

PB-06 SUCCESSION

SUMMARY

This Practice Bulletin addresses questions that frequently arise when an Architect or Licensed Interior Designer must be changed through the course of services. Both the successor and predecessor have responsibilities they must uphold.

This Bulletin also outlines the procedures that successors must follow in fulfilling their professional obligations under Section 43 of the *Architects Act General Regulation*.

BACKGROUND

The termination of services may occur at any time during a project. Examples of this are:

- ▶ Termination of the agreement by either party
- ▶ Death of either party
- ▶ Bankruptcy of either party
- ▶ Failure of either party to fulfill the contractual obligation
- ▶ Client suspending or abandoning the project
- ▶ Change in ownership of the project

Before a new architect or licensed interior designer can take on the work of the project, they, as the successor of the project, must ensure they have followed the necessary procedures to ensure the services have been properly terminated before providing professional services on that project.

It is important that when a project is passed from one professional to another, it is handled appropriately. As an architect or licensed interior designer owes a duty of care to a client, this procedure protects all relevant parties.

The successor is obligated to provide notification to the predecessor about the successor's intention to provide services on a project in which a predecessor was involved. The successor must demonstrate that all reasonable measures have been undertaken to confirm that the predecessor's services have indeed been terminated.

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. 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.

RELEVANT LEGISLATION

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

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 there must be a single individual professional Architect of Record, or a single individual professional Licensed Interior Designer of Record designated on every project. As an individual authorized entity, the designated professional of record owes a duty of care to the public and to the authorities to clearly identify the designated individual responsible for any building project. Identifying a designated professional on a project ensures that someone is providing meaningful oversight and is accountable for the overall 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, document production and construction review process be prepared directly by the authorized entity or under the personal supervision, direction, and control of the authorized entity.

The *Architects Act* does not include any provisions for personal supervision, direction and control responsibilities to be relinquished, assigned or designated in whole or in part to any others. The core responsibilities of an authorized entity serving in the role of a designated professional of record on a particular project remain 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 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 advisors.

Notwithstanding 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 *Architects Act* imply that an authorized 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 regardless of the qualifications of the predecessors or the level of completion of the predecessor services.

A successor is fully responsible for reviewing any work conducted previously by others to determine whether it is appropriate to accept this work as part of one's own work. A significant duty of care towards the potential intellectual property rights must also be provided when considering the use of any instruments of service provided by others prior to becoming involved in the project.

It is on this basis that the concept of "rubber stamping" work conducted by others without conducting one's own thorough review of all work conducted by others is strongly discouraged by the Alberta Association of Architects (AAA) 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, a predecessor must provide written notification to building code authorities having jurisdiction withdrawing any Schedules of Professional Involvement that may have been submitted. This applies to 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 reused. Intellectual property and copyright are important aspects of succession that any project successor and predecessor must carefully address.

As authors of creative works, the intellectual property of architects and licensed interior designers is protected by legislation.

The written agreement between the client and predecessor should include terms describing how specific instruments of service may be reused.

A successor owes a professional duty of care and is responsible for contacting the predecessor where necessary to determine the extent to which documents may be relied upon or utilized. A successor is also responsible for understanding the requirements of credit for authorship on the past services provided by predecessors.

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 define 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.

SUCCESSION PROCEDURES

For the purpose of Section 43 of the *Architects Act General Regulation*, the AAA 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 of their termination of professional services on the project:
 - (a) A written letter of notice, similar to Appendix A, from the successor to the predecessor notifying the successor about the intention to provide services on the same project and copied to AAA Council; and
 - (b) The notification letter to Council will include a copy of the predecessor's letter confirming the termination of their agreement.
2. In circumstances where termination notification of a predecessor's professional services agreement 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 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 the predecessor about their intention to provide professional services using a notification letter, similar to Appendix B. The successor will allow a reasonable time for the predecessor to either confirm or deny that their professional services agreement has indeed been terminated; and
 - (b) The successor will undertake reasonable efforts to resolve any potential discrepancies regarding the contract termination status, but only insofar as necessary, to both the client and the predecessor to agree the predecessor's agreement has indeed been terminated; and
 - (c) Complete items 1(a) and 1(b) above, and if applicable, provide the discrepancies between the client and predecessor's termination notification status as information to the AAA Council.

Verbal confirmation of the termination of professional services is not sufficient for the successor to proceed with providing professional services on the project.

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

A predecessor who receives a termination status inquiry letter shall respond 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 been terminated should the predecessor fail to reply to the notification. In these circumstances, the proposed successor's letter to Council must include how much time they provided the predecessor to confirm the termination of their agreement.

Continuing to provide services on a project for which professional services have been terminated is considered by the AAA to be a questionable business practice that the Complaint Review Committee may also adjudicate as unprofessional conduct.

The succession notification is provided to Council for information rather than decision-making purposes as long as the successor has fulfilled all requirements of this practice bulletin.

While this practice bulletin outlines the measures a successor must undertake on projects where there is a discrepancy regarding the termination notice status, registrants 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. However, only in cases 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 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 AAA to represent unprofessional and unethical conduct and may be prosecuted accordingly within the terms of the *Architects Act*. In certain circumstances, it may be appropriate for a successor to facilitate the preparation of a letter of termination notification from the client to the predecessor but only where the client has expressed an unsolicited verbal confirmation to terminate the professional services agreement of a predecessor.

The AAA considers issuing letters of succession notification or inquiry for speculative purposes to be unprofessional conduct.

Unless specifically agreed to by all legal entities, 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 that no professional obligations have been transferred from one client to another, including the continuance or transfer of a predecessor's professional services agreement. The succession notification procedures outlined in this practice bulletin do not apply in these situations.

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Practice Bulletins are issued by The Alberta Association of Architects as a practice resource or as general interpretations of the requirements in the *Architects Act*, the Regulation under the Act, and the Bylaws. Bulletins should be read in conjunction with the Act, Regulation and Bylaws and in no way supersede these documents. Bulletins are not intended to be and are not legal advice to the members of the Association nor to the public/client. members and the public should consult their own legal, income tax or financial advisors as to the application of the *Architects Act* and Regulation in specific circumstances.

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].