PB-06
SUCCESSION

SUMMARY
This Practice Bulletin addresses questions that frequently arise when a client changes an Architect or Licensed Interior Designer on the same project through the course of services. There are several key principles that apply and a number of issues that need to be considered by both the successor and predecessor.

This Bulletin also outlines the acceptable procedures for successors to follow in fulfilling their professional obligations under Section 43 of the Architects Act General Regulation.

BACKGROUND
The termination of services can occur at any time during a project and can be for a variety of reasons as precipitated by the authorized entity or the client:

(a) termination of the agreement by either party
(b) the death of either party
(c) bankruptcy of either party
(d) failure of either party to fulfill contractual obligation
(e) client suspending or abandoning the project
(f) change in ownership of the project

It is possible the termination is being disputed or is a breach of contract, in which case the offended party may wish to consider legal proceedings for recovery of damages. While it is not the responsibility of the successor to fully assess the circumstances that gave rise to the termination or whether a breach of contract has occurred, there is an overall responsibility of the successor to verify the professional services of the predecessor have indeed been terminated before providing services on the same project.

The underlying obligations of the successor to the predecessor and Council is to provide notification about the successor’s intention to provide services on a project for which a predecessor was involved and to demonstrate that all reasonable measures have been undertaken to confirm that the predecessor’s services have indeed been terminated.

LEGISLATION REFERENCES
There are several aspects of the legislation that relates to the matter of succession including:

- Architects Act, Code of Ethics
- Architects Act General Regulation, Section 43 - Succession
- Single Designated Professional of Record and Professional Control
- Intellectual Property and Copyright Legislation
Architects Act, Code of Ethics
The following excerpts from the Architects Act, Code of Ethics describe the underlying concepts of professional conduct that govern all acts of succession from one authorized entity to another:

**Integrity**
1 An authorized entity must discharge, with honesty, courtesy and good faith, the duty that it owes to its client, to the public and to the profession.

**Responsibility to the profession generally**
2 An authorized entity must assist in maintaining the integrity of the profession.

The key principles inherent to the Code of Ethics include:

1. The general avoidance of engaging or attempting to engage in a project where one knows or ought to know that another authorized entity is already providing professional services on that same project.

2. The undertaking of all reasonable efforts to independently verify that the professional services agreement between a client and an authorized entity has indeed been terminated Section 43 Succession of the Architects Act General Regulation and the procedures outlined in this Practice Bulletin before offering to provide professional services on the same project.

Architects Act General Regulation, Section 43 - Succession
Section 43 of the *Architects Act General Regulation* applies to successors when the services of an Architect or a Licensed Interior Designer are terminated and the client elects to proceed with the completion of the project engaging another Architect or Licensed Interior Designer:

Section 43 (1) An authorized entity proposing to undertake a project on which another entity is employed must notify in writing:

(a) the employed authorized entity; and  
(b) the Council of the Association.

Section 43 (2) Before accepting employment on a project on which another authorized entity was formerly employed, the successor authorized entity must satisfy itself that the agreement between the authorized entity formerly employed and the client has been terminated.

Single Designated Professional of Record and Professional Control
The Alberta Building Code Schedules of Professional Involvement, as governed by the Safety Codes Act, and the Architects Act both imply that a single individual professional Architect of Record or a single individual professional Licensed Interior Designer of Record is designated on a particular project. The identification of a single professional of record flows from the duty the professional owes to the public and authorities to clearly identify the designated individual responsible for any particular building project.
Furthermore, Section 2 of the Architects Act outlines the core responsibilities of the individual authorized entity serving as the designated professional of record who engages in the practice of Architecture or the practice of Licensed Interior Design as defined by the Act. This section specifically notes that all documents and instruments of professional service as issued throughout the entire planning, design, documents production and construction review process be prepared directly by the authorized entity or under the personal supervision, direction and control of that authorized entity.

The Architects Act does not include any provisions for these personal supervision, direction and control responsibilities to be relinquished, assigned or designated in whole or in part to any others thus highlighting the core responsibilities of an authorized entity serving in the role of a designated professional of record on a particular project regardless of whether the authorized entity is the first to provide services on that project or is acting in the capacity of a successor.

This basic concept of personal supervision, direction and control is of particular importance when assessing one’s responsibilities when deciding to become involved in a project as a successor to another authorized entity or after services have been provided by other professional or non-professional advisor to a prospective client.

Notwithstanding the Section 43 Succession obligations of the Architects Act General Regulation and the procedures outlined as policy in this Practice Bulletin, the underlying personal supervision, direction and control provisions within the Act imply that an authorize entity undertaking any sort of work in which others have been involved must undertake that work on the same project as if it were his/her own. There are no exceptions to this duty of care included in the legislation regardless of the qualifications of the predecessors or the level of completion of the predecessor services.

A successor is fully responsible to conduct a complete review of any work conducted previously by others to determine at his / her sole discretion and professional judgement whether any prior work is appropriate to accept as part of one’s own work notwithstanding the significant duty of care and attention towards the potential intellectual property rights that must also be provided when considering the use of the documents or instruments of services or work prepared, provided or conducted by others prior to becoming involved on the same project.

It is on this basis that the concept of ‘rubber stamping’ work already conducted by others without conducting one’s own thorough review of a predecessors work or all work conducted by others is strongly discouraged by the Association and is a prosecutable professional conduct offence under the Architects Act.

In addition to professional succession provisions, a successor is responsible under the Safety Codes Act and Division C, Volume 1, Section 2.4 of the Alberta Building Code to provide notification in writing to building code authorities having jurisdiction and to submit all the necessary Schedules of Professional Involvement required to demonstrate responsibility for the design and construction review work.

Similarly, it is the responsibility of a predecessor to provide written notification to building code authorities having jurisdiction withdrawing one’s Schedules of Professional Involvement that may
have been submitted in all situations where the professional services agreement of the predecessor has been terminated or the responsibility is being transferred from one authorized entity to another.

For the reasons of personal supervision, direction and control it is not possible within the context of the Schedules of Professional Involvement for one authorized entity to be identified as a professional of record at one stage of a project with another identified as a professional of record at a different stage.

**Intellectual Property and Copyright Legislation**
The federal Copyright Act outlines the terms in which the intellectual property of others may be protected, licensed or re-used and is an important aspect to succession that must be carefully addressed by any project successor and predecessor.

The terms of the written agreement between the client and predecessor should include the provisions for which the instruments of service as provided by the predecessor may be re-used.

In light of the intellectual property legislation that protects the intellectual property rights of Architects and Licensed Interior Designers by default as authors of creative works, the various potential forms of agreement between a client a predecessor with regards to the use of documents upon the termination of an agreement and the professional integrity obligations, a successor owes a professional duty of care and maintains the full responsibility, including contacting the predecessor where necessary, to determine the extent to which documents may relied upon or utilized. A successor is also responsible to understand the requirements of credit for authorship on the past services provided by predecessors in undertaking to complete the work on the same project.

**Predecessor Considerations**
While one does not typically enter into a professional services agreement with the expectation of a termination, the above considerations also highlight the need for all authorized entities to carefully consider the terms and conditions of their written agreements in anticipation of the potential termination of their professional services agreement. The absence of provisions describing the permitted or limited uses of the instruments of service, that limit the use of documents if payment has not been made or that reduce the liability exposure associated with professional services provided up until the time of termination have the potential to expose the authorized entity to unnecessary risks.

**SUCCESION PROCEDURES**
For the purpose of Section 43 of the Architects Act General Regulation, the Alberta Association of Architects considers a successor’s notification obligations to the predecessor and to Council to have been sufficiently fulfilled when the following minimum requirements have been addressed by the proposed successor:

1. Where a predecessor has provided written confirmation to a proposed successor confirming the termination of the predecessor’s professional services on the same project for which a proposed successor intends to provide services:
(a) A written letter of notice from the successor to the predecessor notifying the successor about the intention to provide services on the same project similar to Appendix A shall be issued by the successor to the predecessor and copied to AAA Council; and

(b) The notification letter to Council will include a copy of the predecessor’s letter to the proposed successor confirming termination of the predecessor’s agreement.

2. In circumstances where termination notification of a predecessor’s professional services agreement on the same project for which a proposed successor intends to provide services has been provided by the client only:

(a) The proposed successor must obtain a copy of the relevant sections of the written termination notice from the client to the predecessor that confirms the termination of the professional services agreement between the predecessor and the client; and

i. The successor will complete items 1(a) and 1(b) above; or

ii. The successor will provide written notification to predecessor about the successor’s intention to provide professional services on the same project utilizing a notification letter similar to Appendix B and provide a reasonable time for the predecessor to either confirm or deny that the predecessor’s professional services agreement has indeed been terminated; and

(b) The successor will undertake all reasonable efforts to resolve potential discrepancies regarding the contract termination status as obtained by the client and the successor on the same project only insofar as necessary to both the client and the predecessor agree the agreement of the predecessor has indeed been terminated; and

(c) Complete items 1(a) and 1(b) above indicating the potential discrepancies between the client and predecessor, if applicable, regarding the termination notification status regarding the professional services of the predecessor as information to the AAA Council.

Verbal confirmation alone about the predecessor’s termination of professional services on the same project for which a proposed successor intends to also provide services is not sufficient for the successor to proceed to provided professional services on the same project for which a predecessor is involved.

A successor is not obligated to resolve any outstanding payment or contract close-out issues before proceeding with providing professional services on the same project.

A predecessor that receives a termination status inquiry letter from a proposed successor, shall provide a response to the proposed successor in a reasonable period of time. It is reasonable for a proposed successor to assume that the predecessor’s professional services agreement has indeed been terminated should the predecessor fail to reply to the notification by the successor. In these circumstances, the time provided by the proposed successor to the predecessor to confirm the termination of the predecessor’s agreement must be included in the letter to Council.

The AAA considers the continued provision of services by an authorized entity on a project for which professional services have been terminated as a questionable business practice that may also be adjudicated by the Complaint Review Committee as unprofessional conduct.
The succession notification to Council is provided for information rather than decision-making purposes as long as all requirements of this Practice Bulletin have been fulfilled by the successor.

While this Practice Bulletin outlines the measures for a successor to undertake on projects where there is a discrepancy regarding the termination notice status for which a successor proposes to provided services on the same project, members are strongly encouraged to consider the business risks in these situations and to secure the services of independent legal counsel to advise.

In certain circumstances, it may be appropriate for a successor to facilitate the preparation of a letter of termination notification from the client to predecessor but only under where the client has expressed an unsolicited verbal confirmation to terminate the professional services agreement of a predecessor. Any actions by a proposed successor to solicit the creation of a new professional services agreement or to encourage or promote the termination of an existing agreement between a client and an authorized entity on a project for which a proposed successor knows or should have known that there is an existing agreement in place is considered by the Association to represent unprofessional and unethical conduct and may be prosecuted accordingly within the terms of the Architects Act.

The practice of issuing letters of succession notification or inquiry for speculative purposes is considered by the Alberta Association of Architects as unprofessional conduct.

Unless specifically agreed to by all legal entities involved, a client change on a project does not imply the transfer of the terms of a professional services agreement from one client to another. In these circumstances, successors are advised to undertake all reasonable measures to verify there are no professional obligations that have been transferred from one client to another that include the continuance or transfer of a predecessor’s professional services agreement before a successor considers becoming involved in the same project with a different client. In these situations, the succession notification procedures outlined in this Practice Bulletin do not apply.
APPENDIX A
Successor Letter Template
Notification of Succession to Predecessor and Council

[For use when the predecessor has provided the successor with written verification that the predecessor’s professional services agreement has been terminated for the same project on which the successor intends to provide services].

[Successor Letterhead]
[Date]

[Predecessor Address]

Dear [Name of Predecessor],

Re: [Project Name, Location and Brief Description]

In accordance with Section 43 Architects Act, General Regulation regarding succession, I am writing to notify you and the Alberta Association of Architects Council that [Client Name], has approached me to provide professional services for the above referenced project and that I am satisfied through your enclosed written verification that your professional services on this project have been fully terminated.

Yours truly,
[Name of Successor]

cc: The Alberta Association of Architects Council

enc: [Written confirmation from predecessor to successor confirming the professional services agreement of the predecessor has been terminated].
APPENDIX B
Proposed Successor Letter Template
Seeking Termination Confirmation from Predecessor

[For use when the successor is seeking verification from the predecessor that the predecessor’s professional services agreement has been terminated for the same project on which the successor intends to provide services].

[Successor Letterhead]
[Date]

[Predecessor Address]

Dear [Name of Predecessor],

Re: [Project Name, Location and Brief Description]

In accordance with Section 43 Architects Act, General Regulation regarding succession, I am writing to notify you and the Alberta Association of Architects Council that [Client Name], has approached me to provide professional services for the above referenced project.

[Client Name] has advised that your professional services agreement has been terminated and I am writing to confirm this is consistent with your understanding before entering into a professional services agreement with this client.

Please provide me with written verification that your professional services on this project have indeed been fully terminated within the next ten business days. In the absence of your written confirmation, I will proceed with notifying the Alberta Association of Architects Council about my intentions to provide professional services on the above noted project as a successor and in compliance of the succession legislation and policies prescribed by the Association.

Yours truly,
[Name of Successor]

cc: The Alberta Association of Architects Council

enc: [Written confirmation from predecessor to successor confirming the professional services agreement of the predecessor has been terminated].
APPENDIX C
Successor Letter Template
Notification to Council and Predecessor following Confirmation Period

[For use after successor has provided reasonable opportunity for predecessor to verify the predecessor’s professional services agreement has been terminated for the same project on which the successor intends to provide services and no response has been provided by the predecessor within the confirmation period. If written confirmation is provided by the predecessor to the successor, then use Appendix A letter].

[Successor Letterhead]
[Date]

[Alberta Association of Architects Address]

Attention: Alberta Association of Architects Council

Re: [Project Name, Location and Brief Description]

In accordance with Section 43 Architects Act, General Regulation and Association policies and procedures regarding succession, I am writing to notify Council about my intention to provide professional services as a successor on the above noted project.

As demonstrated by the enclosed letters from [client], the absence of a response from [predecessor] to my attempts to confirm the professional services of [predecessor] have indeed been terminated, I am satisfied all reasonable measures have been undertaken to confirm the professional services agreement of the predecessor to this project has been terminated.

Yours truly,
[Name of Successor]

cc: [Predecessor]

enc: [Copy of the letter from the client to the successor verifying the professional services agreement of the predecessor has been terminated].

[Copy of the letter provided by the successor to the predecessor seeking verification that the predecessor’s professional services agreement has been terminated following request for confirmation period].

Revised: March 23, 2017