



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

## Proposed Amendments to the Project Takeover Professional Standards:

*Note: Current Professional Standard and commentary is in plain text.*

*Proposed amendments are shown in yellow highlighting.*

*Strikeout indicates wording proposed for removal from the Professional Standard.*

PROFESSIONAL STANDARDS	RATIONALE
<p>5.9 An Architect may only accept a commission for a Project when the services of any Architect previously retained for the Project have been terminated.</p> <p><b>Proposed Professional Standard Amendment:</b></p> <p>5.9 <del>An Architect</del> Registrant may only accept a commission for a Project when the services of any <del>Architect</del> Registrant previously retained for the Project have been terminated.</p>	<p>The Professional Standards Advisory Group (“PSAG”) is recommending a minor terminology update to this Professional Standard to use the term Registrant rather than Architect.</p>
<p>5.10 An Architect, on being either approached or instructed to proceed with services for which the Architect knows or can ascertain by reasonable inquiry that another Architect is or has been engaged by the same Client, must notify the other Architect in writing of that fact.</p> <p><i>The ethical responsibility for notifying a previously engaged Architect lies with the new Architect and cannot be delegated to the Client. Upon notifying the previous Architect in writing, the new Architect is under no obligation to delay acquiring the commission until the first Architect’s fee has been paid.</i></p> <p><i>This Professional Standard requires the termination, but not necessarily the financial resolution, of the predecessor Architect’s services prior to a successor Architect making a proposal or being interviewed for, or accepting, a Project commission.</i></p>	

PROFESSIONAL STANDARDS	RATIONALE
<p><b>Proposed New Professional Standard:</b></p> <p>5.10 A Registrant contacted by a potential client in circumstances where the Registrant knows or can ascertain by reasonable inquiry that another Registrant (the “predecessor Registrant”) is or has been engaged, must:</p> <ul style="list-style-type: none"> <li>(a) advise the potential client in writing that if requested to provide a proposal for services, the Registrant has a duty to notify the predecessor Registrant of the request by the potential client; and</li> <li>(b) in the event the potential client requests a proposal for services from the Registrant, that Registrant must promptly notify the predecessor Registrant in writing of the request.</li> </ul> <p><i>Prompt’ notification means without delay – normally, on the same or next business day.</i></p> <p><i>The ethical responsibility for notifying the other Registrant lies with the new Registrant and cannot be delegated to the potential Client or other person. The notification obligation exists whether the other Registrant is understood or suspected to still be under contract with their Client (or former Client), or no longer under contract. Professional Standard 5.11 addresses the importance of contract termination and related requirements for a successor Registrant making a proposal for and/or starting services.</i></p> <p><i>This Professional Standard requires the termination, but not necessarily the financial resolution, of the predecessor Registrant’s services prior to a successor Registrant providing services.</i></p>	<p>This threshold allows parties to engage in early, non-substantive communication about architectural services. A mere “approach” by the potential client no longer triggers notice to a predecessor Registrant. The new threshold is set at a request for a proposal for services. This revised notification requirement reflects the AIBC’s Professional Practice Advice and professional conduct complaints experience.</p>

PROFESSIONAL STANDARDS	RATIONALE
<p>5.11 An Architect taking over a Project must not provide architectural services that are based upon, and which continue and complete, those initiated by the predecessor Architect unless:</p> <p>(a) there has been no supplanting of the predecessor Architect by the successor;</p> <p>(b) the resignation or termination of the predecessor Architect must have occurred in accordance with the terms of the relevant Client-Architect Contract;</p> <p>(c) the original Client must have paid for the services of the predecessor Architect; and</p> <p>(d) in the case of property transfer to a new owner, there must have been legal acquisition by the new owner of the original Architect's copyright and instruments of service, either directly from the predecessor Architect or from the original owner, if that owner was legally entitled to sell them.</p> <p><i>Note: Paragraph (d) does not in any way affect the baseline copyright/ ownership of instruments of service law and standard contractual provisions. Copyright for instruments of service, including drawings, is the property of the Architect unless specifically agreed to by the Architect (e.g., by copyright sale or licence). No Client has an automatic right to sell drawings or other instruments of service, nor use them for another Project, without the owning Architect's permission.</i></p> <p><i>In Paragraph (c), the services needing to be paid for are those which generated the design, drawings and/ or other instruments of service which are to be used by that Client and successor Firm.</i></p>	

PROFESSIONAL STANDARDS	RATIONALE
<p><i>In some situations, the predecessor Architect will have been duly paid for services up to a certain point in the project (e.g., for development permit drawings and related work) but not other services (e.g., building permit or construction drawings). In such cases, this standard does not prevent the successor Architect from providing services based upon the ‘paid up’ services, as long as the other requirements are met.</i></p> <p><i>The minimum obligation arising under Professional Standards 5.10 and 5.11 for a successor Architect is to give prompt notification to an existing Architect on a Project, even if the second Architect has merely been approached to provide services. The next obligation – to satisfy themselves that the predecessor Architect was terminated – arises if the successor Architect intends to make a proposal, attend an interview or accept a commission for the Project. The final tier of obligations is triggered by the successor Architect actually providing services based on those of the predecessor Architect. In that case, the successor Architect should conduct sufficient inquiries to be satisfied that the requirements of the standard have been met.</i></p> <p><i>The Professional Standard is not intended to be used improperly by the predecessor Architect to ‘enforce’ inappropriate or dubious payment expectations, which behaviour could itself constitute Unprofessional Conduct.</i></p> <p><b>Proposed New Professional Standard:</b></p> <p>5.11 <del>An Architect Registrant</del> taking over a Project (“successor Registrant”) <del>must not provide architectural services</del> <b>is only permitted to provide a proposal for services, enter into a contract for services, or provide services</b> that are based upon, and which continue and complete those initiated by the predecessor <del>Architect Registrant</del>, <del>unless if:</del></p> <p>(a) there has been no supplanting of the predecessor <del>Architect Registrant</del> by the successor; <b>and</b></p>	<p>The removal of the “Client must have paid” condition for continuing and completing service is a modern, public interest amendment. This provision (c) has been misused as a form of “payment enforcement” or “stop work order” in the AIBC’s experience. Registrants are required to provide services under the terms of a Client-Architect Contract that include enforceable payment rights and dispute resolution process.</p>

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<p><del>(b) the resignation or termination of the predecessor Architect must have occurred in accordance with the terms of the relevant Client Architect Contract;</del></p> <p><del>(c) the original Client must have paid for services of the predecessor Architect; and</del></p> <p><del>(d) in the case of property transfer to a new owner, there must have been legal acquisition by the new owner of the original Architect's copyright and instruments of service, either directly from the predecessor Architect or from the original owner, if that owner was legally entitled to sell them.</del></p> <p>(b) the successor Registrant has received written confirmation from the predecessor Registrant of the termination of the predecessor's services or has received no reply from the predecessor Registrant within 10 business days of making a request for confirmation of termination.</p> <p><i>This Professional Standard requires a Registrant taking over a Project to have not supplanted the first Registrant, and to have received confirmation of termination of the predecessor's services from such Registrant or no response within 10 business days of requesting termination confirmation. ("Business days" mean a day other than a Saturday, Sunday, or a provincial or federal holiday.)</i></p> <p><i>Previously, this Professional Standard prohibited the successor Registrant using the predecessor's services if there was a fee dispute about such services. The modern, updated standard does not diminish copyright or fee payment rights of Registrants, but does reinforce the obligation on Registrants to assert such private law and statutory rights rather than have them become the focus of a professional conduct complaint.</i></p>	

PROFESSIONAL STANDARDS	RATIONALE
<p><i>The balance of this commentary refers to Architects and Client-Architect Contracts given the prevalence of application of this scenario to Architects' projects. The Professional Standard and commentary apply equally, however, to situations in which non-Architect Registrants may be providing services in the Regulated Practice, or where either the predecessor and successors may be from different registration categories (e.g., an Architect taking over a single-family home renovation Project (outside of the Reserved Practice) from an Intern Architect).</i></p> <p><i>Architects who have been terminated by the Client or who terminate services are entitled to be paid for their services and disbursements in accordance with the Client-Architect Contract. Such contracts generally include dispute resolution clauses.</i></p> <p><i>In addition to contractual rights to payment, Architects retain copyright in their design (unless sold or licensed) under federal law. Architects have been successful in lawsuits in asserting copyright in relation to fee disputes and ownership of design. Even when project takeovers occur cooperatively, uncertainty may persist about copyright and liability issues. The AIBC recommends that wherever possible, the predecessor and successor Architects consider entering into a simple agreement or 'memorandum of understanding' confirming such issues as copyright, liability, and project attribution obligations. Both Registrants should seek legal and insurance advice prior to confirming these important aspects of a change of Architect on a Project.</i></p> <p><i>Architects also have lien rights under the BC Builders Lien Act. Registrants asserting copyright and/or lien rights should seek legal advice and recognize limitation periods may apply.</i></p> <p><i>In circumstances where fees are disputed and/or where a property has been purchased by a new owner, successor Architects should proceed with due diligence and caution. Where unpaid fees are claimed for instruments of services attached to the predecessor Architect's copyright (e.g., drawings), the successor Architect's use of such documentation may constitute copyright infringement on the part of the successor</i></p>	

PROFESSIONAL STANDARDS	RATIONALE
<p><i>Architect and Client. Relying solely on the Client's information or assurances about fee payment may not provide adequate risk management.</i></p>	
<p>2.2 Registrants must not supplant or attempt to supplant another Registrant after the preceding Registrant has been retained or definite steps have been taken toward the other Registrant's retention.</p> <p><i>Subject to the terms of the Client-Architect Contract, a Client is free at any time to terminate the business engagement with a Registrant. This standard does not protect mismatched Clients and Registrants. For the benefit of the Client and the Project or commission, it is intended to protect the relationship between a Client and Registrant from unethical interruption by another Registrant.</i></p> <p><i>The basis of competent professional practice on behalf of the public rests in part on the strength of the relationship between Client and Registrant. Hence, when the Client has made a choice, other Registrants must cease their overtures.</i></p> <p><i>This restriction does not prevent Registrants from approaching a potential Client who has a broader program of prospective work which is not yet allocated to another Registrant.</i></p> <p><b>Proposed Professional Standard Amendment:</b></p> <p>2.2 Registrants must not supplant or attempt to supplant another Registrant after the preceding Registrant has been retained or definite steps have been taken toward the other Registrant's retention.</p> <p><i>Subject to the terms of the Client-Architect Contract, a Client is free at any time to terminate the business engagement with a Registrant. This standard does not protect mismatched Clients and Registrants. For the benefit of the Client and the</i></p>	<p>The PSAG is only recommending a minor update to the commentary to include a clearer definition of supplanting.</p>

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<p><i>Project or commission, it is intended to protect the relationship between a Client and Registrant from unethical interruption by another Registrant.</i></p> <p><i>The basis of competent professional practice on behalf of the public rests in part on the strength of the relationship between Client and Registrant. Hence, when the Client has made a choice, other Registrants must cease their overtures.</i></p> <p><i>This restriction does not prevent Registrants from approaching a potential client who has a broader program of prospective work which is not yet allocated to another Registrant.</i></p> <p><i>For the purposes of this Professional Standard, “supplanting” means taking the place of another Registrant in a manner that is unethical, such as interfering with a Client in a way that causes that person to prevent a Client from establishing a commercial relationship with another Registrant or causes the Client to breach or terminate its contract with another Registrant.</i></p>	