractor is limited to services specifically noted in ~~B&P Code~~[BPC](#) Section 6737.43 (Professional Engineers Act) ~~specifically; appropriately~~ licensed ~~mechanical~~ contractors ~~and licensed electrical contractors~~ may design mechanical and electrical systems, ~~respectively~~, in accordance with applicable construction codes if they also install those systems. If they do not install the systems and supervise the installation of the systems, they must have an architect or engineer design the systems.

In addition, a contractor may design systems that are required to complete the contracting services he or she has offered or contracted to perform. Such systems are considered temporary and must be removed once the project he or she has contracted to build is completed.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5537.2 and 6737.3)

2. May a licensed contractor perform design services under the direction of a structural or civil engineer for a non-exempt structure?

Yes, provided the contractor works under the responsible charge of the engineer, and the engineer signs all engineering documents prepared by the contractor.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537.2)

3. May contractors design non-exempt structures if they are going to build them?

No. Contractors may only design exempt buildings under ~~B&P Code~~[BPC](#) Section 5537 and nonstructural or nonseismic storefronts or interior alterations ~~which~~ that do not affect the structural system or safety of the building under ~~B&P Code~~[BPC](#) Section 5538. If they associate with an architect or engineer, contractors may prepare documents under the direct supervision of an architect or engineer. However, the architect or engineer must stamp and sign the documents.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537.2)

~~4. A general contractor hires mechanical and electrical contractors to design the mechanical and electrical systems for a non-exempt building with the understanding that the contractors will also install their systems. The drawings are approved and a construction permit is issued. During the construction phase, the general contractor hires other mechanical and electrical contractors to install the systems. Are the initial mechanical and electrical drawings valid?~~

~~No. B&P Code Section 6737.4 states that the respective mechanical and electrical systems must be installed by the licensed contractors who prepared the drawings for the systems.~~

~~(Ref.: B&P Code Section 6737.4)~~

45. May the building official delay the project until properly prepared documents are re-submitted for approval?

This question should be discussed with the legal advisor for the building department.

56. May licensed ~~mechanical and electrical~~ contractors prepare and sign drawings for their respective systems without supervision of an architect or engineer?

Yes. In ~~B&P Code~~[BPC](#) Section 6737.[43](#) of the Professional Engineers Act, it states that appropriately licensed ~~mechanical and electrical~~ contractors may design ~~such~~[electrical or mechanical](#) systems for any building if they also install them.

(Ref.: ~~B&P Code~~[BPC](#) Section 6737.[43](#))

67. May a general contractor prepare and sign drawings pertaining to mechanical, and electrical, and plumbing systems for non-exempt structures?

No. If the general contractor does prepare mechanical or electrical drawings, he or she must do so under the supervision of an architect or appropriately registered engineer. The architect or engineer must stamp and sign the drawings.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537.2)

Corporations

1. — May a corporation offer architectural services?

~~Yes. — A corporation can offer and perform architectural services provided the services are performed by or under the responsible control of an architect. — The architect must sign all instruments of service.~~

~~(Ref.: B&P Code Sections 5535, 5536.1(a) and CCR Section 134)~~

2. — Does the CAB license architectural firms or corporations?

~~The CAB licenses individuals only. — The Secretary of State registers professional corporations, including professional architectural corporations, as well as general corporations. — The Secretary of State’s address is: 1500 11th Street, Sacramento, California 95814, phone (916) 653-6814.~~

~~(Ref.: B&P Code Section 5551)~~

3. — What are the rules governing general corporations offering architectural services?

~~It is unlawful for a corporation, which is not a professional architectural corporation as defined by B&P Code Section 5610, to use a business name which includes as part of its title or description of services the term “architect,” “architecture,” or “architectural” unless it includes in its title or designation the name as licensed with the CAB of a licensed architect followed by the word architect. — All instruments of service must be signed by a licensed architect. — The designated architect must be an officer or an employee of the firm.~~

~~(Ref.: CCR Section 134(e))~~

~~For example, ABC Architecture, a general corporation, must include an architect’s name in its title or designation. — They might legally advertise the following way:~~

~~**ABC Architecture**
John Smith, Architect~~

4. — What distinguishes a professional architectural corporation from a general corporation?

~~Professional architectural corporations are required to limit their shareholders, officers, and directors to licensed architects. — In addition, the name of a professional architectural corporation and any name or names under which it may be rendering professional services must contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders, or of persons who were associated with a predecessor person, partnership, or other organization and whose name or names appeared in the name of the predecessor organization, and shall include either (1) the words “architectural corporation” or (2) the word “architect” or “architects” and wording or abbreviations denoting corporate existence.~~

~~(Ref.: B&P Code Sections 5610 and 5610.3)~~

Disasters

1. If a person's residence is damaged by a natural disaster, how can the homeowner obtain a copy of the plans?

If damage to residential real property is caused by a natural disaster declared by the Governor, and if the damage may be covered by insurance, an architect or other person who has prepared the plans used for the construction or remodeling of the property must release a copy of the plans to the homeowner, the homeowner's insurer, or a duly authorized agent of either upon request. The plans may only be used for verifying the fact and the amount of damage for insurance purposes. The architect may charge a reasonable fee to cover the reproduction costs of providing a copy of the plans.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.3)

2. Can the homeowner rebuild the property using the plans?

The plans cannot be used to rebuild any of the property without [a current permit and](#) the written consent of the architect or other person who prepared the plans. If written consent is not provided, the architect will not be liable if the plans are subsequently used by the homeowner or anyone else to rebuild any part of the property.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.3)

3. If the homeowner cannot contact the original designer, can the building department provide a copy of the plans?

The building department can duplicate the plans under the provisions contained in ~~Health and Safety Code~~[HSC](#) Section 19851. Refer to that code section for details.

4. In the event of a declared disaster, what deterrents to unlicensed practice exist?

Only persons licensed by the ~~CAB~~[Board](#) may call themselves architects and provide architectural services. During a declared state of emergency, the penalty against an unlicensed person who represents that he or she is an architect in connection with the offer or performance of architectural services for the repair of damage to a structure caused by a natural disaster is increased and punishable by a fine up to \$10,000 and/or imprisonment. When responding to advertisements or solicitations offering architectural services, disaster victims should verify whether the person offering services has a valid license by ~~writing or calling the CAB office~~[contacting the Board or visiting its website, cab.ca.gov.](#)

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.5)

5. Can architects perform structural inspections after an earthquake?

Yes. Architects may provide structural inspections at the scene of a declared national, state, or local emergency when acting voluntarily and at the request of a public official, public safety officer, or city or county building inspector who is acting in an official capacity.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.27)

6. What type of immunity is available to architects who provide inspection services for building departments?

California has a good Samaritan law for licensed architects, engineers, and land surveyors who, at the request of a public official, provide safety inspection services, without compensation, at the scene of a declared national, state, or local emergency caused by an earthquake. This law provides architects who provide these services with immunity from liability. This immunity applies only for an inspection that occurs within 30 days of the earthquake.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.27)

Engineers

1. Are engineers exempt from the Architects Practice Act?

Civil and structural engineers may provide “~~architectural~~ building design services” to the extent that they are included as part of the engineering services for which they are registered. Civil and structural engineers may not practice architecture, i.e., architectural design, unless it is a part of the civil or structural engineering services they are performing. Civil and structural engineers may not use the title “architect” or offer “architectural” services unless licensed by the CAB Board.

(Ref.: ~~B&P Code~~ BPC Sections 5537.1, 5537.4, and 5537.5)

2. May a structural or civil engineer sign architectural drawings for non-exempt structures prepared by an unlicensed person who was not under their supervision even though the engineers prepared the structural drawings and calculations?

This question must be answered by the Board for Professional Engineers, ~~and~~ Land Surveyors, and Geologists (BPELSG). If an architect signed documents that were not prepared under his or her responsible control, the CAB Board would consider the act “aiding and abetting” under ~~B&P Code~~ BPC Sections 5582 and 5582.1.

(Ref.: ~~B&P Code~~ BPC Sections 5537.1 and 5537.5)

3. What are the structural and civil engineer’s limitations as to performing architectural design services?

There are none in the Architects Practice Act. The engineer may design any structure as long as the engineer adheres to the exemptions.

(Ref.: ~~B&P Code~~ BPC Sections 5537.1 and 5537.5)

Title 21 and 22 of the CCR are more restrictive and do set limitations as to what services architects and, civil and structural engineers may perform. However, Title 21 and 22 are relevant only to state-regulated construction under the jurisdiction of the Division of the State Architect (DSA) and Office of Statewide Health Planning and Development (OSHPD).

~~4. May a structural or civil engineer sign mechanical or electrical engineering drawings if the engineer is not registered in those disciplines?~~

~~This question should be answered by the BPELS.~~

45. BPC Section 5537.4 ~~of the B & P Code~~ exempts all professional engineers. Does this mean that all registered professional engineers can design non-exempt structures?

No. Only structural and civil engineers are professional engineers authorized to design structures. Other professional engineers are exempt from the Architects Practice Act only to the extent that they practice the profession for which they are registered.

56. If a structural or civil engineer prepares and signs structural calculations as a consultant to an architect, must the engineer also prepare, stamp, and sign the structural drawings?

Not necessarily. If the calculations are given to the architect, who then prepares the structural drawings from the information provided in the calculations, only the architect is required to stamp and sign the drawings. The engineer is not required to over-sign documents prepared by the architect.

Exempt Buildings and Structures

1. What are exempt buildings or structures?

The Architects Practice Act defines exempt buildings or structures in ~~B&P Code~~[BPC](#) Section 5537 as follows:

- (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:
 - (1) Single-family dwellings of wood frame construction not more than two stories and basement in height.
 - (2) Multiple dwellings containing no more than four dwelling units of wood frame construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.
 - (3) Garages or other structures appurtenant to buildings described under subdivision (a), of wood frame construction not more than two stories and basement in height.
 - (4) Agricultural and ranch buildings of wood frame construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.
- (b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for wood frame construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for wood frame construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by or under the direct supervision of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation. Substantial compliance for purposes of this section is not intended to restrict the ability of the building officials to approve plans pursuant to existing law and is only intended to clarify the intent of Chapter 405 of the Statutes of 1985.

2. What is ~~the CAB's~~[Board's](#) definition of “conventional framing”?

~~The CAB has approached this subject in the past and concluded that the phrase was borrowed from the UBC when the statute was written.~~ Since it appears in the ~~UBC &~~[CBS](#), which is written by building officials, the ~~UBC/~~[CBS](#) definition should be used.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537(b), ~~and~~ Title 24 of the ~~UBC and/or~~[CBS](#).)

3. What are the ~~CAB's~~Board's definitions of a “single family dwelling” and “multiple dwelling”?

(a) **Single-family Dwelling:** As defined in ~~B&P Code~~BPC Section 5537(a) and CCR, Title 16, Section 153~~-of the CCR~~, the term “single-family dwelling” means a free standing unattached dwelling of wood frame construction not more than two stories and basement in height. Such a single-family dwelling shall not share any common building components including, but not limited to, foundations, roofing and structural systems with any other structure or dwelling.

(b) **Multiple Dwelling:** As defined in ~~B&P Code~~BPC Section 5537(a) and CCR, Title 16, Section 153~~-of the CCR~~, the term “multiple dwellings” means a structure composed of no more than four attached dwelling units which share any common building components including, but not limited to, foundations, roofing and structural systems. Such multiple dwelling units shall be of wood frame construction and not more than two stories and basement in height, and as defined in the CBS.

~~4. Must contractors and builders who prepare plans for exempt structures sign the drawings they prepare if they own the structure?~~

~~If they are the owner, the B&P Code does not require the drawings to be signed.~~

~~(Ref.: B&P Code Section 5536.1)~~

~~45. If a lot contains an existing residence, may an unlicensed person prepare plans for a maximum four additional units as exempted under BPC Section 5537~~-of the B&P Code~~?~~

No. The maximum number of units that could be designed on the lot by an unlicensed person would be three additional units in any combination.

(Ref.: ~~B&P Code~~BPC Section 5537)

~~6. Is a roadside fruit and vegetable stand considered a non-exempt structure since the UBC classifies it as a business structure? Is an architect or engineer required to design it?~~

~~Whether an architect or engineer is required to design a fruit and vegetable stand is determined by the building official. If the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved, an architect or engineer can be required.~~

~~(Ref.: B&P Code Section 5537)~~

57. Is a “greenhouse” constructed of metal framing and glass considered an exempt structure if it is for personal use only?

No. The Architects Practice Act, ~~in B&P Code~~[BPC](#) Section 5537 refers only to wood-framed structures; therefore, metal-framed structures would not be considered exempt under the statute.

68. If an owner prepares drawings for his or her own exempt building, is he or she required to sign the drawings?

No. The statute requires only those who prepare drawings for others to sign them and, if licensed, to note their license number. However, the statute does not prohibit a building official from requiring the owner to sign the drawings.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.1)

79. ~~B & P Code~~[BPC](#) Section 5537, which deals with exemptions, does not discuss site planning. Does this mean that an unlicensed person who prepares drawings for exempt structures must hire an architect to prepare the site plan drawings?

An unlicensed person may only do site planning to the extent that such planning does not involve activities that are subject to regulation by any licensing boards. For example, preparing grading and drainage plans are activities that require a license. Therefore, an architect or engineer would be required to prepare such plans for an exempt structure.

810. If an architect or engineer prepares and signs structural calculations for a portion of an exempt building and the building plans are prepared by the owner, must the architect or engineer sign the plans also?

The architect or engineer would only sign for that portion of the drawings that pertain to his or her structural design, not the entire set of drawings. The architect is only required to note that portion for which he or she is taking responsibility. The remainder of the drawings would be signed by the person who prepared them.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.1)

911. May the building official require other exempt structures to be designed by an architect or engineer in addition to the noted agricultural and ranch buildings if it is deemed that such structures are an undue risk to public safety, health, or welfare?

Yes. The building official may require part or all of the structure to be designed by an architect or engineer. The ~~B&P Code~~[BPC](#) does not supersede the building official’s authority to protect the health, safety, and welfare of the public.

12. — Are wood decks exempt in B & P Code Section 5537?

~~Decks come in all sizes and shapes and are installed on all types of terrain. It is, therefore, left to the discretion of the local building official to determine if an architect or engineer is required to prepare and sign documents for such structures. The Architects Practice Act requires that any portion of an exempted structure that deviates from substantial compliance with the conventional framing requirements of the most recent California Building Code, shall be designed by an architect or engineer.~~

~~(Ref.: B&P Code Section 5537(b))~~

Interior Designers

1. Are interior designers licensed by the state?

No. They are not licensed by the state. ~~There is a statutory provision for self-certification through a private organization~~The State of California has a Title Act for certified interior designers under BPC Sections 5800-5812. Certification is not required for interior designers to practice in California.

(Ref.: ~~B&P Code~~BPC Sections 5800-5812)

2. What services may an interior designer provide?

Interior designers and any other unlicensed persons may design nonstructural or nonseismic store fronts, interior alterations or additions, fixtures, cabinetwork, furniture, other appliances or equipment, and any nonstructural or nonseismic alterations or additions necessary to provide for their installation. Interior designers may not design any components that change or affect the structural system or safety of the building.

(Ref.: ~~B&P Code~~BPC Sections 5537 and 5538)

3. What may interior designers call themselves?

Interior designers may call themselves interior designers or designers. They cannot call themselves “architects,” “architectural designers,” ~~“registered interior designers architects,”~~ or any other name that might mislead the consumer to think that they are licensed architects or registered building designers or otherwise certified, licensed, or registered by the sState.

An interior designer may not represent to the public that he or she is “state certified” to practice interior design. However, a person who has been certified by an interior design organization may refer to herself or himself as a “certified interior designer”.

(Ref.: ~~B&P Code~~BPC Sections 5800 and 5804)

No unlicensed person may use the term “architect,” “architectural,” or “architecture” or use the term “licensed” or “registered”.

(Ref.: ~~B&P Code~~BPC Section 5536)

4. May interior designers stamp exempt plans?

Yes. Unlicensed persons may stamp exempt plans as long as they do not use the legend “State of California” or words or symbols that indicate that they are licensed by the state.

(Ref.: ~~B&P Code~~BPC Sections 5536(b), 5802, and 5805)

Landscape Architects

1. May a registered landscape architect refer to himself or herself as an “architect”?

No. A landscape architect may not use the title “architect” without the word “landscape” unless he or she also holds an architect’s license.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537.6)

2. Can landscape architects prepare site grading and site drainage plans?

Yes. A landscape architect can prepare landscape architectural site grading and site drainage plans.

3. What structures can landscape architects design if they perform site planning services?

Any exempt structures that unlicensed persons may design in accordance with ~~B&P Code~~[BPC](#) Section 5537 and exempt under the ~~UBC~~/[CBSC](#). If a structure requires engineering, it must be designed by an appropriately licensed or registered person.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537)

Land Surveyors

1. May a licensed land surveyor use the title “architect”?

No. A licensed land surveyor may not use the title “architect” unless he or she also holds an architect’s license.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537.7)

2. Can licensed land surveyors prepare and sign site plans?

No. Land surveyors are limited to preparing and signing documents relating to their survey services, such as location of property lines or boundaries, topographic maps, site elevations, etc. They are not licensed to plan the improvements of a site.

(Ref.: ~~B&P Code~~[BPC](#) Section 5537.7)

Mechanic's Lien Laws

1. How does one find out about Mechanic's Lien Laws?

The ~~CAB~~Board does not respond to questions regarding [design professionals and mechanic's lien laws](#), as those laws are outside of the Board's jurisdiction. For information regarding design professionals and mechanic's liens, review Civil Code sections 8300-8319 and 8400-8494, respectively, or ~~The individual may~~ consult an attorney, ~~or refer to~~ [Additional resources regarding liens may be found in](#) publications at a public library. ~~Another resource is the Contractor's License Law and Reference Book which may be obtained from: General Services Publications Unit, P.O. Box 1015, North Highlands, California 95660, (916) 928-4630 or by~~ [visiting the Contractors' State License Board's website at cslb.ca.gov.](#)

Signature Requirement

1. May the title block for non-exempt buildings contain the words “drawings prepared by” and/or the name of the drafting service in addition to the name of the architectural firm?

Yes. There is nothing in the ~~statutes~~[Architects Practice Act](#) that prohibits this practice, but the architect responsible for their preparation must sign the drawings. If drawings were submitted without the architect’s stamp and signature, it would be of assistance to the ~~CAB’s~~[Board’s eEnforcement p](#)Program to have a copy of the title block sent to the ~~CAB office~~[Board](#).

(Ref.: ~~B&P Code~~[BPC](#) Sections [5536.1 and](#) 5536.2)

2. In a set of plans submitted to a building official for approval and issuance of a permit, which sheets of the plans or drawings must be signed or stamped?

The ~~statutes do~~[Architects Practice Act does](#) not address this issue. The building official has the discretion to determine which sheets should be stamped and signed. However, standard practice in the profession is to stamp and sign every sheet and the cover page of specifications.

3. May an employee of an architect sign and stamp the plans or drawings or must the person whose name appears in the firm’s title block sign and stamp?

An employee may stamp and sign the documents if the employee is licensed by the ~~CAB~~[Board](#) and prepared or was in responsible control of their preparation.

- ~~4. A building department requires wet signatures on all documents. To expedite the approval of a design change on plans submitted for plan check, an architect proposes to FAX a design change to the building department. As a FAX, the architect’s signature on the design change is a reproduction. Is a building official required to accept such documents in lieu of those with a wet signature? If a building official does not accept these faxed documents, is he or she liable for delaying the project?~~

~~The CAB does not establish whether or not building departments should accept documents with reproduced signatures. Regarding liability for delaying a project, consult with your jurisdiction’s legal advisor.~~

~~(Ref.: B&P Code Section 5536.25)~~

- ~~45. Must the architect sign the documents at initial submittal?~~

~~The Architects Practice Act does not stipulate when the documents are to be stamped and signed. Many architects do not want to sign the initial submittal until plan checks have been made. The statute~~[BPC Section 5536.2](#) ~~requires building officials~~ to verify that the person who prepares the documents is properly licensed to do so. This can be done by ~~to obtaining~~ a signed statement that the person who prepared the documents is licensed to prepare such documents. ~~The CAB~~

~~believes that if an architect does not wish to sign initial submittal documents,~~ The building official ~~could~~can accept the signed statement in lieu of the stamp and signature at the time of initial submittal. After the plan check corrections have been made and before the permit for construction is issued, the drawings must be stamped and signed by the architect.

(Ref.: ~~B&P Code~~BPC Sections 5536.1 and 5536.2)

56. May building officials require architects to stamp and oversign a consultant's drawings?

No. Architects are only required to stamp and sign what they have prepared themselves or what others have prepared under their responsible control. Architects cannot be required to stamp and over-sign documents prepared by others, with the exception of DSA and OSHPD, which may require such "over-stamping" of documents prepared by consultants to satisfy state regulations for schools and hospitals.

(Ref.: ~~B&P Code~~BPC Section 5536.2)

67. Are reproduced signatures on documents acceptable?

~~The CAB believes that b~~Building officials may accept documents with a reproduced signature. ~~If building officials accept these documents, then it is recommended that building officials obtain the signed statement required in B&P Code Section 5536.2 and attach this statement to the documents as a permanent record.~~ Electronic stamps and signatures are commonly accepted in all business forums.

78. Must each page of a set of specifications or structural calculations be signed by the licensed person who prepares them?

An architect is required to sign his or her plans, specifications, and other instruments of service. The ~~CAB~~Board does not require that each page of a set of specifications and/or calculations ~~must~~ be signed by the architect.

(Ref.: ~~B&P Code~~BPC Section 5536.1)

89. Must the engineer who has prepared and signed structural calculations also sign the structural drawings if the structural drawings are prepared by a licensed architect?

No. The engineer only signs the documents ~~which~~that he or she has prepared. The architect signs the structural drawings that he or she prepared.

(Ref.: ~~B&P Code~~BPC Section 5536.1)

910. May non-exempt plans be signed by the unlicensed person who prepared the plans and the architect who is responsible for their preparation?

An unlicensed person may prepare plans for a non-exempt structure only under the responsible control of an architect. The unlicensed person, as well as the architect, may sign the plans; however, the only required stamp and signature is the architect's.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.1)

1011. Are wet or dry signatures required on ~~exempt~~ plans?

The ~~B&P Code~~[Architects Practice Act](#) does not state what type of media is to be used; it only states that the drawings must be stamped and signed. ~~Accordingly, the building official can require wet or dry stamps and signatures on plans.~~

(Ref.: ~~B&P Code~~[BPC](#) Sections 5536.1 and 5536.2)

Stamp Requirement

1. Must architects stamp their plans, specifications, and other instruments of service prior to obtaining a building permit?

Yes.

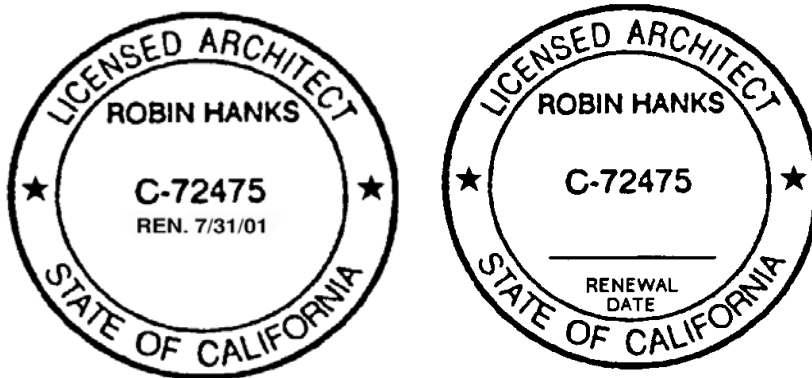
(Ref.: ~~B&P Code~~[BPC](#) Sections 5536.1 and 5536.2)

2. What must the architect's stamp look like, and what must it contain?

The Architects Practice Act ~~specifies~~[requires, at minimum](#), that the architect's stamp contain: (1) the legend "State of California"; (2) the term "licensed architect"; (3) the architect's name (as licensed with the ~~CAB~~[Board](#)); (4) the architect's license number; and (5) a means for noting the renewal date for the current license (last day of birth month and year). The renewal date may be hand written or typeset.

The stamp must be ~~of at least one inch, -1"-~~[but not more than minimum--2"](#)~~two inches, maximum-in~~ diameter [and](#) circular [in](#) shape. The design of the circle may include solid lines (thin or thick) or broken lines, such as dashes or dots. Other possibilities include a rope or beaded effect or words forming the circle. Embellishments (stars, graphic designs) are also acceptable so long as the stamp is legible. The stamp shall not be of the embossing type. Provided below are basic examples of recommended formats for a California architect's stamp. Stamps can be ordered from any source - stationery stores, business supply houses, rubber stamp manufacturers, and print shops.

(Ref.: ~~B&P Code~~[BPC](#) Section 5536.1(b) and CCR, [Title 16](#), Section 136)



REN. Refers to Renewal Date

~~Title 24 (State Building Code)~~

~~1. —Where can an individual obtain copies of State Building Code (Title 24)?~~

~~The complete set of Title 24, consisting of the State Building, Electrical, Mechanical, Plumbing and specialty Codes may be obtained at specialty book stores specializing in construction documents or through:~~

~~International Conference of Building Officials
5360 Workman Mill Road
Whittier, CA 90601-2298
(562) 699-0541
1-(800)-284-4406
www.icbo.org~~

Unlicensed Individuals

1. What may an unlicensed individual design?

- A. ~~An Un~~licensed individuals may design exempt buildings or structures. The Architects Practice Act defines exempt buildings or structures in ~~B&P Code~~[BPC](#) Section 5537 as follows:
- (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:
 - (1) Single-family dwellings of wood frame construction not more than two stories and basement in height.
 - (2) Multiple dwellings containing no more than four dwelling units of wood frame construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.
 - (3) Garages or other structures appurtenant to buildings described under subdivision (a), of wood frame construction not more than two stories and basement in height.
 - (4) Agricultural and ranch buildings of wood frame construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.
 - (b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for wood frame construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for wood frame construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by or under the direct supervision of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation. Substantial compliance for purposes of this section is not intended to restrict the ability of the building officials to approve plans pursuant to existing law and is only intended to clarify the intent of Chapter 405 of the Statutes of 1985.
- B. Unlicensed individuals may design nonstructural or nonseismic alterations or additions as defined in the Architects Practice Act, ~~B&P Code~~[BPC](#) Section 5538.

2. What titles may unlicensed individuals use?

Unlicensed individuals cannot call themselves “architects,” “architectural designers,” or any other confusingly similar title that might indicate to the public that they are a licensed architect, architectural designer, ~~or are~~ qualified to engage in the practice of architecture, ~~or are an architectural designer~~.

(Ref.: ~~B&P Code~~BPC Section 5536(a))

~~3. May an unlicensed person prepare and sign plans for the interior of a building and then have an architect prepare and sign drawings of certain constructions within these plans? Must the architect sign all the drawings?~~

~~The unlicensed person should only sign the documents prepared by him or her and the architect should only stamp and sign the documents the architect prepared. Architects can not stamp and sign the documents of others unless they were prepared under the responsible control of the architect.~~

~~(Ref.: B&P Code Sections 5536.1, 5536.2 and 5538)~~

34. Must the design of a seismic bracing system required for raised computer floors be done by an architect or engineer?

Yes. Plans for seismic bracing systems are considered a seismic alteration and should be designed and signed by architects or engineers. ~~It is also important to consider perimeter walls that enclose the raised floor. The design of the walls should be analyzed for their ability to withstand lateral loads.~~

(Ref.: ~~B&P Code~~BPC Section 5538)

~~5. May unlicensed individuals prepare and sign energy calculations for non-exempt buildings when tenant improvements are made?~~

~~The State Energy Commission states that only appropriately licensed or registered persons can sign forms ENV-1, LTG-1 and MECH-1.~~

46. In BPC Section 5538, of the ~~B&P Code~~ interior alterations and additions are considered exempt. Does the word “additions” apply to exterior work, as well as interior, or is it meant to apply only to interior additions?

~~B&P Code~~BPC Section 5538 discusses interior additions only. Exterior additions are discussed in ~~B&P Code~~BPC Section 5537.

57. Does the replacement of a fire rated door require an architect or engineer to approve the replacement or write a specification for the replacement?

The local building official should make this determination.

68. May unlicensed individuals design and sign plans for handicap disabled access systems?

Yes. Unlicensed individuals may design systems, including handicap disabled access systems, that are nonstructural and nonseismic in nature and that do not affect the safety of the structure, provided that the design of those systems is not restricted by law to registered or licensed individuals.

(Ref.: B&P CodeBPC Section 5538)

79. Does the CABBoard provide building departments with specific criteria as to what interior components affect the safety of a building or its occupants?

No. Local building departments determine such criteria.

810. May an unlicensed individual design, plan or prepare instruments of service for store fronts or interior alterations?

Yes. Unlicensed persons may prepare and submit plans for nonstructural or nonseismic interior alterations or additions, provided such alterations do not change or affect the structural system or safety of the building.

(Ref.: B&P CodeBPC Section 5538)

911. May an unlicensed individual design interior alterations or additions for non-exempt structures?

Unlicensed individuals may prepare and sign plans for nonstructural or nonseismic store fronts, interior alterations or additions, fixtures, cabinetwork, furniture, other appliances or equipment, and any nonstructural or nonseismic alterations or additions necessary to provide for their installation. However, an unlicensed individual may not prepare and sign plans for any components affecting the structural system or safety of any building as determined by the local building official.

(Ref.: B&P CodeBPC Section 5538)

1012. May unlicensed individuals prepare and sign plans for the interiors of any type of building? Are there square foot limitations?

Unlicensed individuals may prepare and sign interior designs for any type of building subject to the approval of the building official. There are no square footage limitations imposed by the Architects Practice Act; however, some building departments do set square footage limitations applicable to design services by unlicensed individuals.

(Ref.: B&P CodeBPC Section 5538)

~~13.— What is considered an exempt nonstructural storefront?~~

~~The CAB believes that a storefront, which does not require wind calculations and structural calculations to verify the stability of the installation, would qualify as an exempt nonstructural storefront. Each installation must be judged individually by the building official. If the storefront installation requires structural calculations, it is not exempt. However, if only glazing is replaced, then an architect or engineer may not be required to design the system.~~

~~(Ref.: B&P Code Section 5538)~~

1114. May unlicensed individuals design and sign mechanical, electrical, and plumbing systems?

No. Such systems must be designed and signed by appropriately licensed or registered [design](#) professionals, or appropriately licensed contractors as allowed by the Professional Engineers Act.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5537.2, 5537.4, and 6737.4~~3~~)

~~15.— If one occupancy is being converted into a more restrictive occupancy, is an architect or engineer required to prepare and sign the documents?~~

~~Not necessarily. The building official should make the decision based on the scope of work required to convert the occupancy.~~

~~(Ref.: B&P Code Section 5538)~~

~~16.— Are full height, non-bearing, non-rated partitions considered components that affect the safety of the occupant?~~

~~The CAB believes that the addition, relocation or removal of full height, non-bearing, non-rated partitions could change or affect the structure and/or the safety of a building. Each situation must be judged within its specific circumstances and thus the building official must decide whether such partitions would affect the safety of the building.~~

~~(Ref.: B&P Code Section 5538)~~

1217. What criteria does the ~~CAB~~[Board](#) use to determine what it considers the “safety of a building”?

~~The CAB has no specific criteria. For regulations dealing with those elements that affect the safety of a building and its occupants, s~~[See the California Building Standards Code](#). The local building official should determine which components of building systems affect safety and are required to be designed by an architect or engineer.

1318.May unlicensed individuals prepare specifications for non-exempt structures?

Unlicensed individuals may prepare specifications for non-exempt structures only under the responsible control of an architect or engineer. The architect or engineer is required to [stamp and sign](#) the specifications.

(Ref.: ~~B&P Code~~[BPC](#) Sections 5535.1 and 5536.1)

~~**19. Suspended ceilings do not add to the structural stability of a building but require seismic bracing. Is an architect or engineer required to design suspended ceilings?**~~

~~The CAB believes that seismic components should be designed by architects or civil and structural engineers. However, some building officials allow such ceilings to be designed by unlicensed individuals if they do not exceed certain square foot limitations.~~

1420.May unlicensed individuals alter exterior wall, door, and window configurations on non-exempt structures so that they are coordinated with new interior construction?

No. The ~~B&P Code~~[Architects Practice Act](#) does not allow an unlicensed individual to prepare and sign plans and specifications for the alteration of exterior walls, doors, or windows except for nonstructural or nonseismic alterations to storefronts as determined by the local building official.

(Ref.: ~~B&P Code~~[BPC](#) Section 5538)

~~Violations of the Architects Practice Act~~

~~1.—Who may be prosecuted for violations of the Architects Practice Act?~~

- ~~▪ **Prosecutions:** The CAB may prosecute all persons guilty of violating the provisions of Chapter 3, Division 3 of the Business and Professions Code. Except as provided by Section 159.5, the CAB may employ the inspectors, special agents, investigators and staff it deems necessary to carry out the provisions of this chapter.~~

~~(Ref.: B&P Code Section 5525)~~

- ~~▪ **Injunctions:** Whenever any person has engaged in or is about to engage in any act or practice which constitutes or which will constitute an offense against Chapter 3, Division 3 of the Business and Professions Code, the superior court of the county in which the offense has occurred or is about to occur, on application of the CAB, may issue an injunction or other appropriate order restraining such act or practice.~~

~~(Ref.: B&P Code Section 5527)~~

~~The proceedings authorized by this section shall be in accordance with the provisions contained in Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.~~



CALIFORNIA ARCHITECTS BOARD

400 R STREET, SUITE 4000, SACRAMENTO, CALIFORNIA 95814-6238

Telephone: (916) 445-3393 Fax: (916) 445-8524

E-mail: cab@dca.ca.gov Web: cab.ca.gov



CONSUMER COMPLAINT FORM

1. SUBJECT (Person Complaint is Against)

Form with fields: Last Name, First Name, Middle Name, Business Name, Business Address, City, State, Zip Code, Business Phone, Home Phone (If Known), Architect License Number (If Known)

2. COMPLAINANT (Person Making the Complaint)

Form with fields: Last Name, First Name, Middle Name, Address, City, State, Zip Code, Business Phone, Home Phone, Best Time of Day to Contact You

3. Did you have a contract or letter of agreement with the subject? YES NO (If yes, please attach a copy.)

4. Have you discussed your complaint with the subject? YES NO

5. Have you contacted an attorney regarding this matter? YES NO If so, provide your attorney's name, address and phone number.

6. Have you filed a claim in any court regarding this complaint? YES NO If so, name court: and indicate hearing date, if scheduled:

7. What do you want the person or company to do to satisfy your complaint?

8. Describe the nature of your complaint on the next page



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PLAN CHECK REVIEW PROCESS & EVALUATION PROGRAM

for

BUILDING OFFICIALS & ARCHITECTS

PROGRAM INTENT:

The California Architects Board (CAB) is offering this program to aid building officials and architects in the resolution of questions and issues concerning documents submitted by architects to the building official for plan check review and construction permitting.

Upon the request of a building official and/or an architect, the CAB will provide review of document submittals with reoccurring issues of code or procedure non-compliance, of document completeness and/or coordination, scope of practice and signature/stamp requirements. The program will not address specific code issues or usurp the regulatory authority of the building official.

The program is intended to assist both parties in understanding and interpretation of the standard of care as it applies to the Architects Practice Act and their respective responsibilities. The program goals are to resolve or prevent formal complaints, to prevent reoccurring submittal problems or deficiencies, and to improve communication and understanding between architects and building officials.

REQUEST FOR REVIEW:

A building official and/or an architect may request a review by the CAB's architect consultant (or other representatives) via fax, e-mail, letter or phone. The consultant will review the documents and the issues identified by the request, and if appropriate, will meet with both parties at their local building department. The consultant will advise both parties of the findings and may, in some cases, suggest improvements to avoid similar situations in the future.

REVIEW REQUEST FORM:

Review Requested by: Building Official _____ Architect _____ (Check One) Date: _____

Building Official: _____ Phone: _____

Jurisdiction/Agency: _____

Architect: _____ Phone: _____

Issues for Review: _____

CAB Architect Consultants:

Lawrence P. Segrue, FAIA @ larry_segrue@dea.ca.gov & Robert L. Carter, AIA @ bob_carter@dea.ca.gov

Telephone: (800) 991-2223

**AGENDA ITEM G: DISCUSS AND POSSIBLE ACTION ON 2019-2021
STRATEGIC PLAN OBJECTIVES TO:**

1. Educate Architects Regarding Their Responsibilities Under Business and Professions Code Section 5535 "Responsible Control" and CCR Section 151 "Aiding and Abetting," to Protect Consumers From Unlicensed Practice
2. Research and Evaluate Categories of Criminal Convictions as They Relate to the Practice of Architecture and Amend Disciplinary Guidelines and Rehabilitation Criteria to Comply With the Requirements of Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018)
3. Collaborate With Websites to Restrict Advertisements From Unlicensed Entities

AGENDA ITEM G.1: EDUCATE ARCHITECTS REGARDING THEIR RESPONSIBILITIES UNDER BUSINESS AND PROFESSIONS CODE SECTION 5535 “RESPONSIBLE CONTROL” AND CALIFORNIA CODE OF REGULATIONS SECTION 151 “AIDING AND ABETTING,” TO PROTECT CONSUMERS FROM UNLICENSED PRACTICE

Background Summary

The Board’s 2019-2021 Strategic Plan contains an objective assigned to the Regulatory and Enforcement Committee to Educate architects regarding their responsibilities under Business and Professions Code section 5535 “responsible control” and California Code of Regulations section 151 “aiding and abetting,” to protect consumers from unlicensed practice. Recent expansion of the design-build business model in California has resulted in confusion among architects, contractors, and business owners regarding the necessary involvement of licensed architects in a firm’s corporate structure and the level of control each are required to maintain over architectural designs.

As a result, the Board’s Enforcement Unit has received an increase in complaints about companies advertising architectural services without having a licensed architect in responsible control of the designs. Consumers are impacted because they do not have a contract directly with the architect who may be working on their project, and therefore limited recourse in the case of architectural misconduct.

Recommendation(s)

Board staff recommend publishing an informational bulletin describing recent case analyses involving issues of responsible control and aiding and abetting. An article could also be included on the Board’s website and added to the new licensee packet.

Action Requested

The Committee is asked to review and discuss the information provided, as well as approve the general content of the proposed informational bulletin and consider its format and alternative methods of education.

Attachment(s)

1. Informational Bulletin (Draft): Responsible Control within the Design-Build Model
2. Architects Practice Act Sections Involving Responsible Control

Attachment 1

Informational Bulletin (Draft): Responsible Control within the Design-Build Model

Recent expansion of the design-build business model in California has resulted in confusion among architects, contractors, and business owners regarding the necessary involvement of licensed architects in a firm's corporate structure and the level of control each are required to maintain over architectural designs.

The phrase "responsible control" means that level of control over architectural instruments of service that is required by professional standards of care. (Business and Professions Code (BPC) § 5535.1)

The *Architects Practice Act (Act)* does not prevent a corporation from contracting out architectural services, as long they are under the responsible control of a licensed architect (BPC§ 5535.3). However, it is unlawful to use a business name that includes as part of its title or description of services the term "architect," or any confusingly similar variations thereof, unless that business has a licensed architect who is either a part-owner, an officer or an employee. Furthermore, all the professional services offered by that business are to be under the responsible control of an architect. (California Code of Regulations (CCR) § 134)

If an architect signs instruments of service which have not been prepared by them, or under their responsible control, or has permitted their name to be used for the purpose of evading the *Act*, they are subject to disciplinary action. (BPC§ 5582.1, Aiding and Abetting CCR§ 151).

The Board's Enforcement Unit has seen these factors come into play, for example, when a business named "Acme Architecture" contracts out, on a project-by-project basis with one or more licensed architects. Under BPC section 5535.3 and CCR section 134, such a business can contract out the work, but it is not allowed to use the term "architecture" in its name or advertising.

Many architects believe that they can maintain such an arrangement as long as they have reported to the Board that they are providing architectural services through the business entity in question (see BPC§ 5558). However, if the business includes the term "architecture" in their name or advertises that they provide architectural services, the architect must at least be an "employee" (as defined by the Internal Revenue Service) and must also be in responsible control over all of that company's professional services.

If an architect allows their name to be used by such a business without being in responsible control of all their professional services, the owner of the business is subject to citation under BPC section 5536 and CCR section 134, while the architect is subject to disciplinary action under BPC section 5582.1 and CCR section 151.

Attachment 2

Architects Practice Act Sections Involving Responsible Control

BPC §5535.1 Responsible Control Defined

The phrase "responsible control" means that amount of control over the content of all architectural instruments of service during their preparation that is ordinarily exercised by architects applying the required professional standard of care.

BPC §5535.3 Corporation Responsible Control

This chapter does not prevent a corporation from furnishing or supplying by contract architectural services, as long as any architects' professional services are offered and provided under the responsible control of a licensed architect or architects.

BPC §5582 Aiding Unlawful Practice

The fact that the holder of a license has aided or abetted in the practice of architecture any person not authorized to practice architecture under the provisions of this chapter, constitutes a ground for disciplinary action.

BPC §5582.1 Signing Other's Plans or Instruments; Permitting Misuse of Name

(a) The fact that the holder of a license has affixed his or her signature to plans, drawings, specifications, or other instruments of service which have not been prepared by him or her, or under his or her responsible control, constitutes a ground for disciplinary action.

(b) The fact that the holder of a license has permitted his or her name to be used for the purpose of assisting any person to evade the provisions of this chapter constitutes a ground for disciplinary action.

CCR §134 Use of the Term Architect; Responsible Control within Business Entity

(a) Use of the Term Architect: It shall be unlawful for any person to use a business name that includes as part of its title or description of services the term "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations thereof, unless that person is a business entity wherein an architect is: (1) in management control of the professional services that are offered and provided by the business entity; and, (2) either the owner, a part-owner, an officer or an employee of the business entity.

(b) Responsible Control within Business Entity: Where a person uses a business name that includes as part of its title or description of services the term "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations thereof, all of the professional services offered and provided by that person are to be offered and provided by or under the responsible control of an architect.

(c) Definitions of Terms Used in this Section:

(1) The term "professional services" shall be given the same meaning as defined in Business and Professions Code section 5500.1.

(2) The term "management control" shall mean general oversight of the professional services offered and provided by the business entity.

(3) The term "responsible control" shall be given the same meaning as defined in Business and Professions Code section 5535.1.

(4) The term "business entity" shall mean any sole proprietorship, firm, corporation, partnership, limited liability partnership, or alliance formed by written agreement to practice architecture including on a single project or on a series of projects.

(5) The term "person" shall be given the same meaning as defined in Business and Professions Code section 5535.

(6) The term "architect" shall be given the same meaning as defined in Business and Professions Code section 5500.

CCR §151 Aiding and Abetting

(a) For purposes of Sections 5582 and 5582.1 of the code, aiding and abetting takes place when a California licensed architect signs any instrument of service which has been prepared by any person who is not: (1) a California licensed architect or civil engineer or structural engineer, or (2) a subordinate employee under his/her immediate and responsible direction, or (3) an individual, who is associated by written agreement with the architect and who is under the architect's immediate and responsible direction as described in subsection (b) of this section.

(b) The requirements of "immediate and responsible direction" as used in this section shall be deemed to be satisfied when the architect: (1) instructs the person described in subsection (a) of this section, in the preparation of instruments of service, and (2) the architect has exercised the same judgment and responsibility in reviewing all stages of the design documents and other phases of the work as required by law, and which would normally be exercised if he/she personally performed the required tasks.

AGENDA ITEM G.2: RESEARCH AND EVALUATE CATEGORIES OF CRIMINAL CONVICTIONS AS THEY RELATE TO THE PRACTICE OF ARCHITECTURE AND AMEND DISCIPLINARY GUIDELINES AND REHABILITATION CRITERIA TO COMPLY WITH THE REQUIREMENTS OF AB 2138 (CHIU, CHAPTER 995, STATUTES OF 2018).

Background Summary

The Board's 2019-2021 Strategic Plan contains an objective assigned to the Regulatory and Enforcement Committee to research and evaluate categories of criminal convictions as they relate to the practice of architecture and amend disciplinary guidelines and rehabilitation criteria to comply with the requirements of AB 2138 (Chiu, Chapter 995, Statutes of 2018). In order to establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Architects Board (Board) has adopted uniform disciplinary guidelines for particular violations. These guidelines, designed for use by Administrative Law Judges, attorneys, Board licensees, others involved in the Board's disciplinary process, and ultimately the Board, may be revised from time to time and are distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines reference the statutory and regulatory provisions for specific offenses. These recommended penalties and conditions of probation are merely guidelines and mitigating or aggravating circumstances and other factors may necessitate deviations.

Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018) limited the discretion provided to Department of Consumer Affairs (DCA) boards to apply criminal history background, as it relates to denial of an application for licensure. As a result of this legislation, DCA determined that the Substantial Relationship Criteria and Criteria for Rehabilitation sections of the *Disciplinary Guidelines* needed to be modified.

During the February 27, 2019 Board meeting, Board members reviewed and approved the new language. Staff are currently working on justifications for the changes, and they will then go to the Office of Administrative Law to be approved.

Recommendation(s)

Staff recommends the Committee review updated *Disciplinary Guidelines*.

Attachment(s)

1. *Disciplinary Guidelines*

STEPHEN P. SANDS
Executive Officer

VICTORIA WILK
Enforcement Officer



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I. INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Architects Board (~~CAB~~Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by Administrative Law Judges, attorneys, Board licensees, others involved in the Board's disciplinary process, and ultimately the Board, ~~shall~~may be revised from time to time and will be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines reference the statutory and regulatory provisions for specific offenses are referenced to the statutory and regulatory provisions.

For purposes of this document, terms and conditions of probation are divided into two general categories: (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation ~~as a standard term and condition~~; and (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and/or other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

Additional copies of this document may be obtained by contacting the ~~CAB~~Board at its office in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and distribution of copies.

II. GENERAL CONSIDERATIONS

A. Citations

The Board may issue a citation pursuant to Section 125.9 or 148 of the Business and Professions Code, and in accordance with Section 152 of Article 8 of Division 2 of Title 16 of the California Code of Regulations, as an alternate means to address relatively minor violations not necessarily warranting discipline.

Citations are not disciplinary actions, but are matters of public record. The citation program increases the effectiveness of the Board's consumer protection process by providing a method to effectively address less egregious violations.

Citations shall be in writing and shall describe the particular nature and facts of the violation, including a reference to the statute or regulation allegedly violated. In assessing a fine, the Board shall give due consideration to the factors enumerated in subdivision (d) of Section 152 of Article 8 of Division 2 of Title 16 of the California Code of Regulations.

Citations that include an assessment of an administrative fine are classified according to the nature of the violation as follows:

- 1) Class "A" violations are violations that involve an unlicensed person who has violated Business and Professions Code section 5536, including, but not limited to, acting in the capacity of or engaged in the practice of architecture. A class "A" violation is subject to an administrative fine in an amount not less than \$750 and not exceeding \$2,500 for each and every violation.
- 2) Class "B" violations are violations that involve a person who, while engaged in the practice of architecture, has violated a statute or regulation relating to the practice of architecture and which has caused physical damage to a structure or building or to real property or monetary damage to a client or member of the public or a person who has committed a class "C" violation and has one or more prior, separate class "C" violations. A class "B" violation is subject to an administrative fine in an amount not less than \$1,000 and not exceeding \$2,500 for each and every violation.
- 3) Class "C" violations are violations that involve a person who, while engaged in the practice of architecture, has violated a statute or regulation relating to the practice of architecture and which has not caused either the death or bodily injury to another person or physical damage to a structure or building or to real property or monetary damage to a client or a member of the public. A class "C" violation is subject to an administrative fine in an amount not less than \$250 and not exceeding \$1,000 for each and every violation.

Notwithstanding the administrative fine amounts listed above, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

- 1) The citation involves a violation that has an immediate relationship to the health and safety of another person.
- 2) The cited person has a history of two or more prior citations of the same or similar violations.
- 3) The citation involves multiple violations that demonstrate a willful disregard of the law.
- 4) The citation involves a violation or violations perpetrated against a senior citizen or disabled person.

Payment of a fine with or without an informal conference or administrative hearing does not constitute an admission of the violation charged, but represents a satisfactory resolution of the citation for purposes of public disclosure.

After a citation is issued, the person may:

- 1) Pay the fine/comply with any order of abatement and the matter will be satisfactorily resolved.
- 2) Request an informal conference. Following the informal conference, the citation may be affirmed, modified, or dismissed, including any fine levied or order of abatement issued.
- 3) Request an administrative hearing to appeal the citation regardless of whether or not an informal conference was held.

Failure to pay a fine, unless the citation is being appealed, may result in disciplinary action. Where a citation is not contested and a fine is not paid, the fine shall be added to the fee for renewal of the license.

B. Proposed Decisions

The Board requests that pProposed dDecisions following administrative hearings include the following:

- a. Specific code sections violated, along with their definitionsdescriptions.
- b. Clear description of the underlying facts demonstrating the violation committed.
- c. Respondent's explanation of the violation if he/ or she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

C. Stipulated Settlements

The Board will consider agreeing to stipulated settlements to promote cost-effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to a settlement with the Board, he or she may be required to admit to the violations set forth in the accusation or statement of issues. All proposed stipulated settlements must be accompanied by a memorandum from the Deputy Attorney General addressed to Board members explaining the background of the case and defining the allegations, mitigating circumstances, admissions, and proposed penalty, along with a recommendation for the Board to adopt the stipulated settlement.

D. Cost Reimbursement

The Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including, but not limited to, expert consultant opinions and services. The Board seeks reimbursement of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct required investigation and prosecution, not upon the profession as a whole.

E. Criteria to be Considered

Substantially Related Criteria. The Board may deny, suspend, or revoke a license if the applicant or licensee has been convicted of a crime, professional misconduct, or act that is substantially related to the qualifications, functions, or duties of the profession, based on the criteria specified in Section 2655 of Article 1 of Division 26 of Title 16 of the California Code of Regulations.

Rehabilitation Criteria. When considering the denial, revocation, or suspension of a license on the ground that the applicant or licensee has been convicted of a crime, the Board shall consider whether the applicant or licensee has made a showing of rehabilitation based on the criteria specified in Section 2656 of Article 1 of Division 26 of Title 16 of the California Code of Regulations.

Factors to be Considered -

In determining whether revocation, suspension, or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.

2. Actual or potential harm to any consumer, client, or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Aggravating evidence.
56. Mitigating evidence.
67. Rehabilitation evidence. Evidence, if any, of rehabilitation submitted by the respondent.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court ordered probation.
8. Overall criminal record.
98. Time passed since the act(s) or offense(s) occurred.
9. Any financial benefit to the respondent from his or her misconduct.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by the respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

F. Substantial Relationship Criteria

California Code of Regulations, Title 16, Division 2, Article 2, section 110 states:

For the purposes of denial, suspension, or revocation of the license of an architect pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions and duties of an architect if to a substantial degree it evidences present or potential unfitness of an architect to perform the functions authorized by his/her license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(a) Any violation of the provisions of Chapter 3, Division 3 of the Business and Professions Code.

G. Criteria for Rehabilitation

(For cases involving an applicant, the conviction of a crime, the reinstatement of licensure, or the reduction of penalty)

California Code of Regulations, Title 16, Division 2, Article 2, section 110.1 states:

(a) When considering the denial of an architect's license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of the license of an architect on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for licensure will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

~~(c) When considering the petition for reinstatement of the license of an architect, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).~~

III. DISCIPLINARY GUIDELINES

The offenses are listed by section number in the Business and Professions Code or California Code of Regulations. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein, are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets ~~listed after each condition of probation~~ refers to the specific standard or optional conditions of probation listed on pages _____.

A. Business and Professions Code Sections

Section 5536

Practice Without License or Holding Self Out as Architect

MAXIMUM: Revocation or denial of license application

MINIMUM: Issue initial license (if applicable), stayed revocation, and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Cost reimbursement [#16]
- c. Restitution [#17] (if applicable)

Section 5536.1

Signature and Stamp on Plans and Documents; Unauthorized Practice

MAXIMUM: Revocation or denial of license application

MINIMUM: Issue initial license (if applicable), stayed revocation, and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Cost reimbursement [#16]
- c. Restitution [#17] (if applicable)

Section 5536.22
Written Contract

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Cost reimbursement [#16]
- b. Restitution [#17] (if applicable)

Section 5536.4
Instruments of Service – Consent

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Cost reimbursement [#16]
- b. Restitution [#17] (if applicable)

Section 5536.5
State of Emergency Following Natural Disaster – Penalty for Practice Without License or Holding Self Out as Architect

MAXIMUM: Revocation or denial of license application

MINIMUM: Issue initial license (if applicable), stayed revocation, and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Cost reimbursement [#16]
- c. Restitution [#17] (if applicable)

Section 5558
Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional condition:

- a. Cost reimbursement [#16]

Section 5577

Conviction of a Crime Substantially Related to the Qualifications, Duties, Functions, and Duties of an Architect

MAXIMUM: Revocation or denial of license application and \$5,000 fine

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~_____ All standard conditions of probation [#1-7]~~
- b.a. Cost reimbursement [#1216]
- e.b. Criminal probation reports [#1418]
- c. Fine - Maximum \$5,000 [#20]

Section 5578

Acts in Violation of the Architects Practice Act

The appropriate penalty depends on the nature of the offense.

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. _____ Cost reimbursement [#16]
- b. _____ Restitution [#17] (if applicable)

Section 5579

Fraud or Misrepresentation in Obtaining Architect License

MAXIMUM/MINIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. _____ Ethics course [#14]
- b. _____ Cost reimbursement [#16]

Section 5580

Impersonation or Use of Assumed or Corporate Name

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- ba. ~~Continuing education courses~~ Ethics course [#11-14]
- eb. Cost reimbursement [#12-16]
- ec. Restitution [#13-17] (if applicable)

Section 5582

Aiding & Abetting the Unlicensed Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- ba. ~~Continuing education courses~~ Ethics course [#11-14]
- eb. Cost reimbursement [#12-16]
- ec. Restitution [#13-17] (if applicable)

Section 5582.1

Signing Others' Instruments of Service or Permitting Misuse of Name to Evade Provisions of Architects Practice Act

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- ba. ~~Continuing education courses~~ Ethics course [#11-14]
- eb. Cost reimbursement [#12-16]
- ec. Restitution [#13-17] (if applicable)

Section 5583

Fraud or Deceit in the Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ Ethics course [#1-714]
- b. Continuing education courses [#11-15]
- c. Cost reimbursement [#1216]
- d. Restitution [#1317] (if applicable)

Section 5584

Negligence in the Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- b. ~~California Supplemental Examination~~ [#9]
- ea. Continuing education courses [#11-15]
- eb. Cost reimbursement [#1216]
- ec. Restitution [#1317] (if applicable)

Section 5584

Willful Misconduct in the Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ Ethics course [#1-714]
- b. Continuing education courses [#11-15]
- c. Cost reimbursement [#1216]
- d. Restitution [#1317] (if applicable)

Section 5585
Incompetency or Recklessness in the Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation [#1-7]~~
- ba. California Supplemental Examination [#912]
- eb. Continuing education courses [#1415]
- dc. Cost reimbursement [#1216]
- ed. Restitution [#1317] (if applicable)

Section 5586
Disciplinary Action by a Public Agency for an Act Substantially Related to the Qualifications, Functions, or Duties as an Architect

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Continuing education courses [#15]
- b. Cost reimbursement [#16]
- c. Restitution [#17] (if applicable)

Section 5588
Failure to Report Settlement or Arbitration Award

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional condition:

- a. Cost reimbursement [#16]

Civil Penalty: In lieu of revocation, assess civil penalty of not less than \$100 and not more than \$1,000. If knowing and intentional failure to report, in lieu of revocation, assess civil penalty up to \$20,000. [#21]

Section 5600.05

License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Continuing education courses [#15]
- b. Cost reimbursement [#16]

B. General Provisions of Business and Professions Code

Section 125.6

Discrimination by Licensee

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 60 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation [#1-7]~~
- ba. Cost reimbursement [#1216]

Section 140

Failure to Record and Preserve Cash Transactions Involving Employee Wages or Failure to Make Those Records Available to Board Representative

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional condition:

- a. Cost reimbursement [#16]

Section 141

Effect of Disciplinary Action Taken by Another State or the Federal Government

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Continuing education courses [#15]
- b. Cost reimbursement [#16]
- c. Restitution [#17] (if applicable)

Section 143.5

Provision Prohibited in Settlement Agreements

MAXIMUM: Revocation

MINIMUM: Stayed revocation and 3 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Cost reimbursement [#16]

Section 480 (a)

Denial of Licenses

An applicant's application may be denied for (1) conviction of a crime substantially related to the qualifications, functions, or duties of the practice of architecture; (2) any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; (3) any act ~~which~~that if done by a licensee would be grounds for suspension or revocation of license; or (4) knowingly making a false statement of fact required to be revealed in the application for such license.

~~**RECOMMENDED DISCIPLINE**~~**MAXIMUM:** Denial of license application

MINIMUM: Issue initial license, stayed revocation, and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Continuing education courses [#15]
- c. Cost reimbursement [#16]
- d. Restitution [#17] (if applicable)

Section 490

Conviction of Crime; Suspension, Revocation – Grounds

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Cost reimbursement [#16]
- b. Criminal probation reports [#18]

Section 496

Subversion of Licensing Examinations or Administration of Examinations

~~RECOMMENDED DISCIPLINE~~ **MAXIMUM:** Denial or ~~Revocation~~ or denial of license application

MINIMUM: Issue initial license (if applicable), stayed revocation, and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Continuing education courses [#15]
- c. Cost reimbursement [#16]
- d. Restitution [#17] (if applicable)

Section 499

False Statement in Support of Another Person's Application

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Cost reimbursement [#16]

C. Title 16, California Code of Regulations, Title 16, Division 2

Article 9. Professional Conduct

Section 160

Rules of Professional Conduct

a. Competence

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation [#1-7]~~
- ba. California Supplemental Examination [#912]
- eb. Continuing education courses [#1115]
- dc. Cost reimbursement [#1216]
- ed. Restitution [#1317] (if applicable)

b. Willful Misconduct

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- ba. ~~California Supplemental Examination~~ Ethics course [#914]
- eb. Continuing education courses [#11-15]
- dc. Cost reimbursement [#1216]
- ed. Restitution [#1317] (if applicable)

c. Conflict of Interest

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- ba. ~~Continuing education courses~~ Ethics course [#1114]
- eb. Cost reimbursement [#1216]
- dc. Restitution [#1317] (if applicable)

d. Full Disclosure

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ [#1-7]
- ba. ~~Continuing education courses~~ Ethics course [#1114]
- eb. Cost reimbursement [#1216]
- dc. Restitution [#1317] (if applicable)

e. Copyright Infringement

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. ~~All standard conditions of probation~~ Ethics course [#1-714]
- b. Continuing education courses [#11-15]
- c. Cost reimbursement [#12-16]
- d. Restitution [#13-17] (if applicable)

f. Informed Consent

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days' actual suspension [#11], and 5 years' probation on all standard conditions [#1-10] and the following optional conditions:

- a. Ethics course [#14]
- b. Continuing education courses [#15]
- c. Cost reimbursement [#16]
- d. Restitution [#17] (if applicable)

D. Violation of Probation

Maximum Penalty -

Actual suspension; vacate stay order and reimpose penalty that was previously stayed; and/or revoke, separately and severally, for violation of probation and/or for any additional offenses.

Minimum Penalty -

Actual suspension and/or extension of probation.

The maximum penalty is appropriate for repeated similar offenses, or for probation violations indicating a cavalier or recalcitrant attitude. If the probation violation is due in part to the commission of additional offense(s), additional penalties shall be imposed according to the nature of the offense; and the probation violation shall be considered as an aggravating factor in imposing a penalty for those offenses.

IV. MODEL DISCIPLINARY ORDERS

A. Licensee

Revocation of License

Architect License No. _____, issued to respondent _____, is revoked.

Respondent shall relinquish and forward or deliver his or her license to practice architecture and wall certificate to the Board within ten (10) days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of his or her revoked license for one (1) year from the effective date of this Decision.

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$ _____ within thirty (30) days of the effective date of this Decision.

Option: As a condition precedent to reinstatement of his/her revoked license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$ _____. Said amount shall be paid in full prior to the reinstatement of his or her license unless otherwise ordered by the Board.

Revocation Stayed and License Placed on Probation

Architect License No. _____, issued to respondent _____, is revoked; however, the revocation is stayed and respondent is placed on probation for _____ years on the following terms and conditions:

Public Reproval

Architect License No. _____, issued to respondent _____, is publicly reproved. This reproval constitutes disciplinary action by the Board and shall become a part of respondent's license history with the Board.

Surrender of License

Respondent _____ surrenders Architect License No. _____ as of the effective date of this Decision. Respondent shall relinquish and forward or deliver his or her license to practice architecture and wall certificate to the Board within ten (10) days of the effective date of this Decision.

The surrender of respondent's license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent. This Decision constitutes disciplinary action by the Board and shall become a part of respondent's license history with the Board.

B. Petition for Reinstatement

Grant Petition with No Restrictions on License

The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner's architect license shall be fully restored.

Grant Petition and Place License on Probation

The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner's architect license shall be reinstated and immediately revoked; however, the revocation shall be stayed and the petitioner shall be placed on probation for a period of _____ years on the following terms and conditions:

Grant Petition and Place License on Probation After Completion of Conditions Precedent

The petition for reinstatement filed by petitioner _____ is hereby granted, and petitioner's architect license shall be fully reinstated upon the following conditions precedent:

Upon completion of the conditions precedent above, petitioner's architect license shall be reinstated and immediately revoked; however, the revocation shall be stayed, and petitioner shall be placed on probation for a period of _____ years on the following terms and conditions:

Deny Petition

The petition for reinstatement filed by petitioner _____ is hereby denied.

C. Petition to Revoke Probation

Revocation of Probation

Architect License No. _____, issued to respondent _____, is revoked.

Extension of Probation

Architect License No. _____, issued to respondent _____, is revoked; however, the revocation is stayed, and respondent is placed on probation for an additional _____ year(s) on the following terms and conditions:

D. Applicant

(in cases where a Statement of Issues has been filed)

Grant Application with No Restrictions on License

The application filed by respondent _____ for initial licensure is hereby granted, and an architect license shall be issued to respondent upon successful completion of all licensing requirements, including payment of all fees.

Grant Application and Place License on Probation

The application filed by respondent _____ for initial licensure is hereby granted, and an architect license shall be issued to respondent upon successful completion of all licensing requirements, including payment of all fees. However, the license shall be immediately revoked, the revocation shall be stayed, and respondent shall be placed on probation for _____ years on the following terms and conditions:

Grant Application and Place License on Probation After Completion of Conditions Precedent

The application filed by respondent _____ for initial licensure is hereby granted, and an architect license shall be issued to respondent upon the following conditions precedent:

Upon completion of the conditions precedent above and successful completion of all licensing requirements, including payment of all fees, respondent shall be issued an architect license. However, the license shall be immediately revoked, the revocation shall be stayed, and respondent shall be placed on probation for _____ years on the following terms and conditions:

Deny Application

The application filed by respondent _____ for initial licensure is hereby denied.

V. CONDITIONS OF PROBATION

A. Standard Conditions of Probation **(To be included in all Cases of Probation)**

Severability Clause

Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Obey All Laws

Respondent shall obey all federal, state, and local laws and regulations ~~governing the practice of architecture in California~~ and comply with all conditions of probation.

2. Submit Quarterly Reports

Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board ~~on using the Board's a-Quarterly Probation Report of Compliance form (4/00 Rev. 12/2017)~~ obtained from the Board (Attachment-A).

3. Personal Appearances

Upon reasonable notice by the Board, ~~the~~ respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Cooperate During Probation

Respondent shall cooperate fully with the Board, and with any of its agents or employees in their supervision and investigation of his/ or her compliance with the terms and conditions of this probation. Upon reasonable notice, ~~the~~ respondent shall provide the Board, its agents or employees with the opportunity to review all plans, specifications, and instruments of service prepared during the period of probation.

5. Maintain Active and Current License

Respondent shall maintain an active and current license to practice architecture in California for the length of the probation period. Failure to pay all renewal fees and meet applicable coursework requirements prior to respondent's license expiration date shall constitute a violation of probation.

6. Notification of Changes to Address, Telephone Number, and/or Employment

Respondent shall notify the Board in writing of any and all changes to his or her address of record, telephone number, and employment within 10 calendar days of such change.

57. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as an architect or held any architecture related professional license or registration within 30 calendar days of the effective date of this Decision. Respondent shall further provide information regarding the status of each license and registration and any changes in the license or registration status within 10 calendar days, during the term of probation. Respondent shall inform the Board if he or she applies for or obtains an architectural license or registration outside of California within 10 calendar days, during the term of probation.

In the event respondent should leave California to reside or to practice outside the State or for any reason stop practicing architecture in California, respondent shall notify the Board or its designee in writing within ~~ten~~10 days of the dates of departure and return, or the dates of non-practice or the resumption of practice within California. Respondent's probation is tolled, if and when he or she ceases practicing in California. Non-practice is defined as any period of time exceeding ~~thirty~~30 days in which respondent is not engaging in any activities defined in Section 5500.1 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period. Respondent shall not be relieved of the obligation to maintain an active and current license with the Board. It shall be a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total of five years.

All provisions of probation other than the quarterly report requirements, examination requirements, cost reimbursement, restitution, and education requirements, shall be held in abeyance until respondent resumes practice in California. All other provisions of probation shall recommence on the effective date of resumption of practice in California. ~~Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.~~

68. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which that was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction ~~until the matter is final~~, and the period of probation shall be extended until the matter is final.

9. License Surrender While on Probation

During respondent's term of probation, if he or she ceases practice due to retirement or health reasons, or is otherwise unable to satisfy any condition of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and exercise its discretion

in determining whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., cost reimbursement) are due upon reinstatement or relicensure.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board.

710. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

B. Optional Conditions of Probation

811. Suspension

Respondent is suspended from the practice of architecture for _____ days beginning on the effective date of ~~the~~this Decision.

912. California Supplemental Examination

Option 1 (Condition Subsequent)

Within _____ ~~days~~six months of the effective date of this Decision, respondent shall take and pass the California Supplemental Examination (CSE) designated by the Board.

If respondent fails to pass said examination within ~~6~~six months, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/ or she may resume practice. Tolling provisions apply during any period of non-practice due to respondent's failure to take and pass said examination. It shall be a violation of probation for respondent's probation to remain tolled pursuant to this condition for a period exceeding a total of three years. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for paying all costs of such examination.

Option 2 (Condition Precedent)

Prior to resuming or continuing practice, respondent shall take and pass the California Supplemental Examination (CSE) designated by the Board within two years of the effective date of this Decision.

This probationary period shall not commence until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he or she may resume practice. Respondent is responsible for paying all costs of such examination.

1013. Written Examination

Option 1 (Condition Subsequent)

Within one year of the effective date of this Decision, Respondent shall take and pass (specified) sections of the Architect Registration Examination (ARE).

If respondent fails to pass said examination within one year or within two attempts, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/ or she may resume practice. Tolling provisions apply during any period of non-practice due to respondent's failure to take and pass said examination. It shall be a violation of probation for respondent's probation to remain tolled pursuant to this condition for a period exceeding a total of three years. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for paying all costs of such examination.

Option 2 (Condition Precedent)

Prior to resuming or continuing practice, respondent shall take and pass (specified) sections of the Architect Registration Examination (ARE) within two years of the effective date of this Decision.

This probationary period shall not commence until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he or she may resume practice. Respondent is responsible for paying all costs of such examination.

14. Ethics Course

Within 30 days of the effective date of this Decision, respondent shall submit for prior Board approval a course in ethics that will be completed within the first year of probation.

Failure to satisfactorily complete the required course as scheduled or failure to complete same within the first year of probation shall constitute a violation of probation. Respondent is responsible for submitting to the Board for its approval the specifics of the course required by this condition, and for paying all costs of said course.

115. Continuing Education Courses

Respondent shall successfully complete and pass professional education courses approved in advance by the Board or its designee, directly relevant to the violation as specified by the Board. The professional education courses shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for submitting to the Board for its approval the specifics of each course required by this condition, and for paying all costs of such courses.

1216. Cost Reimbursement

Respondent shall reimburse the Board \$ _____ for its investigative and prosecution costs. The payment shall be made within _____ days/months of the effective date the Board's of this dDecision is final.

Option: The payment shall be made as follows: _____(specify either prior to the resumption of practice or in monthly or quarterly payments, the final payment being due one year before probation is scheduled to terminate).

1317. Restitution

Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of \$ _____ and shall provide the Board with proof from _____ attesting the full restitution has been paid. In all cases, restitution shall be completed no later than one year before the termination of probation.

Note: Business and Professions Code section 143.5 prohibits the Board from requiring restitution in disciplinary cases when the Board's case is based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties in the civil action.

1418. Criminal Probation Reports

If respondent is convicted of any crime, Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports, and the name of his/ or her probation officer.

15. ~~Relinquish License and Wall Certificate~~

~~Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within 10 days of the effective date of this decision and order.~~

1619. Notification to Clients/Cessation of Practice

In orders which provide for a cessation or suspension of practice, within 30 days of the effective date of this Decision, respondent shall ~~comply with procedures provided by the Board regarding notification to, and management of,~~ provide all clients with whom he or she has a current contractual relationship in the practice of architecture with a copy of the Decision and Order of the Board and provide the Board with evidence of such notification, including the name and address of each person or entity required to be notified.

20. Fine

Respondent shall pay to the Board a fine in the amount of \$ _____ [not to exceed \$5,000] pursuant to Business and Professions Code section 5577. Respondent shall make the payments as follows: _____.

[Term only applicable to Business and Professions Code section 5577 violations.]

21. Civil Penalty

Respondent shall pay to the Board a civil penalty in the amount of \$ _____ [not less than \$100 and not more than \$1,000; if knowing and intentional failure to report, assess civil penalty up to \$20,000] pursuant to Business and Professions Code section 5588. Respondent shall make the payments as follows: _____.

[Term only applicable to Business and Professions Code section 5588 violations and used in lieu of revocation.]

IV. REHABILITATION CRITERIA

California Code of Regulations, Title 16, Division 2, Section 110.1, Criteria for Rehabilitation states:

- ~~(a) When considering the denial of an architect's license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
 - ~~(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.~~
 - ~~(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.~~
 - ~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).~~
 - ~~(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.~~
 - ~~(5) Evidence, if any, of rehabilitation submitted by the applicant.~~~~
- ~~(b) When considering the suspension or revocation of the license of an architect on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for licensure will consider the following criteria:
 - ~~(1) Nature and severity of the act(s) or offense(s).~~
 - ~~(2) Total criminal record.~~
 - ~~(3) The time that has elapsed since commission of the act(s) or offense(s).~~
 - ~~(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.~~
 - ~~(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.~~
 - ~~(6) Evidence, if any, of rehabilitation submitted by the licensee.~~~~
- ~~(c) When considering the petition for reinstatement of the license of an architect, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).~~



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Attachment A

Blue header box containing the California Architects Board logo, name, address, phone numbers, website, and Governor Edmund G. Brown Jr.'s name.

QUARTERLY PROBATION REPORT OF COMPLIANCE

1. NAME: (Last/First/Middle) TELEPHONE #: () (Residence)

RESIDENCE ADDRESS OF RECORD:

CITY: STATE: ZIP CODE:

2. NAME OF FIRM: YOUR TITLE:

FIRM ADDRESS:

CITY: STATE: ZIP CODE:

TELEPHONE #: ()

3. On the back second page of this form, detail your architectural activities for the probation period beginning: Mo. Day Year and ending: Mo. Day Year.

4. Site List any other activities related to the practice of architecture:

Table with columns for ACTIVITY and DATE, containing several empty rows for listing activities.

5. I declare under penalty of perjury under the laws of the State of California that the information contained in this quarterly report regarding my professional practice is true and correct.

Signature: _____

Date: _____

DATE: _____

QUARTER: _____ YEAR: _____

CLIENT NAME: _____ TELEPHONE #: () _____
(Last/First/Middle)

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TITLE/ADDRESS	PROJECT DESCRIPTION	DATE START-COMPLETE	YOUR INVOLVEMENT

CLIENT NAME: _____ TELEPHONE #: () _____
(Last/First/Middle)

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TITLE/ADDRESS	PROJECT DESCRIPTION	DATE START-COMPLETE	YOUR INVOLVEMENT

CLIENT NAME: _____ TELEPHONE #: () _____
(Last/First/Middle)

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TITLE/ADDRESS	PROJECT DESCRIPTION	DATE START-COMPLETE	YOUR INVOLVEMENT

AGENDA ITEM G.3: COLLABORATE WITH WEBSITES TO RESTRICT ADVERTISEMENTS FROM UNLICENSED ENTITIES

Background Summary

The Board's 2019-2021 Strategic Plan contains an objective assigned to the Regulatory and Enforcement Committee to collaborate with websites to restrict advertisements from unlicensed entities. Unlicensed advertising is one of the most common complaints received at the Board. Oftentimes the Board receives complaints about unlicensed persons describing themselves as architects and/or offering to provide architectural services on numerous websites.

Business and Profession Code section 5536(a), states that an unlicensed person may not advertise or put out any device that might indicate to the public that the person is an architect or qualified to engage in the practice of architecture.

The Board's Enforcement staff reviewed a sample of advertisement complaints to determine the most common websites used for advertising and provided the data that was collected in the attached graph.

The control the user has on each website varies. Some websites allow users to make modifications, while others do not. Board staff have created profiles on these websites to review what information users may control. In instances where there is no user control, the unlicensed person is asked to submit a request to remove that information to the offending website.

Board staff have contacted (Yelp on April 18, 2019 and Houzz on May 9, 2019) about modifying their websites to make it less likely unlicensed persons inadvertently advertise themselves as architects. Staff received generic responses stating they would have their teams consider implementing the request.

Recommendation(s)

Board staff to collaborate with DCA legal counsel to create a standard cease and desist letter to send to websites that advertise unlicensed persons as architects.

Adopt regulation to require an architect to post his or her license number on advertisements to mitigate unlicensed practice.

Determine if the Committee supports continuing to work with various websites to restrict unlicensed advertisements.

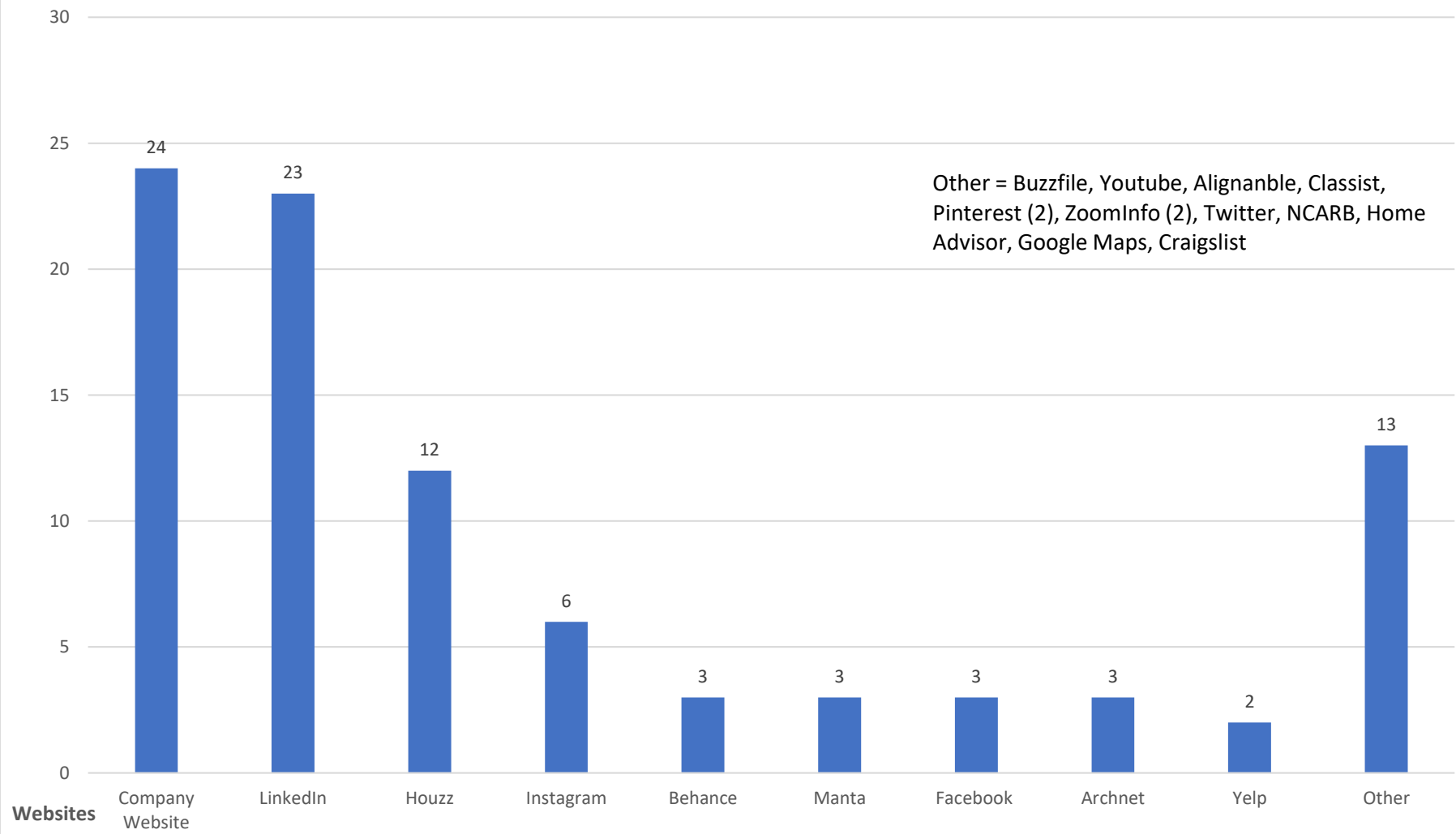
Action Requested

The Committee is asked to review and discuss this objective and make recommendations to be considered by the Board.

Attachment(s)

1. Advertisement Violations on Websites

Advertisement Violations on Websites



Source: Review of 48 Advertisement Complaints from December 2018 to May 2019

AGENDA ITEM H.1 AB 1076 (TING, 2019) CRIMINAL RECORDS; AUTOMATIC RELIEF

Status: Senate Appropriations Committee

Summary

This bill would, commencing January 1, 2021, require the Department of Justice (DOJ), on a weekly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure. The bill would require the DOJ to grant relief to an eligible person, without requiring a petition or motion. The bill would not limit petitions, motions, or orders for relief, as required or authorized by any other law.

Comments

According to the author, "Everybody deserves a second chance. We must open doors for those facing housing and employment barriers and use available technology to clear arrest and criminal records for individuals already eligible for relief. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals."

Action Requested

No action is requested.

Attachment(s)

1. Assembly Bill 1076 (Ting) (as amended July 11, 2019)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS
FOLLOWS:

SECTION 1.

Section 480 of the Business and Professions Code, as amended by Section 3 of Chapter 995 of the Statutes of 2018, is amended to read:

480.

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, ~~or 1203.41~~ 1203.41, or 1203.425 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit ~~himself or herself~~ themselves or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that ~~he or she has~~ they have been convicted of a felony if ~~he or she has~~ they have obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that ~~he or she has~~ they have been convicted of a misdemeanor if ~~he or she has~~ they have met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, ~~or 1203.41~~ 1203.41, or 1203.425 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, ~~or 1203.41~~ 1203.41, or 1203.425 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2.

Section 480 of the Business and Professions Code, as added by Section 4 of Chapter 995 of the Statutes of 2018, is amended to read:

480.

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 1 (commencing with Section 5000) of Division 3.

(ii) Chapter 6 (commencing with Section 6500) of Division 3.

(iii) Chapter 9 (commencing with Section 7000) of Division 3.

(iv) Chapter 11.3 (commencing with Section 7512) of Division 3.

(v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, ~~or 1203.42~~ [1203.42](#), or [1203.425](#) of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that ~~he or she~~ [the person](#) has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if ~~he or she~~ [that person](#) has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, ~~or 1203.42~~ [1203.42](#), or [1203.425](#) of the Penal Code, or

a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, ~~or 1203.42~~ 1203.42, or 1203.425 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of ~~his or her~~ *the applicant's* complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's ~~Internet Web site~~ *internet website* and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 3.

Section 480.2 of the Business and Professions Code is amended to read:

480.2.

(a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit ~~himself or herself~~ *themselves* or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that ~~he or she~~ *the person* has been convicted of a felony if ~~he or she~~ *that person* has obtained

a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that ~~he or she~~ *the person* has been convicted of a misdemeanor if ~~he or she~~ *the person* has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, ~~or 1203.41~~ *1203.41, or 1203.425* of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, ~~or 1203.41~~ *1203.41, or 1203.425* of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary

action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, ~~or 1203.41~~ *1203.41, or 1203.425* of the Penal Code.

(j) This section shall become operative on July 1, 2020.

~~SECTION 1.~~ **SEC. 4.**

Section 851.93 is added to the Penal Code, to read:

851.93.

(a) (1) On a weekly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, *there is no indication that criminal proceedings have been initiated*, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, *there is no indication that criminal proceedings have been initiated*, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges ~~arising from,~~ *arising, from* that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) Any diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a weekly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, *except as provided in subdivision (d)*, the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(4) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(5) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section shall not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal, as defined in Section 13010.

(g) This section shall be operative commencing January 1, 2021.

~~SEC. 2.~~ SEC. 5.

Section 1203.425 is added to the Penal Code, immediately following Section 1203.42, to read:

1203.425.

(a) (1) On a weekly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in paragraph (2) and are eligible for automatic conviction record relief.

(2) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(A) The person is not required to register pursuant to the Sex Offender Registration Act.

(B) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(C) The person is not currently serving a sentence for any offense and does not have any pending criminal charges.

(D) Except as otherwise provided in clause (iii) of subparagraph (E), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(E) The conviction occurred on or after January 1, 1973, and meets one of the following criteria:

(i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, has completed their sentence, and, based upon the disposition date in the department's record, at least one calendar year has elapsed since the date of judgment.

(iii) The defendant was sentenced for a crime ~~which~~ *that* is, or on or before January 1, 2012, would have been, eligible for sentencing pursuant to subdivision (h) of Section 1170, and, based upon the disposition date and the sentence specified in the department's records, it appears that two years have elapsed following the defendant's completion of the sentence.

(b) (1) Except as specified in subdivision ~~(g)~~, *(h)*, the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(3) Except as otherwise provided in subdivision (d) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(c) On a weekly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, *except as provided in subdivision (d)*, the court shall not disclose information concerning a conviction granted relief pursuant to this section or ~~Sections~~ *Section* 1203.4, 1203.4a, 1203.41, ~~and or~~ 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(3) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(4) Relief granted pursuant to this section does not limit the jurisdiction of the court over any subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(5) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(6) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(7) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(8) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

~~(7)~~

(9) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.

(e) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.41, and 1203.42.

(f) The department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (h), on the OpenJustice Web portal, as defined in Section 13010.

(g) Subdivisions (a) to ~~(g)~~, (f), inclusive, shall be operative commencing January 1, 2021.

(h) For convictions entered on or after January 1, 2018, the prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a motion to prohibit the department from granting automatic relief pursuant to this section. The court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed. If the court grants that motion, the court shall report that outcome to the department, and the department shall not grant relief pursuant to this section. The person may continue to be eligible for relief pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42, and if the court subsequently grants such a motion, the court shall report that outcome to the department and the department shall grant relief pursuant to the applicable section.

(i) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

SEC. 3. SEC. 6.

Section 11105 of the Penal Code is amended to read:

11105.

(a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

- (1) The courts of the state.
- (2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.
- (3) District attorneys of the state.
- (4) Prosecuting city attorneys or city prosecutors of a city within the state.
- (5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.
- (6) Probation officers of the state.
- (7) Parole officers of the state.
- (8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.
- (9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.
- (10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.
- (11) A city or county, city and county, district, or an officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.
- (12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).
- (13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, “federal tax information,” “state entity” and “designee” are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To a person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To an individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on ~~his or her~~ *their* own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) To a campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To a foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or

certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped “no criminal record” and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section ~~1203.425~~ *1203.4, 1203.4a, 1203.41, 1203.42, 1203.425*, or 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on ~~his or her~~ *their* own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

AGENDA ITEM H.2: SENATE BILL (SB) 608 (GLAZER) ARCHITECTS AND LANDSCAPE ARCHITECTS

Status: Assembly Floor

Summary

This bill extends the sunset date for the California Architects Board (Board) and the Landscape Architects Technical Committee (LATC) and, beginning January 1, 2021, requires the Board to fingerprint applicants for licensure. (“Applicant” is limited to an initial applicant who has never been registered or licensed by the Board or to an applicant for a new licensure or registration category).

Comments

Existing law regulating professions and vocations requires certain designated agencies, within the purview of the Department of Consumer Affairs (DCA), to require applicants to furnish their fingerprints for purposes of conducting criminal history record checks. Unlike most other DCA boards and bureaus, the California Architects Board (Board) is not statutorily mandated to fingerprint candidates as a condition of license. In meeting its Strategic Plan objectives in 2011 and 2012, the Board considered adopting a fingerprint requirement, but determined that the increased costs and likely de minimis arrest reports would not substantially increase the public’s health, safety, and welfare. This issue was revisited in 2018, at which the REC concluded there is insufficient data to justify the need for fingerprinting based on the following considerations:

1. A low percentage of the Board’s applicant and licensee population has criminal records, and of those, most are not substantially related to the qualifications, functions, or duties of an architect.
2. Applicants and licensees must disclose convictions to the Board.
3. A fingerprint requirement would result in increased costs.
4. Related design and construction boards (the Board for Professional Engineers, Land Surveyors, and Geologists and the Contractors State License Board) fingerprint their applicants, but only deny a negligible percentage of applications due to prior convictions.
5. The Texas Board of Architectural Examiners is the only architectural licensing board in the United States with a fingerprint requirement.
6. A fingerprint requirement would only apply to applicants and licensees, not unlicensed employees of architectural firms who enter consumers’ homes and businesses.
7. Licensees who work on school projects are required to submit to a background check.

Public protection is the highest priority for the Board, and applicants should be fingerprinted. This bill would, beginning on January 1, 2021, add the Board to the listed of designated agencies subject to these provisions.

Action Requested

No action is requested

Attachment(s)

1. Senate Bill 608 (Glazer) (as amended July 2, 2019)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 144 of the Business and Professions Code is amended to read:

144.

(a) Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Board of Vocational Nursing and Psychiatric Technicians.
- (10) Respiratory Care Board of California.
- (11) Physical Therapy Board of California.
- (12) Physician Assistant Committee of the Medical Board of California.
- (13) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (14) Medical Board of California.
- (15) State Board of Optometry.
- (16) Acupuncture Board.
- (17) Cemetery and Funeral Bureau.
- (18) Bureau of Security and Investigative Services.
- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.

- (22) Structural Pest Control Board.
- (23) Contractors' State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (27) Bureau of Cannabis Control.
- (28) California Board of Podiatric Medicine.
- (29) Osteopathic Medical Board of California.
- (30) California Architects Board, beginning January 1, 2021.

(31) Landscape Architects Technical Committee, beginning January 1, 2021.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2.

Section 5510 of the Business and Professions Code is amended to read:

5510.

There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.

Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.

This section shall remain in effect only until January 1, 2024, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 3.

Section 5517 of the Business and Professions Code is amended to read:

5517.

The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in the executive officer by this chapter.

This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4.

Section 5520 of the Business and Professions Code is amended to read:

5520.

The board shall adopt a seal for its own use. The seal used shall have the words, "California Architects Board" inscribed thereon.

The executive officer shall have the care and custody of the seal.

SEC. 5.

Section 5526.5 is added to the Business and Professions Code, to read:

5526.5.

(a) In addition to requesting an administrative hearing as provided for in paragraph (4) of subdivision (b) of Section 125.9, the cited person may request an informal conference to review the acts shared in the citation. The cited person shall make the request for an informal conference in writing, within 30 days of the date of issuance of the citation, to the executive officer.

(b) The executive officer or their designee shall hold, within 60 days from the receipt of the request, an informal conference with the cited person. The executive officer or their designee may extend the 60-day period for good cause.

(c) Following the informal conference, the executive officer or their designee may affirm, modify, or dismiss the citation, including any fine that is levied, order of abatement, or order of correction issued. The executive officer or their designee shall state in writing the reasons for the action and transmit a copy of those findings to the cited person within 30 days after the informal conference.

(d) If the citation, including any fine that is levied or order of abatement or correction, is affirmed or modified following the informal conference, the respondent may make a request in writing to the executive officer within 30 days of the affirmed or modified citation, for a formal hearing, which shall be conducted as provided for in paragraph (4) of subdivision (b) of Section 125.9.

(e) A cited person shall not request an informal conference for a citation which has been affirmed or modified following an informal conference.

SEC. 6.

Section 5536 of the Business and Professions Code is amended to read:

5536.

(a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that the person is an architect, is qualified to engage in the practice of architecture, or is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person who is not licensed to practice architecture under this chapter to affix a stamp or seal that bears the legend "State of California" or words or symbols that represent or imply that the person is so licensed by the state to prepare plans, specifications, or instruments of service.

SEC. 7.

Section 5536.22 of the Business and Professions Code is amended to read:

5536.22.

(a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or the client's representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

(1) A description of the project for which the client is seeking services.

- (2) A description of the services to be provided by the architect to the client.
 - (3) A description of any basis of compensation applicable to the contract and the method of payment agreed upon by both parties.
 - (4) The name, address, and license number of the architect, the name and address of the client, and the project address.
 - (5) A description of the procedure that the architect and the client will use to accommodate *additional services and* contract changes, including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation and method of payment.
 - (6) A description of the procedure to be used by either party to terminate the contract.
 - (7) A statement identifying the ownership and use of instruments of service prepared by the architect.
 - (8) A statement in at least 12-point type that reads: "Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834."
- (b) This section shall not apply to any of the following:
- (1) Professional services rendered by an architect for which the client will not pay compensation.
 - (2) An arrangement as to the basis for compensation and manner of providing professional services implied by the fact that the architect's services are of the same general kind which the architect has previously rendered to and received payment from the same client.
 - (3) If the client knowingly states in writing after full disclosure of this section that a writing which complies with the requirements of this section is not required.
 - (4) Professional services rendered by an architect to a professional engineer registered to practice engineering under Chapter 7 (commencing with Section 6700), or to a land surveyor licensed under Chapter 15 (commencing with Section 8700).
 - (5) Professional services rendered by an architect to a public agency when using that public agency's written contract.

SEC. 8.

Section 5552.1 is added to the Business and Professions Code, to read:

5552.1.

(a) Pursuant to Section 144, beginning January 1, 2021, the board has the authority to obtain and receive criminal history information. The information obtained as a result of the fingerprinting shall be used in accordance with Section 11105 of the Penal Code and to determine whether the applicant is subject to denial of a license pursuant to Division 1.5 (commencing with Section 475) or Sections 5560 and 5577.

(b) As a condition of application for a license, each applicant shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.

(c) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105 of the Penal Code.

(d) The applicant shall pay for the reasonable regulatory costs for furnishing the fingerprints and conducting the searches.

(e) The applicant shall certify, under penalty of perjury, when applying for a license whether the applicant's fingerprints have been furnished to the Department of Justice in compliance with this section.

(f) Failure to comply with the requirements of this section renders the application for a license incomplete, and the application shall not be considered until the applicant demonstrates compliance with all of the requirements of this section.

(g) Notwithstanding any other law, the results of any criminal offender record information request by either state or federal law enforcement authorities shall not be released by the board except in accordance with state and federal requirements.

(h) This section shall apply to all applicants subject to this chapter and subdivision (i).

(i) As used in this section, the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

(j) As a condition of petitioning the board for reinstatement of a revoked or surrendered license, an applicant shall comply with subdivision (a).

~~SEC. 8.~~SEC. 9.

Section 5552.5 of the Business and Professions Code is amended to read:

5552.5.

The board may, by regulation, implement an architectural *education and training* experience or internship program.

~~SEC. 9.~~SEC. 10.

Section 5600.05 of the Business and Professions Code is amended to read:

5600.05.

(a) (1) As a condition of license renewal, a licensee shall complete five hours of coursework pursuant to paragraph (2).

(2) Coursework regarding disability access requirements shall include information and practical guidance concerning requirements imposed by the *federal* Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Coursework provided pursuant to this paragraph shall be presented by trainers or educators with knowledge and expertise in these requirements. The board shall promulgate regulations to establish qualifications for courses and course providers by January 1, 2023.

(b) The board may audit the records of a licensee to verify the completion of the coursework requirements of subdivision (a). A licensee shall maintain records of completion of the required coursework for two years from the date of license renewal, containing the following information: course title, subjects covered, name of provider and trainer or educator, date of completion, number of hours completed, and a statement about the trainer's or educator's knowledge and experience background. A licensee shall make those records available to the board for auditing upon request. A licensee who provides false or misleading information as it relates specifically to the requirements of this subdivision shall be subject to an administrative citation, which may include an administrative fine pursuant to Section 125.9, or to disciplinary action by the board.

(c) The board shall audit at least 3 percent of the license renewals received each year to verify the completion of the continuing education requirements of this subdivision.

(d) A continuing education provider may submit evidence of coursework to the board directly.

~~SEC. 10.~~ **SEC. 11.**

Section 5616 of the Business and Professions Code is amended to read:

5616.

(a) A landscape architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the landscape architect and the client, or their representatives, prior to the landscape architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

(1) A description of the project for which the client is seeking services.

(2) A description of the services to be provided by the landscape architect to the client.

(3) A description of any basis of compensation applicable to the contract, including the total price that is required to complete the contract, and the method of payment agreed upon by both parties.

(4) A statement in at least 12-point type that reads:

“Landscape architects are licensed by the Landscape Architects Technical Committee located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834.”

(5) The name, address, and license number of the landscape architect, the name and address of the client, and project address.

(6) A description of the procedure that the landscape architect and client will use to accommodate additional services.

(7) A description of the procedure to be used by either party to terminate the contract.

(8) A description of the procedure that the landscape architect and the client will use to accommodate contract changes, including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation, total price, and method of payment.

(9) A statement identifying the ownership and use of instruments of service prepared by the landscape architect.

(b) This section shall not apply to any of the following:

(1) Professional services rendered by a landscape architect for which the client will not pay compensation.

(2) An arrangement as to the basis for compensation and manner of providing professional services implied by the fact that the landscape architect’s services are of the same general kind that the landscape architect has previously rendered to, and received payment for from, the same client.

(3) If the client states in writing after full disclosure of this section that a written contract is not required.

(4) Professional services rendered by a landscape architect to any of the following:

- (A) A landscape architect licensed under this chapter.
 - (B) An architect licensed under Chapter 3 (commencing with Section 5500).
 - (C) A professional engineer licensed under Chapter 7 (commencing with Section 6700).
 - (D) A contractor licensed under Chapter 9 (commencing with Section 7000).
 - (E) A geologist or geophysicist licensed under Chapter 12.5 (commencing with Section 7800).
 - (F) A professional land surveyor licensed under Chapter 15 (commencing with Section 8700).
 - (G) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with, or incidental to, the products, systems, or services of that corporation or its affiliates.
 - (H) A public agency when using that public agency's written contract.
- (c) As used in this section, "written contract" includes a contract that is in electronic form.

~~SEC. 11.~~ SEC. 12.

Section 5620 of the Business and Professions Code is amended to read:

5620.

The duties, powers, purposes, responsibilities, and jurisdiction of the California State Board of Landscape Architects that were succeeded to and vested with the Department of Consumer Affairs in accordance with Chapter 908 of the Statutes of 1994 are hereby transferred to the California Architects Board. The Legislature finds that the purpose for the transfer of power is to promote and enhance the efficiency of state government and that assumption of the powers and duties by the California Architects Board shall not be viewed or construed as a precedent for the establishment of state regulation over a profession or vocation that was not previously regulated by a board, as defined in Section 477.

(a) There is in the Department of Consumer Affairs a California Architects Board as defined in Article 2 (commencing with Section 5510) of Chapter 3 of Division 3.

Whenever in this chapter "board" is used, it refers to the California Architects Board.

(b) Except as provided herein, the board may delegate its authority under this chapter to the Landscape Architects Technical Committee.

(c) After review of proposed regulations, the board may direct the examining committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 5630, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(d) The board shall not delegate its authority to discipline a landscape architect or to take action against a person who has violated this chapter.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

~~SEC. 12.~~ SEC. 13.

Section 5620.2 is added to the Business and Professions Code, to read:

5620.2.

(a) The following powers conferred by law upon the board are hereby delegated to and conferred upon the executive officer, or in their absence from the office, to the acting executive officer, as provided below:

(1) Receive and file accusations.

(2) Issue notices of hearings, statements to respondents, and statements of issues.

(3) Receive and file notices of defense.

(4) Determine the time and place of hearings under Section 11508 of the Government Code.

(5) Issue subpoenas and subpoenas duces tecum.

(6) Set calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the board in connection with proceedings under Sections 11500 to 11528, inclusive, of the Government Code, before hearing those proceedings.

(7) Approve settlement agreements for the revocation or surrender of a license.

(8) Certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code.

(b) In addition to the powers described in subdivision (a), the following powers are also delegated to and conferred upon the executive officer, as provided below:

(1) Evaluate and determine qualifications and approve applicants for examination under Section 5650.

(2) Determine which applicants for reciprocity licenses are entitled to waiver of the written examination under Section 5651.

~~SEC. 13.~~ SEC. 14.

Section 5621 of the Business and Professions Code is amended to read:

5621.

(a) There is hereby created within the jurisdiction of the board, a Landscape Architects Technical Committee, hereinafter referred to in this chapter as the landscape architects committee.

(b) The landscape architects committee shall consist of five members who shall be licensed to practice landscape architecture in this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.

(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of the member's successor or until one year shall have elapsed, whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

~~SEC. 14.~~ SEC. 15.

Section 5622 of the Business and Professions Code is amended to read:

5622.

(a) The landscape architects committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) The landscape architects committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) The landscape architects committee may perform duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) The landscape architects committee may send a representative to all meetings of the full board to report on the committee's activities.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 16.

The Legislature finds and declares that Section 8 of this act, which adds Section 5552.1 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy and personal information of applicants, it is necessary that applicant record information be kept confidential.

SEC. 17.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

AGENDA ITEM H.3: SB 721 - BALCONY INSPECTION LAW

Status: Approved by Governor September 17, 2018.

Summary

This bill establishes minimum inspection requirements for the exterior elevated elements, including balconies and decks, of buildings with three or more multifamily dwelling units.

Comments

SB 721 was introduced in response to the 2015 Berkeley balcony collapse. The balcony collapsed due to decayed wooden joists; six young adults on the balcony were killed and seven others were injured, mostly Irish citizens, visiting California as part of University of California Berkeley's summer exchange program. While some local governments already impose a local inspection program, this California law requires inspection of specific balconies throughout California.

This law requires an inspection of exterior elevated elements and associated waterproofing elements, as defined, including decks and balconies, for buildings with three or more multifamily dwelling units by a licensed architect, licensed civil or structural engineer, a building contractor holding specified licenses, or an individual certified as a building inspector or building official, as specified. The law requires the inspections, including any necessary testing, to be completed by January 1, 2025, with certain exceptions, and would require subsequent inspections every six years, except as specified.

If the inspection reveals conditions that pose an immediate hazard to the safety of the occupants, the inspection report must be delivered to the owner of the building within 15 days and emergency repairs must be undertaken, as specified, with notice given to the local enforcement agency. The nonemergency repairs made under these provisions would be required to be completed within 120 days, unless an extension is granted by the local authorities.

This law additionally authorizes a landlord to enter the dwelling unit to comply with the above-described requirements (Civil Code section 1954).

Action Requested

No action is requested.

Attachment(s)

1. FAQ about Balcony Inspection Law from California Apartment Association
2. SB 721 Legislative Digest
3. Health and Safety Code section 17973

ATTACHMENT 1

FAQ about Balcony Inspection Law from
California Apartment Association

<https://caanet.org/kb/balcony-inspection-law/>

KNOWLEDGE BASE: INDUSTRY INSIGHT

Balcony Inspection Law

California State Balcony Inspection Law

SB 721 (Chapter 445, Stats. 2018) was signed by Governor Brown in response to the 2015 Berkeley balcony collapse. The balcony collapsed due to decayed wooden joists; six young adults on the balcony were killed and seven others were injured, mostly Irish citizens, visiting California as part of UC Berkeley's summer exchange program. While some local governments already impose a local inspection program, this California law requires inspection of specific balconies throughout California.

What Buildings Must be Inspected?

Buildings with 3 or more units that have:

- Balconies, decks, porches, stairways, walkways, and entry structures that extend beyond exterior walls of the building and that rely in whole or in substantial part on wood or wood-based products for structural support or stability; and
- A walking surface that is elevated more than 6 feet above the ground level; and
- Balconies designed for human occupancy or use.

Buildings that are proposed for conversion to condominiums to be sold to the public after January 1, 2019, must be inspected prior to the first close of escrow.

When Must the Buildings be Inspected?

Inspections of the balconies, decks, porches, stairways, walkways, and entries as described above must be inspected by January 1, 2025, with certain exceptions, and requires subsequent inspections every 6 years.

The inspection of buildings for which a building permit application has been submitted on or after January 1, 2019, shall occur no later than 6 years following issuance of a certificate of occupancy from the local jurisdiction and shall otherwise comply with the provisions of this law.

If the property was inspected within 3 years prior to January 1, 2019, by an inspector as described in the law and a report of that inspector was issued stating that the exterior elevated elements and associated waterproofing elements are in proper working condition and do not pose a threat to the health and safety of the public, no new inspection shall be required until January 1, 2025.

Who Can Perform the Inspections?

- A licensed architect,
- Licensed civil or structural engineer,
- General Contractor holding any or all A, B, or C-5 Licenses issued by the Contractors State License Board, with a minimum of 5 years' experience in constructing multistory wood frame buildings;
- Individuals certified as a building inspector or building official, as specified; (these individuals cannot be employed by the local jurisdiction while performing these inspections).

What Must the Inspection Cover?

The inspection required by this law must, at a minimum, include:

- Identification of each exterior elevated element or associated waterproofing elements that, if found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, would, in the opinion of the inspector, constitute a threat to the health or safety of the occupants.
- "Associated waterproofing elements" are defined to mean flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water and the elements.
- Assessments of elevated elements using methods allowing for evaluation of their performance by direct visual examination or comparable means of evaluating their performance. For purposes of this section, a sample of at least 15 percent of each type of exterior elevated element shall be inspected.
- The evaluation and assessment shall address each of the following as of the date of the evaluation:
 - The current condition of the exterior elevated elements.
 - Expectations of future performance and projected service life.
 - Recommendations of any further inspection necessary.
 - Recommendations of any necessary repair or replacement.

The Report

The inspector conducting the inspection shall produce an initial report and a final report indicating that any required repairs have been completed.

A written report of the evaluation stamped or signed by the inspector presented to the owner of the building or the owner's designated agent within 45 days of completion of the inspection.

The report shall include photographs, any test results, and narrative sufficient to establish a baseline of the condition of the components inspected that can be compared to the results of subsequent inspections. In addition to the evaluation required by this section, the report shall advise which, if any, exterior elevated element poses an immediate threat to the safety of the occupants, and whether preventing occupant access or conducting emergency repairs, including shoring, are necessary.

A copy of the inspection report must be presented to the owner of the building within 45 days of the completion of the inspection. The law requires that if the inspection reveals conditions that pose an immediate hazard to the safety of the occupants, the inspection report be delivered to the owner of the building within 15 days and emergency repairs be undertaken, as specified, with notice given to the local enforcement agency.

Who Keeps the Report?

Copies of all inspection reports shall be maintained in the building owner's permanent records for not less than two inspection cycles and shall be disclosed and delivered to the buyer at the time of any subsequent sale of the building.

What if Repairs are Required?

Immediate Threat – An exterior elevated element that the inspector advises poses an immediate threat to the safety of the occupants, or finds preventing occupant access or emergency repairs, including shoring, or both, are necessary, shall be considered an emergency condition and the owner of the building shall perform required preventive measures immediately.

Immediately preventing occupant access to the exterior elevated element until emergency repairs can be completed constitutes compliance with this paragraph. Repairs of emergency conditions shall comply with the requirements of the law, be inspected by the inspector, and reported to the local enforcement agency.

No Immediate Threat – The owner of the building that requires corrective work to an exterior elevated element that, in the opinion of the inspector, does not pose an immediate threat to the safety of the occupants, shall apply for a permit within 120 days of receipt of the inspection report. Once the permit is approved, the owner of the building shall have 120 days to make the repairs unless an extension of time is granted by the local enforcement agency.

If the owner of the building does not comply with the repair requirements within 180 days, the inspector shall notify the local enforcement agency and the owner of the building. If within 30 days of the date of the notice the repairs are not completed, the owner of the building shall be assessed a civil penalty based on a fee of not less than \$100 or more than \$500 per day until the repairs are completed, unless an extension of time is granted by the local enforcement agency. If a civil penalty is assessed, a building safety lien may be recorded against the property.

Can a Local Government Pass a More Stringent Law?

Yes. The State law provides that the governing body of any city, county, or city and county, may enact ordinances or laws imposing requirements greater than those imposed by this law.

References:

- SB 721 (Hill), Ch. 445, Stats. 2018
- Health and Safety Code Section 17973, et seq.

ATTACHMENT 2

Senate Bill No. 721 CHAPTER 445

An act to amend Section 1954 of the Civil Code, and to add Article 2.2 (commencing with Section 17973) to Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, relating to building standards.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 721, Hill. Building standards: decks and balconies: inspection.

Existing law provides authority for an enforcement agency to enter and inspect any buildings or premises whenever necessary to secure compliance with or prevent a violation of the building standards published in the California Building Standards Code and other rules and regulations that the enforcement agency has the power to enforce.

This bill would require an inspection of exterior elevated elements and associated waterproofing elements, as defined, including decks and balconies, for buildings with 3 or more multifamily dwelling units by a licensed architect, licensed civil or structural engineer, a building contractor holding specified licenses, or an individual certified as a building inspector or building official, as specified. The bill would require the inspections, including any necessary testing, to be completed by January 1, 2025, with certain exceptions, and would require subsequent inspections every 6 years, except as specified. The bill would require the inspection report to contain specified items and would require that a copy of the inspection report be presented to the owner of the building within 45 days of the completion of the inspection and would require copies of the reports to be maintained in the building owner's records for 2 inspection cycles, as specified. The bill would require that if the inspection reveals conditions that pose an immediate hazard to the safety of the occupants, the inspection report be delivered to the owner of the building within 15 days and emergency repairs be undertaken, as specified, with notice given to the local enforcement agency. The nonemergency repairs made under these provisions would be required to be completed within 120 days, unless an extension is granted by the local authorities. The bill would authorize local enforcement agencies to recover enforcement costs associated with these requirements. The bill would require the local enforcement agency to send a 30-day corrective notice to the owner of the building if repairs are not completed on time and would provide for specified civil penalties and liens against the property for the owner of the building who fails to comply with these provisions. The bill would exclude a common interest development, as defined, from these provisions. The bill would require any building subject to these provisions that is proposed for conversion to condominiums to be sold to the public after January 1, 2019, to have the required inspection conducted prior to the first close of escrow of a separate interest in the project, and would require the inspection report and written confirmation by the inspector that any recommended repairs or replacements have been completed to be submitted to, among others, the Department of Real Estate and included in certain required statements and reports, as specified. The bill would authorize a local governing entity to enact stricter requirements than those imposed by these provisions.

Existing law authorizes a landlord to enter the dwelling only in certain situations, including to make necessary repairs.

This bill would additionally authorize a landlord to enter the dwelling unit to comply with the above-described requirements.

Because this bill would impose new duties upon local enforcement authorities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

ATTACHMENT 3

Health and Safety Code - HSC

DIVISION 13. HOUSING [17000 - 19997]

PART 1.5. REGULATION OF BUILDINGS USED FOR HUMAN HABITATION [17910 - 17998.3]

CHAPTER 5. Administration and Enforcement [17960 - 17992]

ARTICLE 2.2. Exterior Elevated Elements: Inspections. [17973- 17973.]

17973.

(a) Exterior elevated elements that include load-bearing components in all buildings containing three or more multifamily dwelling units shall be inspected. The inspection shall be performed by a licensed architect; licensed civil or structural engineer; a building contractor holding any or all of the "A," "B," or "C-5" license classifications issued by the Contractors' State License Board, with a minimum of five years' experience, as a holder of the aforementioned classifications or licenses, in constructing multistory wood frame buildings; or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by the local jurisdiction. These individuals shall not be employed by the local jurisdiction while performing these inspections. The purpose of the inspection is to determine that exterior elevated elements and their associated waterproofing elements are in a generally safe condition, adequate working order, and free from any hazardous condition caused by fungus, deterioration, decay, or improper alteration to the extent that the life, limb, health, property, safety, or welfare of the public or the occupants is not endangered. The person or business performing the inspection shall be hired by the owner of the building.

(b) For purposes of this section, the following terms have the following definitions:

(1) "Associated waterproofing elements" include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water and the elements.

(2) "Exterior elevated element" means the following types of structures, including their supports and railings: balconies, decks, porches, stairways, walkways, and entry structures that extend beyond exterior walls of the building and which have a walking surface that is elevated more than six feet above ground level, are designed for human occupancy or use, and rely in whole or in substantial part on wood or wood-based products for structural support or stability of the exterior elevated element.

(3) "Load-bearing components" are those components that extend beyond the exterior walls of the building to deliver structural loads from the exterior elevated element to the building.

(c) The inspection required by this section shall at a minimum include:

(1) Identification of each type of exterior elevated element that, if found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, would, in the opinion of the inspector, constitute a threat to the health or safety of the occupants.

(2) Assessment of the load-bearing components and associated waterproofing elements of the exterior elevated elements identified in paragraph (1) using methods allowing for evaluation of their performance by direct visual examination or comparable means of evaluating their performance. For purposes of this section, a sample of at least 15 percent of each type of exterior elevated element shall be inspected.

(3) The evaluation and assessment shall address each of the following as of the date of the evaluation:

(A) The current condition of the exterior elevated elements.

(B) Expectations of future performance and projected service life.

(C) Recommendations of any further inspection necessary.

(4) A written report of the evaluation stamped or signed by the inspector presented to the owner of the building or the owner's designated agent within 45 days of completion of the inspection. The report shall include photographs, any test results, and narrative sufficient to establish a baseline of the condition of the components inspected that can be compared to the results of subsequent inspections. In addition to the evaluation required by this section, the report shall advise which, if any, exterior elevated element poses an immediate threat to the safety of the occupants, and whether preventing occupant access or conducting emergency repairs, including shoring, are necessary.

(d) The inspection shall be completed by January 1, 2025, and by January 1 every six years thereafter. The inspector conducting the inspection shall produce an initial report pursuant to paragraph (4) of subdivision (c) and, if requested by the owner, a final report indicating that any required repairs have been completed. A copy of any report that recommends immediate repairs, advises that any building assembly poses an immediate threat to the safety of the occupants, or that preventing occupant access or emergency repairs, including shoring, are necessary, shall be provided by the inspector to the owner of the building and to the local enforcement agency within 15 days of completion of the report. Subsequent inspection reports shall incorporate copies of prior inspection reports, including the locations of the exterior elevated elements inspected. Local enforcement agencies may determine whether any additional information is to be provided in the report and may require a copy of the initial or final reports, or both, be submitted to the local jurisdiction. Copies of all inspection reports shall be maintained in the building owner's permanent records for not less than two inspection cycles, and shall be disclosed and delivered to the buyer at the time of any subsequent sale of the building.

(e) The inspection of buildings for which a building permit application has been submitted on or after January 1, 2019, shall occur no later than six years following issuance of a certificate of occupancy from the local jurisdiction and shall otherwise comply with the provisions of this section.

(f) If the property was inspected within three years prior to January 1, 2019, by an inspector as described in subdivision (a) and a report of that inspector was issued stating that the exterior elevated elements and associated waterproofing elements are in proper working condition and do not pose a threat to the health and safety of the public, no new inspection pursuant to this section shall be required until January 1, 2025.

(g) An exterior elevated element found by the inspector that is in need of repair or replacement shall be corrected by the owner of the building. No recommended repair shall be performed by a licensed contractor serving as the inspector. All necessary permits for repair or replacement shall be obtained from the local jurisdiction. All repair and replacement work shall be performed by a qualified and licensed contractor in compliance with all of the following:

(1) The recommendations of a licensed professional described in subdivision (a).

(2) Any applicable manufacturer's specifications.

(3) The California Building Standards Code, consistent with subdivision (d) of Section 17922 of the Health and Safety Code.

(4) All local jurisdictional requirements.

(h) (1) An exterior elevated element that the inspector advises poses an immediate threat to the safety of the occupants, or finds preventing occupant access or emergency repairs, including shoring, or both, are necessary, shall be considered an emergency condition and the owner of the building shall perform required preventive measures immediately. Immediately preventing occupant access to the exterior elevated element until emergency repairs can be completed constitutes compliance with this paragraph. Repairs of emergency conditions shall comply with the requirements of subdivision (g), be inspected by the inspector, and reported to the local enforcement agency.

(2) The owner of the building requiring corrective work to an exterior elevated element that, in the opinion of the inspector, does not pose an immediate threat to the safety of the occupants, shall apply for a permit within 120 days of receipt of the inspection report. Once the permit is approved, the owner of the building shall have 120 days to make the repairs unless an extension of time is granted by the local enforcement agency.

(i) (1) The owner of the building shall be responsible for complying with the requirements of this section.

(2) If the owner of the building does not comply with the repair requirements within 180 days, the inspector shall notify the local enforcement agency and the owner of the building. If within 30 days of the date of the notice the repairs are not completed, the owner of the building shall be assessed a civil penalty based on the fee schedule set by the local authority of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per day until the repairs are completed, unless an extension of time is granted by the local enforcement agency.

(3) In the event that a civil penalty is assessed pursuant to this section, a building safety lien may be recorded in the county recorder's office by the local jurisdiction in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(j) (1) A building safety lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the street address, the legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the building.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A safety lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A building safety lien may be foreclosed by an action brought by the appropriate local jurisdiction for a money judgment.

(4) Notwithstanding any other law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the owner of

the building. A city may recover from the owner of the building any costs incurred regarding the processing and recording of the lien and providing notice to the owner of the building as part of its foreclosure action to enforce the lien.

(k) The continued and ongoing maintenance of exterior elevated elements in a safe and functional condition in compliance with these provisions shall be the responsibility of the owner of the building.

(l) Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this section.

(m) For any building subject to the provisions of this section that is proposed for conversion to condominiums to be sold to the public after January 1, 2019, the inspection required by this section shall be conducted prior to the first close of escrow of a separate interest in the project and shall include the inspector's recommendations for repair or replacement of any exterior elevated element found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, and would, in the opinion of the inspector, constitute a threat to the health or safety of the occupants. The inspection report and written confirmation by the inspector that any repairs or replacements recommended by the inspector have been completed shall be submitted to the Department of Real Estate by the proponent of the conversion and shall be a condition to the issuance of the final public report. A complete copy of the inspection report and written confirmation by the inspector that any repairs or replacements recommended by the inspector have been completed shall be included with the written statement of defects required by Section 1134 of the Civil Code, and provided to the local jurisdiction in which the project is located. The inspection, report, and confirmation of completed repairs shall be a condition of the issuance of a final inspection or certificate of occupancy by the local jurisdiction.

(n) This section shall not apply to a common interest development, as defined in Section 4100 of the Civil Code.

(o) The governing body of any city, county, or city and county, may enact ordinances or laws imposing requirements greater than those imposed by this section.

(Added by Stats. 2018, Ch. 445, Sec. 2. (SB 721) Effective January 1, 2019.)

Senate Bill No. 721

CHAPTER 445

An act to amend Section 1954 of the Civil Code, and to add Article 2.2 (commencing with Section 17973) to Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, relating to building standards.

[Approved by Governor September 17, 2018. Filed with
Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 721, Hill. Building standards: decks and balconies: inspection.

Existing law provides authority for an enforcement agency to enter and inspect any buildings or premises whenever necessary to secure compliance with or prevent a violation of the building standards published in the California Building Standards Code and other rules and regulations that the enforcement agency has the power to enforce.

This bill would require an inspection of exterior elevated elements and associated waterproofing elements, as defined, including decks and balconies, for buildings with 3 or more multifamily dwelling units by a licensed architect, licensed civil or structural engineer, a building contractor holding specified licenses, or an individual certified as a building inspector or building official, as specified. The bill would require the inspections, including any necessary testing, to be completed by January 1, 2025, with certain exceptions, and would require subsequent inspections every 6 years, except as specified. The bill would require the inspection report to contain specified items and would require that a copy of the inspection report be presented to the owner of the building within 45 days of the completion of the inspection and would require copies of the reports to be maintained in the building owner's records for 2 inspection cycles, as specified. The bill would require that if the inspection reveals conditions that pose an immediate hazard to the safety of the occupants, the inspection report be delivered to the owner of the building within 15 days and emergency repairs be undertaken, as specified, with notice given to the local enforcement agency. The nonemergency repairs made under these provisions would be required to be completed within 120 days, unless an extension is granted by the local authorities. The bill would authorize local enforcement agencies to recover enforcement costs associated with these requirements. The bill would require the local enforcement agency to send a 30-day corrective notice to the owner of the building if repairs are not completed on time and would provide for specified civil penalties and liens against the property for the owner of the building who fails to comply with these provisions. The bill would exclude a common interest development, as defined, from these provisions. The bill would require any building subject to these provisions that is proposed for

conversion to condominiums to be sold to the public after January 1, 2019, to have the required inspection conducted prior to the first close of escrow of a separate interest in the project, and would require the inspection report and written confirmation by the inspector that any recommended repairs or replacements have been completed to be submitted to, among others, the Department of Real Estate and included in certain required statements and reports, as specified. The bill would authorize a local governing entity to enact stricter requirements than those imposed by these provisions.

Existing law authorizes a landlord to enter the dwelling only in certain situations, including to make necessary repairs.

This bill would additionally authorize a landlord to enter the dwelling unit to comply with the above-described requirements.

Because this bill would impose new duties upon local enforcement authorities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1954 of the Civil Code is amended to read:

1954. (a) A landlord may enter the dwelling unit only in the following cases:

- (1) In case of emergency.
 - (2) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.
 - (3) When the tenant has abandoned or surrendered the premises.
 - (4) Pursuant to court order.
 - (5) For the purposes set forth in Chapter 2.5 (commencing with Section 1954.201).
 - (6) To comply with the provisions of Article 2.2 (commencing with Section 17973) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code.
- (b) Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents to an entry during other than normal business hours at the time of entry.
- (c) The landlord may not abuse the right of access or use it to harass the tenant.
- (d) (1) Except as provided in subdivision (e), or as provided in paragraph (2) or (3), the landlord shall give the tenant reasonable notice in writing of

his or her intent to enter and enter only during normal business hours. The notice shall include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

(2) If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice may be given orally, in person or by telephone, if the landlord or his or her agent has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. The notice shall include the date, approximate time, and purpose of the entry. At the time of entry, the landlord or agent shall leave written evidence of the entry inside the unit.

(3) The tenant and the landlord may agree orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. In this case, the landlord is not required to provide the tenant a written notice.

(e) No notice of entry is required under this section:

(1) To respond to an emergency.

(2) If the tenant is present and consents to the entry at the time of entry.

(3) After the tenant has abandoned or surrendered the unit.

SEC. 2. Article 2.2 (commencing with Section 17973) is added to Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, to read:

Article 2.2. Exterior Elevated Elements: Inspections.

17973. (a) Exterior elevated elements that include load-bearing components in all buildings containing three or more multifamily dwelling units shall be inspected. The inspection shall be performed by a licensed architect; licensed civil or structural engineer; a building contractor holding any or all of the "A," "B," or "C-5" license classifications issued by the Contractors' State License Board, with a minimum of five years' experience, as a holder of the aforementioned classifications or licenses, in constructing multistory wood frame buildings; or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by the local jurisdiction. These individuals shall not be employed by the local jurisdiction while performing these inspections. The purpose of the inspection is to determine that exterior elevated elements and their associated waterproofing elements are in a

generally safe condition, adequate working order, and free from any hazardous condition caused by fungus, deterioration, decay, or improper alteration to the extent that the life, limb, health, property, safety, or welfare of the public or the occupants is not endangered. The person or business performing the inspection shall be hired by the owner of the building.

(b) For purposes of this section, the following terms have the following definitions:

(1) “Associated waterproofing elements” include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water and the elements.

(2) “Exterior elevated element” means the following types of structures, including their supports and railings: balconies, decks, porches, stairways, walkways, and entry structures that extend beyond exterior walls of the building and which have a walking surface that is elevated more than six feet above ground level, are designed for human occupancy or use, and rely in whole or in substantial part on wood or wood-based products for structural support or stability of the exterior elevated element.

(3) “Load-bearing components” are those components that extend beyond the exterior walls of the building to deliver structural loads from the exterior elevated element to the building.

(c) The inspection required by this section shall at a minimum include:

(1) Identification of each type of exterior elevated element that, if found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, would, in the opinion of the inspector, constitute a threat to the health or safety of the occupants.

(2) Assessment of the load-bearing components and associated waterproofing elements of the exterior elevated elements identified in paragraph (1) using methods allowing for evaluation of their performance by direct visual examination or comparable means of evaluating their performance. For purposes of this section, a sample of at least 15 percent of each type of exterior elevated element shall be inspected.

(3) The evaluation and assessment shall address each of the following as of the date of the evaluation:

(A) The current condition of the exterior elevated elements.

(B) Expectations of future performance and projected service life.

(C) Recommendations of any further inspection necessary.

(4) A written report of the evaluation stamped or signed by the inspector presented to the owner of the building or the owner’s designated agent within 45 days of completion of the inspection. The report shall include photographs, any test results, and narrative sufficient to establish a baseline of the condition of the components inspected that can be compared to the results of subsequent inspections. In addition to the evaluation required by this section, the report shall advise which, if any, exterior elevated element poses an immediate threat to the safety of the occupants, and whether preventing occupant access or conducting emergency repairs, including shoring, are necessary.

(d) The inspection shall be completed by January 1, 2025, and by January 1 every six years thereafter. The inspector conducting the inspection shall produce an initial report pursuant to paragraph (4) of subdivision (c) and, if requested by the owner, a final report indicating that any required repairs have been completed. A copy of any report that recommends immediate repairs, advises that any building assembly poses an immediate threat to the safety of the occupants, or that preventing occupant access or emergency repairs, including shoring, are necessary, shall be provided by the inspector to the owner of the building and to the local enforcement agency within 15 days of completion of the report. Subsequent inspection reports shall incorporate copies of prior inspection reports, including the locations of the exterior elevated elements inspected. Local enforcement agencies may determine whether any additional information is to be provided in the report and may require a copy of the initial or final reports, or both, be submitted to the local jurisdiction. Copies of all inspection reports shall be maintained in the building owner's permanent records for not less than two inspection cycles, and shall be disclosed and delivered to the buyer at the time of any subsequent sale of the building.

(e) The inspection of buildings for which a building permit application has been submitted on or after January 1, 2019, shall occur no later than six years following issuance of a certificate of occupancy from the local jurisdiction and shall otherwise comply with the provisions of this section.

(f) If the property was inspected within three years prior to January 1, 2019, by an inspector as described in subdivision (a) and a report of that inspector was issued stating that the exterior elevated elements and associated waterproofing elements are in proper working condition and do not pose a threat to the health and safety of the public, no new inspection pursuant to this section shall be required until January 1, 2025.

(g) An exterior elevated element found by the inspector that is in need of repair or replacement shall be corrected by the owner of the building. No recommended repair shall be performed by a licensed contractor serving as the inspector. All necessary permits for repair or replacement shall be obtained from the local jurisdiction. All repair and replacement work shall be performed by a qualified and licensed contractor in compliance with all of the following:

- (1) The recommendations of a licensed professional described in subdivision (a).
- (2) Any applicable manufacturer's specifications.
- (3) The California Building Standards Code, consistent with subdivision (d) of Section 17922 of the Health and Safety Code.
- (4) All local jurisdictional requirements.

(h) (1) An exterior elevated element that the inspector advises poses an immediate threat to the safety of the occupants, or finds preventing occupant access or emergency repairs, including shoring, or both, are necessary, shall be considered an emergency condition and the owner of the building shall perform required preventive measures immediately. Immediately preventing occupant access to the exterior elevated element until emergency repairs

can be completed constitutes compliance with this paragraph. Repairs of emergency conditions shall comply with the requirements of subdivision (g), be inspected by the inspector, and reported to the local enforcement agency.

(2) The owner of the building requiring corrective work to an exterior elevated element that, in the opinion of the inspector, does not pose an immediate threat to the safety of the occupants, shall apply for a permit within 120 days of receipt of the inspection report. Once the permit is approved, the owner of the building shall have 120 days to make the repairs unless an extension of time is granted by the local enforcement agency.

(i) (1) The owner of the building shall be responsible for complying with the requirements of this section.

(2) If the owner of the building does not comply with the repair requirements within 180 days, the inspector shall notify the local enforcement agency and the owner of the building. If within 30 days of the date of the notice the repairs are not completed, the owner of the building shall be assessed a civil penalty based on the fee schedule set by the local authority of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per day until the repairs are completed, unless an extension of time is granted by the local enforcement agency.

(3) In the event that a civil penalty is assessed pursuant to this section, a building safety lien may be recorded in the county recorder's office by the local jurisdiction in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(j) (1) A building safety lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the street address, the legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the building.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A safety lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A building safety lien may be foreclosed by an action brought by the appropriate local jurisdiction for a money judgment.

(4) Notwithstanding any other law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the owner of the building. A city may recover from the owner of the building any costs incurred regarding the processing and recording of the lien and providing notice to the owner of the building as part of its foreclosure action to enforce the lien.

(k) The continued and ongoing maintenance of exterior elevated elements in a safe and functional condition in compliance with these provisions shall be the responsibility of the owner of the building.

(l) Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this section.

(m) For any building subject to the provisions of this section that is proposed for conversion to condominiums to be sold to the public after January 1, 2019, the inspection required by this section shall be conducted prior to the first close of escrow of a separate interest in the project and shall include the inspector's recommendations for repair or replacement of any exterior elevated element found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, and would, in the opinion of the inspector, constitute a threat to the health or safety of the occupants. The inspection report and written confirmation by the inspector that any repairs or replacements recommended by the inspector have been completed shall be submitted to the Department of Real Estate by the proponent of the conversion and shall be a condition to the issuance of the final public report. A complete copy of the inspection report and written confirmation by the inspector that any repairs or replacements recommended by the inspector have been completed shall be included with the written statement of defects required by Section 1134 of the Civil Code, and provided to the local jurisdiction in which the project is located. The inspection, report, and confirmation of completed repairs shall be a condition of the issuance of a final inspection or certificate of occupancy by the local jurisdiction.

(n) This section shall not apply to a common interest development, as defined in Section 4100 of the Civil Code.

(o) The governing body of any city, county, or city and county, may enact ordinances or laws imposing requirements greater than those imposed by this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.