

Reach Out and Touch Someone's Wallet?

State Board of Architects Rule Concerning Advertising Practices by Licensed Architects

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In years past, advertising in New Jersey was of little concern to the professional architect. While advertising has long been regulated by the State Board of Architects ("Board"), the rules concerning advertising only prohibited the use of the terms "architect," "architectural," "architect on staff," "architectural services" or "the substantial equivalent" unless the advertiser was authorized to render architectural services. The focus of the advertising rule was clearly more concerned with identifying those individuals or entities that were authorized to render architectural services, rather than the manner of the advertisement itself. To the architect or architectural firm, seemingly authorized to render architectural services, regulations concerning advertising would have little impact. This changed late last year.

In March 2005 the Board issued proposed regulations which would significantly change the advertising practices of the professional architect in the State of New Jersey. The proposed rule amendments sought to require the name and license number of the architect on any advertisement, to require that each architect who is a principal of an architectural business entity be responsible for the form and content of the advertisement, and to require that a copy of the advertisement be retained for a period of three years from the date of its last dissemination. In addition, the amendment would clarify that a violation of the rule would constitute professional misconduct, a consequence not explicitly promulgated with the original rule.

Concerns about the new rule were brought to the attention of the Board, specifically regarding the requirement for the name and license number of an architect on all advertising. The Board defines an advertisement as means of communication to the public, including professional stationary, brochures and telephone directories, by which the availability of architectural services is made known to the public. Thus, it was recognized that the proposed rule amendments would have a significant economic impact on architects who would be required to alter and reprint business stationary, forms and other materials in order to comply with the rule. The Board was cognizant of the economic impact that architects would face, but believed that a license number on all advertisements was necessary, since the license number is the sole unique identifier of the licensed architect. The Board explained that "[a] consumer with a license number can readily determine the status of a licensee by the license number where other identifiers such as a name, may be shared by other licensees. The Division of Consumer Affairs has found that the inclusion of a license number on advertising assists consumers when they are researching licensees to hire as well as when they file complaints against a licensee. Therefore, the Division has encouraged all professional licensing boards to adopt this requirement." In order to reduce the economic effect of the new rule, however, the Board did indicate that it would allow a "reasonable grace period" for compliance with the new rule. Such grace period, however, was undefined.

The new advertising rule was adopted on September 6, 2005, and became effective immediately. It requires that architects meet the following requirements concerning advertising:

1. An advertisement shall include a term which is descriptive of the professional services to be provided, such as "architect," "architectural," "architectural services," or the substantial equivalent;
2. An advertisement shall include the name of the architect, the license number, and name of the architect's architectural business entity;
3. Each architect, who is a principal, partner or officer of the architectural firm, shall be responsible for the form and content of any architectural advertisement;
3. A copy of every architectural advertisement shall be retained for a period of three years from the date of its last dissemination to the public and shall be made available to the Board on request; and
5. An architect which uses an advertisement containing false or misleading information or which fails to comply with the new rule shall be deemed to be engaged in professional misconduct.

In light of these new regulations, all architects in New Jersey are cautioned to include their license

number on all materials disseminated to the public. This would seemingly include all stationary, business cards, brochures, and telephone directories. While the architect may experience a "cost of business" expense in altering and reprinting existing materials, the consequences for failing to meet these new requirements may far exceed the expenses incurred amounting to professional misconduct. Immediate attention to these new requirements is also advised. While the Board has indicated it will allow a "reasonable grace period" for architects to comply with the new regulation, the new rules concerning advertising are effective *now*. As the Board has purposely left the grace period undefined and will likely determine violations on a case-by-case basis at some time in the future, measures should be taken now in order to show an effort was made to comply with the new regulations as soon as was practicable. Don't be the architect who is the first to find out the length of this "reasonable grace period"!

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