



# the Advocate

LEGAL NEWSLETTER OF THE  
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## The Design/Build Dilemma

If you are a design/build contractor, should you be concerned that your business activities may be an unlawful practice of architecture without a license? Is it legal to advertise that your company offers "construction design services" or "design/build services" regarding residential projects or commercial projects? Can your company offer alterations that affect electrical, mechanical, HVAC or plumbing systems without the involvement of a licensed architect? If you are uncertain of the answers to these questions, read on.

### Architectural Services or Contracting?

There is a New Jersey regulatory law known as N.J.A.C. 13:27-3 titled "Architectural Practice and Responsibility" which is part of the New Jersey Administrative Code. These regulations are promulgated by administrative departments of the State to regulate in specific areas. In this case, N.J.A.C. 13:27-3 is part of Title 13, Law and Public Safety; Chapter 27, New Jersey State Board of Architects.

This regulation provides under N.J.A.C. 13:27-3.2(a), a section titled "Scope of architectural service; advertising" that "No person, except an architect licensed in the State of New Jersey, shall use the title "architect" or its substantial equivalent or otherwise represent to the public that the person is licensed to practice architecture in this State."

Having said that, however, this administrative code provision then goes on to set forth further rules regu-

lating the activities of design/build contractors.

### Residential Homebuilder Exception

N.J.A.C. 13:27-3.2(c) states that "A builder registered pursuant to the "New Home Warranty and Builder's Registration Act" (N.J.S.A. 46B-1 et seq.) or a home improvement contractor may advertise, or offer to perform "design services" either in the construction of one- to two-family homes or in connection with the demolition, enlargement or alteration thereto. A builder or home improvement contractor shall render such services only to the owner-occupant of such dwellings."

Accordingly, a "design services" contractor must limit its activities to one- to two-family homes where

*Continued on reverse page...*

### **Law Firm Briefs**

In June 2000, our Law Library was updated from hard bound editions to the latest CD-ROM editions of all New Jersey legal materials to provide for faster and more effective legal research capabilities.

### Since Our Last Issue

Renee Lockwood, a Paralegal, completed her 3rd year with the firm in July 2000.

### Great Quotations ...

"Difficulties mastered are opportunities won."  
- Winston Churchill

the "design services" are provided to the owner-occupant. Commercial construction "design services" are not covered under the exception of N.J.A.C. 13:27-3.2(c). Multi-family construction "design services" are not covered under the exception of N.J.A.C. 13:27-3.2(c). And residential construction "design services" to be provided to a developer that is not an owner-occupant are not covered under the exception of N.J.A.C. 13:27-3.2(c).

Advertising by "design services" contractors is governed by N.J.A.C. 13:27-3.2(d). Under this regulation advertising contractors that are in compliance with the requirements of N.J.A.C. 13:27-3.2(c) may publish advertisements for design services by a builder or home improvement contractor that contain the following terms or their substantial equivalent: (1) Construction design services; (2) Design; (3) Design services; (4) Design/build; (5) Design/build services; and/or (6) Building design services.

However, under N.J.A.C. 13:27-3.2(e), a builder or home improvement contractor may not advertise, offer or perform design services that involve the preparation of construction documents, which consist of, but are not limited to, those drawings or specifications necessary to support an application for building or other construction permits.

In addition, a person not authorized to render architectural services can utilize the terms "space planning," "interior design," "interior design services" or the substantial equivalent thereof in his advertising, under N.J.A.C. 13:27-3.2(f), provided, however, that the design services advertised, offered or performed comply with all of the following four criteria:

#### Criteria One

The design services advertised, offered or performed must be limited to the function of the interior space within an existing or proposed building. N.J.A.C. 13:27-3.2(f)(1);

#### Criteria Two

The design services advertised, offered or

performed must not affect the means of egress and life safety of the building, nor involve any alteration or modifications of the building's existing or proposed structure, seismic integrity, or partitions that affect the means of egress and life safety, or its electrical, mechanical, HVAC (heating, ventilation and air conditioning) or plumbing systems. N.J.A.C. 13:27-3.2(f)(2);

#### Criteria Three

The design services advertised, offered or performed must not require or involve the skill, training or expertise of a licensed architect. N.J.A.C. 13:27-3.2(f)(3); and

#### Criteria Four

The design services advertised, offered or performed must not include the production of construction documents, which consist of, but are not limited to, those drawings or specifications necessary to support an application for a building or other construction permit. N.J.A.C. 13:27-3.2(f)(4).

Remember that full compliance with N.J.A.C. 13:27-3.2(f) requires that your advertising and business activities conform to all four of the above criteria, not just some of them.

Also, consult with legal counsel to ensure that your activities are in keeping with the requirements of the law as to your specific circumstances.



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