



PRACTICE NOTE 12: “QUALIFIED” LETTERS OF ASSURANCE

OCTOBER 2005 (FIRST REVISION: OCTOBER 2008)

This first revision to Practice Note 12 provides minor upgrades for clarity of syntax and to graphic format. The single adjustment of substance is flagged by sidebar. Otherwise, content remains fundamentally unchanged.

The provision of AIBC-endorsed Letters of Assurance (without modification) by architects, in their sole professional discretion, is a fundamental component of architects’ Minimum Scope of Services under AIBC Bulletin 90 under the authority of AIBC Bylaw 28.1 and in keeping with AIBC Council Policy 6.10. The AIBC is aware that architects and other consultants occasionally may be influenced or (inappropriately) required or otherwise inclined, within the practical context of a particular project, to issue “qualified” Letters of Assurance, for a variety of reasons and under certain conditions.

The AIBC Practice Board and its Regulatory Coordination Committee (which includes not only architects... in both practice and client capacities ... but also representatives of the Association of Professional Engineers & Geoscientists of British Columbia (APEGBC), the Building Officials Association of British Columbia (BOABC) and several municipalities) have completed their deliberations on this topic and concluded as indicated below. **In summary, the AIBC does not support or condone “qualified” Letters of Assurance.**

1. There is no requirement in either the BC Building Code (BCBC) or the City of Vancouver Building Bylaw (VBBL) for any registered professional (RP), in any capacity, to disclose any deficiencies in construction which might exist at the time of the RP’s issuing a schedule of types “C” or “D” (AIBC’s model schedule for enhanced building envelope services) regarding field review and construction compliance. The RP may so disclose, but that’s a matter of the RP’s choice. The authority having jurisdiction (AHJ) may well choose not to receive such a list and has no legitimate mandate or authority to deal with or to enforce the correction of such a list, which inevitably attracts undue attention and confusion.
2. Deficiencies under construction contract are not necessarily deficiencies with regard to the permitting process. Identifying or attaching such a list with a letter of assurance can be misleading and invite wholly inappropriate concerns and related consequences.
3. Letters of Assurance, when issued, are not to be qualified as to their being (e.g.) “interim” or “partial” or “conditional” or “pending resolution of deficiencies” or “to expire by a given date should the deficiencies remain outstanding by that date”. That applies equally to schedules of types ‘A’ and ‘B’ for owner’s undertaking and design, respectively, as well as for types ‘C’ and AIBC Model Schedules ‘D’ (cf. Bulletin 34 for Enhanced Building Envelope Services). The state of the design or of the construction in relation to the building code and the permit being sought either merits the architect’s assurance, in keeping with the language of the schedules and the RP’s professional judgment, or it does not.

(NB: The acceptable use of Letters of Assurance for “phased” (or partial) occupancies of portions of buildings or projects...unqualified ...is dealt with under Practice Note 15, first issued October 2008.)

4. If one or more deficiencies should give rise to the RP’s reluctance or refusal to issue the letter of assurance, then that letter of assurance should not be issued. Whether such deficiencies are “seasonal” or arise from some other factor (e.g. long delivery time for a building component) is irrelevant to the appropriate issuing of the letter of assurance, unqualified. The issuing of the letter of assurance, in the presence (or not) of any deficiencies, is a judgment call by the RP alone, at the RP’s sole discretion, upon which the AHJ is entitled to rely. While appreciative of the private contractual issues this may affect, the letters of assurance do not relate to any contractual requirement but, rather, to protection of the public interest and sound professional practice.
5. Seasonal deficiencies are acknowledged to be problematic. Pressure must be resisted to issue a letter of assurance in the face of a seasonal (or other) deficiency which, in the RP’s judgment, is fundamental to substantial compliance of the construction with the building code, applicable regulations and the design and drawings accepted by the AHJ for building permit purposes.
6. As a practical matter, for an AHJ to issue an occupancy permit based upon (e.g.) a conditional letter of assurance, or one which has, at the risk of a colloquialism, a “best before date” is not only inappropriate under the BCBC or the VBBL but would also put the AHJ (with attendant exposure to the Owner and the RP) in the extremely awkward and costly, if not outright impossible position, of having to enforce the permitted occupancy’s “expiry” in an occupied building.
7. The foregoing notwithstanding, the issuance of an occupancy permit (or equivalent form of permission in certain jurisdictions) is nonetheless up to the AHJ (only) and is known to happen occasionally without the full, unqualified set of letters of assurance, for reasons best known to and decided by the AHJ, as arranged and agreed to with the project’s Owner ... at the Owner’s and the AHJ’s risk and, at times, with liability protection in some form for the AHJ by the Owner. Knowledge by the RP of such an arrangement for permit issuance, on the immediate or a prior project, is not to be construed by the RP as either precedent or permission condoning qualified letters of assurance by the RP.
8. Submission of a qualified letter of assurance may well attract, in addition to confusion, its refusal by the AHJ (only) and delay, successful litigation and/or a successful complaint of unprofessional conduct filed by the AHJ against an architect. There are case precedents for those results.

One corollary is that an architect (in an RP or Coordinating RP capacity) should not accept or rely upon a qualified letter of assurance from another RP, regarding professional engineering or enhanced building envelope services.

Not to deny or diminish the importance of commercial contract matters, the basis for professional judgment when issuing letters of assurance is protection of the public.

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