The Nebraska Board of Engineers and Architects Newsletter

SEPTEMBER 2009

Board emphasizes enforcement and education in strategic plan

By Albert Hamersky, AIA
NBEA Chairman

The Nebraska Board of Engineers and Architects held its annual strategic planning retreat on May 28, 2009. Several issues were discussed for incorporation into the Strategic Plan for 2009-2010. The major issues included: allied professions and the support of these, enforcement of the law, Coordinating Professional, incidental practice, code officials and long-term planning for 2011-2015.

Because some of these issues required additional research, I appointed several committees to continue this work. Specifically, the four new committees are: Allied Board Committee, Practice Committee, Legislative Committee and Interior Design Committee. Each committee was given a charge and specific tasks to accomplish before the regular board meeting on September 18, 2009.

- The Allied Board Committee was asked to develop the position of the board regarding administration of other allied professions.
- The Practice Committee was charged with clarifying the role of the Coordinating Professional as well as addressing unlicensed practice and incidental practice.
- The Legislative Committee was asked to develop recommendations regarding statute changes, if necessary.
- The Interior Design Committee was asked to draft a board position concerning the certification of Interior Designers and their relationship to the Board.

In addition, the Design Build and Alternative Delivery Systems Committee and the Engineering Education Committee will continue their work.

Board Vision

The Board’s vision relates to the basic stated purpose of the Engineers and Architects Act in all aspects which are the protection of health, safety and welfare of the public.

With that in mind, the Board has placed more emphasis on enforcement of the Act as well as on public information about the Act. Specially qualified staff such as a Compliance Officer and Public Information Officer have been added over the past several years to deal with these issues.

The Board puts a priority on the fact that licensed professionals must be highly qualified as engineers or architects through education, experience and examination. The Board is determined that the public recognize that these licensed professionals will protect their health, safety and welfare. Therefore the requirement for continuing education is mandatory.

The Board’s vision implies and recognizes the future of the fast changing delivery of professional services. It is developing and researching issues which may affect future licensing. Such issues and ideas as borderless practice, globalization, outsourcing practice, design/build, integrated practice are all part or will become part of the vision.

Earn continuing education credits at Oct. 22 program

The Nebraska Board of Engineers and Architects will host a continuing education event for licensees and interns on Thursday, October 22nd at the Strategic Air and Space Museum in Ashland from 8:30 a.m. to 4:30 p.m.

National speakers from Seattle, Atlanta, and Iowa will present the program entitled “Who’s In Charge of Your Integrated Project?”

The cost is $30, which includes 6.5 hours of continuing education credit, breakfast, lunch, and a guided tour of the museum.

The seminar will focus on the challenges of alternative delivery systems for building projects. Topics include the ethical problems and concerns with using technology and delivery systems in exploratory design projects, who has “responsible control” in Integrated Project Delivery Systems, and legal responsibilities. Of particular interest to interns will be a discussion on ethics and internship – supervision, responsibility, technology issues, and exam cheating. Please encourage your interns to attend.

Preregistration is required. Online registration is now available on our website (www.ea.state.ne.us).
Board’s mission to protect the public health, safety and welfare

By Melinda Pearson, FAIA  
Executive Director

Whenever I am making a presentation on behalf of the Nebraska Board of Engineers and Architects, I always start by clarifying who we are and what our mission is.

Who we are: The Board is made up of four engineers, three architects and one public member. The professions provide the expertise on the Board so that decisions are made by people who know what is going on in the built environment, all public members advocate for the public.

What our mission is: The mission of the Board is to “protect the public health, safety and welfare” by enforcing the laws that not only govern the practice of engineering and architecture but also have a significant impact on the building industry.

The Board’s mission does not include advocating for the professions of engineering and architecture. This is an important distinction, and one that we must often remind ourselves. In the Winter 2009 newsletter, we floated a few proposed changes by our licensees. We received many excellent responses, via phone calls, letters, and emails, not to mention cc’s and bc’s of a host of other emails. While most of your comments were right on, there were some “urban legends” that need to be clarified.

Clarifying the role of the Coordinating Professional

One greatly misunderstood issue came to light after the last issue of the newsletter, and that was regarding the role of the Coordinating Professional. The Coordinating Professional has always been, and will always be, required to be a licensed professional engineer or architect. This is a requirement the Board firmly stands behind and enforces. It is a false urban legend that a builder, or electrical contractor, or any other unlicensed professional can fill the role of the Coordinating Professional.

The requirement of designating a Coordinating Professional has been in the E&A Act since 1997 but is little known and often misunderstood. Seeking to clarify this role, this issue features:

- An article from Charles Nelson, providing background on the genesis of the requirement;
- Our renewed efforts to educate the industry on this requirement; and
- An overview on how documents must be sealed to conform with Nebraska law.

Stepping up enforcement

The most common theme in your comments was for the Board to not weaken the Engineer and Architect Act in any way and to step up enforcement. Our proposals were not intended to weaken the law, and we are continually seeking ways to strengthen the E & A Act. We are, in fact, stepping up enforcement, with details explained in this issue.

Drafting legislative updates

The Board has designated a Legislative Committee tasked with reviewing the current Engineers & Architects Regulation Act and crafting updated language to be introduced during the 2011 legislative session. We have already identified sections of the statute language that are out-of-date with current practices, along with a number of areas in which we are seeking to strengthen the rules and law.

An advisory group is being assembled to assist the Board with these updates, so please let us know if you are interested in joining this group. We will be meeting several times during 2010 to address the types of issues mentioned above.

Protecting safety, health and welfare

All these efforts relate directly to our mission to protect the safety, health and welfare of the public. We encourage you to keep you ideas coming our way. We look forward to hearing from you and we value your input.

Why is there a Coordinating Professional requirement?

By Charles Nelson  
Former NBEA Executive Director (1991-2005)

It was the mid-1990s. A hotel renovation in central Nebraska employed three or four professional engineers of varying disciplines, but with no architect, and with no apparent communication among the team. The Board of Engineers and Architects, just then in the process of working with the Legislature to rewrite the 60-year-old law regulating the professions in the public interest, had received a complaint about the haplessness of the design effort. It was clear that the old law was deficient in provision for comprehensive design, particularly the integration of technology that had developed in the years since the original statutes were drafted.

The Board believed that coordination should be required among professionals engaged on a project but that it should not be intrusive on the prerogatives of the engineers and architects involved. Nor did the Board seek to establish a hierarchy among the professions. Long-established fallacies about the depth and breadth of professional knowledge by architects and engineers were to be disregarded in the realization that either were capable of asking an astute question of the other. So the statute language ended up stating that the Coordinating Professional may be either a licensed Professional Engineer or an Architect, but may not be from outside the professions or the design team.

The Coordinating Professional is not to be a “hired gun” from outside the design team. The objective is to unify the effort from within, not to burden the project owner with an additional fee for a disinterested outside coordinator.

The seal of the Coordinating Professional is to be applied to the contract documents, but denoted for coordination only. Under no circumstance is it to connote design qualification outside the practice for which the professional is licensed by the Board. It does not signify responsible charge for engineering or architecture work. The Coordinating Professional is to also be considered the liaison between the design team, the project owner, and regulatory agencies.

Lack of a Coordinating Professional on projects involving more than one architect or engineer is a violation of Nebraska Statute Section § 81-3437 by each of the design team members and could jeopardize their licensure to practice within the state.

The State of Nebraska does not condone uncoordinated design of simple or complex construction projects for public use. It is the responsibility of design professionals to assure that their work meets those expectations.
Seals have been used as early as the fourth millennium BC in ancient Mesopotamia as instruments to authenticate documents. They have evolved from simple impressions in bees-wax or resin to today’s electronic seals drawn with computer-aided drafting software.

The Engineers and Architects Regulation Act requires each licensed professional engineer and architect authorized to practice in Nebraska to obtain a seal. The purpose of applying the seal and signature on documents is to certify that the work has been done by that licensee or under the licensee’s control.

The seal may be a rubber stamp or may be generated electronically. Whenever the seal is applied, the licensee’s written signature and the date shall be across the seal. The signature and date should not obscure the name or license number. No further words or wording are required.

The Act specifies that the seal, signature and date must be placed on:

- All technical submissions and calculations whenever presented to a client or any public or governmental agency, and;

- All originals, copies, tracings, or other reproducible drawings and the first and last pages of specifications, reports, and studies in such a manner that the seal, signature, and date will be reproduced and be in compliance with the Act.

The 2007 Rule and Regulation update added Rule 6.1.7, which states that documents clearly marked as “draft” do not require a seal.

Architects and professional engineers newly licensed in Nebraska receive a seal letter that shows the approved design along with the statutory requirements. All seals should look exactly like those in this article.

One of the most common seal violations is engineers not having the discipline of licensure specified on their seal. Twelve years after the statute was changed, many seals still use “Registered Professional Engineer.”

When electronic documents are placed on the internet, the seals must be protected with an electronic revision approval system. That system should be designed so that, if any changes are made to the original electronic document, the signature will disappear or be invalidated.

The intent of the revision approval protection is to protect the licensee from unauthorized use of his or her seal. However it is noted that there are few affordable revision systems available today. If an electronic document does not have an electronic revision approval system, a note should be placed in the location of the missing seal stating those conditions (see example below).

The Coordinating Professional seal required on all projects with multiple professionals

The E & A Act states that “the Coordinating Professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional” in N.R.S. § 81-3437 (g). The Coordinating Professional “coordinates, as qualified, the various professional disciplines involved in a project,” per N.R.S. § 81-3408.

The appropriate seal of the coordinating professional is shown above.

The Board will be increasing enforcement of the statutory requirement to have a coordinating professional on jobs that require them. Over the next few months, if the Board is made aware of a project that requires a coordinating professional but they are not identified on drawings, specifications, and other documents submitted to local building/permitting departments, an initial warning letter will be sent to the licensees involved.

Additional violations will be followed by a $100 fine, increasing to a $500 fine for the further offenses, with potential license probation for habitual offenders.

In addition, the Executive Director and Compliance Officer will be increasing their visits over the next few months to building officials and construction sites across the state to provide education about and enforce the coordinating professional requirement in the Act.
Candidates disciplined for exposing ARE content

This spring, the NCARB Board of Directors took action against eight candidates for violating the ARE Confidentiality Agreement and disclosing exam information. Even though none of the applicants were from Nebraska, the Nebraska Board of Engineers and Architects takes this issue very seriously. All candidates should be aware of the risks associated with committing such a violation.

The ARE is designed to measure minimum competency of knowledge, skills and ability architects must possess in order to safely practice architecture independently. The disclosure of content tested by the ARE diminishes the reliability and defensibility of the exam and ultimately undermines the integrity of the process. If someone passes the ARE exam and ultimately undermines the integrity of the process, what is considered cheating and what it means to break the Confidentiality Agreement. All ARE candidates should read this information.

Discipline imposed on the eight candidates this spring includes suspension of testing privileges (between one and five years) as well as cancelled exam scores for some of the candidates. The disciplinary action also becomes part of their permanent NCARB record, and can be reviewed by any future jurisdiction where the candidate is seeking licensure.

ARE cost to increase

The National Council of Architectural Registration Boards (NCARB) will increase the fees for the Architect Registration Examination® (ARE®) by $40 per division to the new rate of $210 per division effective October 1, 2009. The increase is due to recent incidents of exam content disclosure by ARE candidates.

Updated Board Policies

P08.04 - Reimbursement for Rosters/Mailing Lists

When a mailing list of licensees is requested in writing, the information will be provided for $25.00 for simple mailing lists and $50.00 or more for time spent on more complex requests including limited or expanded lists. Lists requested by partner agencies within the State or professional organizations will be furnished free of charge. Email addresses are not part of the public record.

P09.01 - Structural Equivalency Reviews

Each structural engineer who serves as an Evaluator for the Structural Engineer by Equivalency license application process will be available for a $50.00 stipend and credit for 2 Continuing Education Units for each application they complete a timely review of and make a recommendation to the Board.

For the complete list of official Board Policies, go to our website and look under the “E&A Statutes & Regulations” section.

NBEA meetings go paperless

The Nebraska Board of Engineers and Architects (NBEA) is in the process of holding paperless board meetings. The NBEA started working toward the paperless system at their June meeting and will phase out printed materials over the next few months.
Change to Structural PE exam format

The National Council of Examiners for Engineering and Surveying (NCEES) will introduce a new 16-hour Structural PE exam in April 2011. The exam will replace the current Structural I and Structural II exams, which will be administered for the last time in October 2010.

The new 16-hour Structural exam is divided into two eight-hour components, which will be offered on successive days. The Vertical Forces component focuses on gravity loads and incidental lateral loads. The Lateral Forces component focuses on wind and earthquake loads. To pass the exam, examinees must pass both components, but these components may be taken and passed in different exam administrations.

The new 16-hour exam is expected to eliminate the reciprocity issue with people taking many different exams for licensure in the different areas of the country.

To assist in the development of the exam, NCEES surveyed licensed structural engineers to find out what knowledge areas are the most relevant to professional practice.

If the Structural II exam is not passed before April 2011, to become a licensed Professional Structural Engineer in Nebraska, the 16-hour Structural exam will have to be passed.

Anyone that does not want to take the Structural II exam must apply for licensure through the Structural Engineer by Equivalency process. This process can only be used by professional engineers who have passed either the Structural I exam or an NCEES exam with emphasis in structures prior to and including the March 1992 exam. To use this particular application process, individuals must have been licensed as a Professional Engineer in Nebraska prior to January 1, 2007. This provision expires on January 1, 2011 and may take up to 90 days to complete.

NBEA steps up compliance enforcement

In our Winter 2009 newsletter, an article titled “Non-compliant building projects: A growing concern and possible remedies” reviewed the growing challenge of structures being built without the involvement of licensed architects or professional engineers, or where such professionals are providing services outside the scope of their training and licensure. Nebraska law protects the public safety by requiring that licensed professionals be involved in all building projects other than smaller exempt projects, and prohibits any type of incidental practice; defined as licensed professionals providing services outside of the limits of their training and licensure, regardless of experience.

In that newsletter article, a Board committee outlined several possible changes under consideration and asked for reader reactions. We were extremely pleased with the number of responses we received and the message from our licensees was very clear. Your comments clearly asked the Board to NOT weaken laws and rules and step up enforcement of non-compliant practices.

Enforcement focus

In response to your comments and Board discussions, NBEA has been stepping up enforcement, particularly in three key areas:

1. Unlicensed practice: Owners, contractors, and builders will be reprimanded and/or fined when non-exempt structures designed and built without the involvement of appropriate licensed professionals.

2. Incidental practice: Architects and professional engineers will be reprimanded and/or fined when found to be practicing outside their areas of licensure. Professional interns will be reprimanded and/or fined when found to be practicing without a valid license.

3. Incorrect seals: see article on page three.

Fine guidelines developed

For many years the NBEA has resolved compliance complaints through education and mitigation, but has seldom levied fines. Many states impose substantial fines on a variety of infractions including unlicensed practice, expired seals or licenses, or other violations of state statutes. The NBEA is looking at a fine schedule to provide guidelines to assess fees as part of the process of resolving complaints.

Over the past several months the Board has used these guidelines during the review of five complaint cases, with the goal to resolve the cases with consent decrees. In one recently resolved case a $1,000 civil penalty was imposed for practicing architecture with an expired license and a $400 civil penalty for not obtaining a Certificate of Authorization for the engineering firm. Four additional cases of unlicensed or incidental practice are still before the Board and penalties may be levied in several cases.

We appreciate your input

The Board appreciates that many of our licensees took the time to express their concerns regarding the issues related to compliance enforcement.

NBEA temporarily reduces renewal fees

The Nebraska Board of Engineers and Architects voted to temporarily reduce renewal fees at their August board meeting. The renewal fee will be reduced by $10 for the next two years to $90. The renewal fee was increased to $100 in 2006.

The board will likely have to access cash reserves during the next two years to offset the fee reduction, even with reduced spending in some areas. However the cash reserves are at a sufficient level to allow the board to make this move.

“Given the state of the economy, we feel this minor fee change will be beneficial to our licensees and to the firms that pay their employee’s licensing fees,” said NBEA Board Vice Chair Fred Choobineh.

Reimbursement available to Nebraska grads

Architecture students may receive a $100 reimbursement from the Board when they enroll in NCARB’s IDP program. The student must have enrolled in IDP within six months of graduation with an accredited degree from the University of Nebraska College of Architecture and have a qualifying educational debt. The reimbursement request form is available on our website.

Engineering students who pass the FE exam on their first attempt will receive a $50 reimbursement from the Board. The student must be enrolled in or have graduated from an accredited engineering program from the University of Nebraska’s College of Engineering and have a qualifying educational debt. Successful exam candidates will automatically be send the reimbursement.

We appreciate your input

The Board appreciates that many of our licensees took the time to express their concerns regarding the issues related to compliance enforcement.
The following cases were reviewed for compliance by the Nebraska Board of Engineers and Architects, and resolved via the action noted. These summaries are provided for licensee education and information.

**Riverboat jurisdiction**

**Case #08.01** – The State Fire Marshal informed the Board of a rather unique project: a river barge moored to the shore being reconfigured for use as a floating hotel. The size of the project was approximately 5,500 square feet. The Owner had not used a licensed architect or professional engineer to design the converted project.

**Action:** The Board first tried to assist the Owner of the facility in securing the services of licensed architect and professional engineers to design the facility, with no success. There is no local permitting authority for the area in question, neither the municipality nor the county. The U.S. Coast Guard was also contacted to inquire if this project would typically be under their jurisdiction. The project did not fall under the Coast Guard’s authority since the craft did not fall under the federal definition of a “vessel.” In reviewing the Board’s own statutes and regulations, however, the Board found the project did not meet the definition of “real property” as noted in N.R.S. § 81-3446. The Board dismissed the complaint without prejudice.

**Term “engineer” questioned**

**Case #08.03** – A complaint was filed against a public power utility that has positions with job titles using the term “engineer.” The Complainant asserted that the positions did not have job duties or requirements consistent with the E&A Act. For example, one of the positions cited in the complaint used the title “Corporate Performance & Process Engineer.”

**Action:** The Respondent’s position was that the term “engineer” may be used in conjunction with the position at issue here because the duties of this person would not involve the practice of engineering. The Board did not disagree with their broad conclusion, and dismissed the complaint on that basis.

However, the Board requested that the utility company reconsider its use of the term “engineer” with respect to positions that do not involve the practice of engineering so as to eliminate possible confusion to the public. N.R.S. § 81-3441 prohibits any person from taking steps that would constitute the practice of engineering without being licensed. The Respondent had submitted a report which appeared to constitute the practice of engineering in Nebraska, and also informed the Herald of the the Act and the use of the term “engineer” to those positions that truly involve the practice of the profession. The Board directed the Respondent to cease and desist from continuing the practice of engineering without being licensed.

**No seal on commercial building**

**Case #08.07** – The Board was made aware of a lawn care company which submitted plans to the State Fire Marshal for a new 5,000 square-foot storage and office building. No seal of a licensed architect or professional engineer appeared on the submitted drawings.

**Action:** The Board contacted the Owner for the names of the licensed architects and professional engineers involved in the design of the project. The Owner did submit, and the Board confirmed, information that professional engineers designed the structural engineering portions of the project. However, no architect was involved to provide the required architectural services; no engineers provided mechanical, electrical, or civil services; and no Coordinating Professional was identified.

The Owner was advised that the requirements of the Act are designed to protect the health, safety, and welfare of anyone who may occupy or use the structure, and that their failure to have complied with the Act could give rise to additional grounds for liability in the event that any building failure causes bodily injury or economic harm to others. Notwithstanding their continued violation of N.R.S. § 81-3446, the Board determined that it would not seek sanctions or penalty against the Owner, and dismissed the case without prejudice. The Board’s decision to close the case did not constitute approval of the manner in which the owners completed the project and in no way established that the project complied with current engineering and architectural standards.

**Case #08.10** – A complaint was filed by a municipal zoning department regarding a 2-story, 3,850 square-foot addition being construction as an addition to an existing automotive shop. No architects or professional engineers were involved in the design of the addition.

**Action:** The Owner of the addition was notified that his project required the involvement of licensed architects and professional engineers, and must have the project remediated in accordance with Chapter 8 regulations. An architect and professional engineer able and willing to perform the required remediation services were retained, but the Owner refused to enter into an agreement with these professionals. Similar to Case #08.07, the Board closed the case without prejudice, based on the unwillingness of the Owner to remediate the project so as to be in compliance with the E&A Act, and advised accordingly.

**Case #09.01** – The State Fire Marshal received unsealed documents for review for a 5,010 square-foot remodel, restoration, and conversion of a historic hospital to a hotel and conference center.

**Action:** The Owner was contacted and informed of the requirements under the Act of the involvement of licensed professionals in the design of their project. The Owner communicated to the Board that their project was early in the initial planning stages and that they have every intention of complying with Nebraska law as it relates to their project. The Owner was directed that if they continued with the planning, design, and construction of the project; they must retain licensed professionals to perform the work. The Owner immediately that they have retained their services by sending the Board a copy of any agreements with the licensed individuals, and that the board will then ensure that future drawings submitted to the Fire Marshal or any other governmental agencies are properly sealed by these design professionals. Case dismissed without prejudice.

**No architect seal**

**Case #08.17** – A professional engineer submitted unsealed plans to the State Fire Marshal on a 19,900 square-foot shop/storage building in Ansley, Nebraska. The seal of a licensed architect did not appear on the submission.

**Action:** The Respondent is licensed as a professional engineer in Nebraska, although the engineering report did not clearly state this as being the case. The Board did not belive the report constituted the practice of engineering, but did remind the Respondent that he is a licensed Architect in Nebraska and professional engineer able and willing to perform the required remediation services. The Respondent complied, case closed without prejudice.

**Misinformed professional terminology**

**Case #09.03** – A licensed architect filed a complaint against an individual who’s business cards indicated that he provided “Architectural Design and Planning” services. The Respondent is not a licensed Architect in Nebraska.

**Action:** The Board directed the Respondent to comply with N.R.S. § 81-3441 and change any reference on his business cards and any other form of business correspondence that tends to indicate that he is a licensed Architect within 30 days. Respondent complied, case closed without prejudice.

**Case #09.04** – A complaint was filed against a non-licensed individual using the title “Lead Architect” on his company website. The Respondent is a licensed Architect in Nebraska.

**Action:** The Board requested that the Respondent change any reference on his website and any other form of business correspondence that implied that he is a licensed architect, per N.R.S. § 81-3441. In addition, the board requested that the company place language on their website that notifies potential clients that the design of single-family through five-plex residential projects 10,000 square feet of more in size requires the involvement of a licensed Nebraska architect. The Respondent complied, case closed without prejudice.

**Misleading news story**

**Case #09.06** – A news story published in the Omaha World-Herald identified an individual who designed a retail project in Omaha as an architect. The individual named in the story is not a licensed Architect in Nebraska.

**Action:** The investigation determined that the misidentification of the individual was likely caused by unfamiliarity with the E&A Act by newspaper staff. The Board reminded World-Herald staff of the Act and the use of the term “Architect” in Nebraska, and also informed the Herald of the License Lookup feature on the Board’s website for confirmation in case a similar issue arose in future. Case dismissed.
The York County Courthouse
York, Nebraska

A good many immigrants came here because of the law. They came to get away from it. But the law followed, brought over from England by people who couldn’t see fit to leave it behind. Naturally, it was the people who brought the law who built the law’s houses, and, in reverence to the past, they designed these buildings to look just a little like pompous English judges, with broad, spreading midriffs and plain bald domes that they covered up with curls of ornament. Sometimes, you can almost hear their stomachs growling.

The York County Courthouse is gone along with hundreds of grand old courthouses in towns and cities across America. The Courthouse, built in 1886, was an historic and architectural landmark of York County that after nine decades of use finally succumbed to old age. It was razed in 1978. Undoubtedly, history will record that this castle of order and justice, with its settings on the square, served the citizens of York County well.

Ted Kooser

Ted Kooser, U.S. Poet Laureate (2004-2006) and recipient of the 2005 Pulitzer Prize for Poetry, is a Nebraska Poet.