



**Application of Indiana’s Architect Licensing Laws
to Businesses Engaged in Architecture**

*Prepared for AIA Indiana
by: William E. Kelley, Jr.*

1. **Individuals** may be registered or licensed in the State of Indiana as architects. **Firms** or **businesses** are *not* registered or licensed in the State of Indiana as architects.
 - a. *See Indiana Code (“I.C.”) 25-4-1-6(a) (“A **person** desiring to engage in the practice of architecture: (1) shall apply to the board for a certificate of registration in compliance with this chapter; (2) shall submit evidence to the board that the **person** is qualified to engage in the practice of architecture in compliance with the requirements of this chapter, including evidence that the **person**: (A) **graduated with a professional degree from a school or college of architecture** accredited by the National Architectural Accrediting Board, Inc., or its successor; (B) **successfully completed the required examination**; and (C) **successfully completed the intern development program** required under section 7.5 of this chapter; and (3) **must not have been convicted** of: (A) an act that would constitute a ground for disciplinary sanction under IC 25-1-11; or (B) a felony that has direct bearing on the applicant’s ability to practice competently.”).*
 - b. *See also See 804 IAC 1.1-1-1(21): “Registrant” means a registered architect or landscape architect, unless the context clearly indicates otherwise, whose qualifications have been examined by the board and a certificate of registration granted.*
2. An architectural firm *may, but is not required*, to incorporate as a **professional corporation**.

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- a. In the case of a professional corporation, there are special laws governing who can and cannot be an owner (shareholder) and/or officer, as set forth in the Indiana Professional Corporation Act.
- i. One or more architectural or engineering professionals may form a professional corporation to render services that may be legally performed only by an architectural or engineering professional. *IC 23-1.5-2-3(a)(2)*.
 - ii. A domestic professional corporation or a foreign professional corporation admitted to render professional services in Indiana: (1) shall have at least one shareholder who is licensed in Indiana; and (2) may have at least one shareholder who is licensed under the laws of another state to render similar professional services. *IC 23-1.5-2-3(c)*.
 - iii. The directors of a professional corporation and all the officers other than the secretary and the treasurer must be qualified persons¹ with respect to the corporation. *See IC 23-1.5-2-4*.
 - iv. A professional corporation may issue shares only to individuals who are authorized to render a professional service² permitted by the articles of incorporation. *See IC 23-1.5-3-1(a)*.
 - v. A professional corporation may render professional services only through individuals permitted to render such services in Indiana. However, individuals who are not usually and ordinarily considered by custom and practice to be rendering professional services (such as clerks, bookkeepers, and technicians) are not required to be licensed to perform their services. *IC 23-1.5-2-5*.
 - vi. Except as provided in IC 25-2.1-5, a professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

¹“Qualified person” means an individual, general partnership, professional corporation, or trustee of a qualified trust that is eligible under this article to own shares issued by a professional corporation. *IC 23-1.5-1-12*. “Disqualified person” means an individual, corporation, limited liability company, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this article to own shares issued by a professional corporation. *IC 23-1.5-1-6*.

² “Professional service” means any type of service that may be legally performed only by: (1) an accounting professional; (2) an architectural or engineering professional; (3) an attorney; (4) a health care professional; (5) a veterinarian; or (6) a real estate professional. *IC 23-1.5-1-11*.

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(1) individuals who are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation; (2) general partnerships in which all the partners are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation; (3) professional corporations authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation; and (4) the trustee of a qualified trust. *IC 23-1.5-3-1(a)*.

vii. When determined necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of the profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares, but no such rule may, of itself, have the effect of causing a shareholder of a professional corporation at the time the rule becomes effective to become a disqualified person. All shares issued in violation of: (1) this section; or (2) any rule adopted by a licensing authority as provided by this section; are void. *IC 23-1.5-3-1(b)*.

viii. If a professional corporation ceases to render professional services, the corporation shall: (1) amend its articles of incorporation to delete from its stated purposes the rendering of professional services; and (2) conform to the requirements of IC 23-1 regarding its corporate name. *IC 23-1.5-4-2*.

3. Instead of organizing as a professional corporation, architectural firms may also be incorporated as **partnerships, corporations, or limited liability companies**.
4. Unlike the laws relating to professional corporations, the laws governing those other types of business entities do not contain express rules on whether those businesses may be owned by registered architects, by non-registered professionals, or some hybrid arrangement, where the business holds itself out as providing architectural services.
5. However, there are laws relating to businesses that engage in the practice of architecture that may apply to all business types that provide architectural services.
 - a. “No firm, partnership or corporation shall engage in the *practice of architecture* unless the work is **under the full authority and responsible charge of a registrant who is also a principal of the firm, or partnership or officer of the**

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corporation. The name of said registrant shall appear whenever the firm name is used in the professional practice of the firm, partnership or corporation.” *I.C. 25-4-1-27.*

- b. “A firm, partnership or corporation *offering architectural service* shall have **a registrant who is a principal of the firm or partnership or officer of the corporation and all work shall be performed under the responsible direction and supervision of said registrant.** The name of such principal or officer who is registered shall appear whenever the name of the firm, partnership or corporation is used in professional practice to indicate to clients or prospective clients that registrant is in responsible charge and is validly registered as determined by the board.” *804 IAC 1.1-2-8.*
6. Both IC 25-4-1-27 and IAC 1.1-2-8 focus on whether someone is a “**principal**” of a firm or partnership, or an “**officer**” of a corporation.
 7. The term “**principal**” is not defined in IC 25-4-1-27 or in 804 IAC 1.1-2-8.
 - a. In legal terms, the term “**principal**” is defined as “One who authorizes another to act on his or her behalf as an agent” or as “One who has primary responsibility on an obligation, as opposed to a surety or indorser.” *Black’s Law Dictionary, 7th Edition.*
 - b. Under the Indiana Administrative Code sections relating to Registration and Code of Conduct for Architects, there is a definition of the term “**principal**” as it relates to those sections.
 - i. Under Rule 7 relating to “Training and Experience Requirements for Architect Registration”: “For the purposes of this rule, an individual practices as a ‘**principal**’ by being: (1) *a registered architect*; and (2) *the individual in charge of the organization’s architectural practice either alone or with other registered architects.*” *See 804 IAC 1.1-7-5.*
 1. The term “**principal**” under this rule does not include a definition that expressly requires ownership in a firm that engages in the organization’s architectural practice. Instead, it indicates that the individual must be a registered architect and “in charge” of the organization’s architectural practice.

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- ii. Similarly, also under Rule 7: “For the purposes of this rule, an organization will be considered to be an ‘*office of a registered architect*’ if all of the following are met: (1) The architectural practice of the organization in which the applicant works is in the charge of **a person practicing as a principal** and the applicant works under the direction supervision of a registered architect...” *See 804 IAC 1.1-7-3.*
 - c. In relation to Indiana’s Uniform Partnership Act governing businesses organized as partnerships, there is no definition of the term “**principal**” in relation to a partnership. However, there are laws dictating who a “**partner**” is in that context.
 - i. A partnership is an association of two (2) or more persons to carry on as co-owners a business for profit and includes for all purposes of the laws of this state a limited liability partnership. *See IC 23-4-1-6.*
 - ii. By extension, a “partner” is a co-owner of a business for profit, where that business is organized as a partnership.
8. The term “**officer**” is also not defined in IC 25-4-1-27 or in 804 IAC 1.1-2-8.
- a. However, the Indiana Business Corporation Law outlines certain definitions and requirements as to “**officers**” of corporations.
 - i. A corporation has the **officers** described in its bylaws or elected or appointed by the board of directors in accordance with the bylaws or appointed by a duly elected or appointed officer in accordance with the bylaws. However, *a corporation must have at least one (1) officer. IC 23-1-36-1(a).*
 - ii. A duly elected or appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors. *IC 23-1-36-1(b).*
 - iii. The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation, and that officer is considered the secretary of the corporation for purposes of this article. *IC 23-1-36-1(c).*

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- iv. The same individual may simultaneously hold more than one (1) office in a corporation. *IC 23-1-36-1(d)*.
 - v. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers. *IC 23-1-36-2*.
- b. The Indiana Business Corporation Law does *not* require that an **officer** of a corporation also be a **shareholder** or an **owner** of the corporation. *See 18 Ind. Prac., Business Organizations, § 24.1*.
9. IC 25-4-1-27 and 804 IAC 1.1-2-8 also do not specifically reference “limited liability companies”, instead referencing only “firms”, “partnerships”, and “corporations”.
- a. A limited liability company is distinct from a corporation under Indiana’s Business Flexibility Act. However, to the extent that IC 25-4-1-27 and 804 IAC 1.1-2-8 apply to both “corporations” and “limited liability companies”, Indiana’s Business Flexibility Act provides requirements for “**officers**” in the context of limited liability companies.
 - i. If the written operating agreement of a limited liability company provides for **officers**, each officer has those powers and duties set forth, generally or specifically in the written operating agreement, or otherwise delegated to an officer from time to time by the managers and/or members. *IC 23-18-3-2.5*.
 - ii. Each officer has the status of an agent of the limited liability company. *IC 23-18-3-2.5*.
 - b. Indiana’s Business Flexibility Act does *not* require that an **officer** of a limited liability company also be a **member** or **owner** of the limited liability company.
10. Finally, at least one reported decision with the Indiana Court of Appeals dealt with application of Indiana Code § 25-3-1-18 (1988 Ed.), which was a similar, but not identical, statute to IC § 25-4-1-27.
- a. In *Faust v. Design Consultants, Inc.*, 542 N.E.2d 1383 (Ind. Ct. App. 1989), the Court of Appeals addressed the statute that provided, “No partnership, firm or corporation doing business in the state of Indiana may be engaged in the practice

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of professional engineering ... **unless such practice is carried on under the responsible direction and supervision of a registered professional engineer ... who is a principal of the firm or partnership or officer of the corporation.**” The Court found that testimony at trial “established that four persons comprised the corporation of [the engineering company]: one professional engineer registered and licensed in the State of Indiana and three draftsmen. Such evidence demonstrated compliance with Ind. Code § 25-31-1-18 (1988 Ed.)” *Id.* at 1385.