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Certificates of Authorization: Debunking the myths regarding sole proprietorships

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Based upon the number of complaints regarding Certificates of Authorization, it is apparent that there is widespread confusion about what the E&A Act requires with regard to practicing engineering or architecture through a business entity, such as a corporation or a limited liability company. A common theme among those who have failed to obtain a Certificate of Authorization is that the licensee does not feel they need one because he or she practices alone, without any other professional, and is therefore a "sole proprietorship." This interpretation of the E&A Act is simply wrong; as a number of licensees can attest based upon the Board's rejection of this argument.

The reality is that anyone practicing in the name of a business organization must have a current Certificate of Authorization for that organization. The number of professionals involved in the organization is irrelevant, as is the number of employees. The starting point for this analysis is Neb. Rev. Stat. § 81-3436(1), which states that licensees may practice "though an organization" as long as the organization meets the "criteria for organizational practice established by the

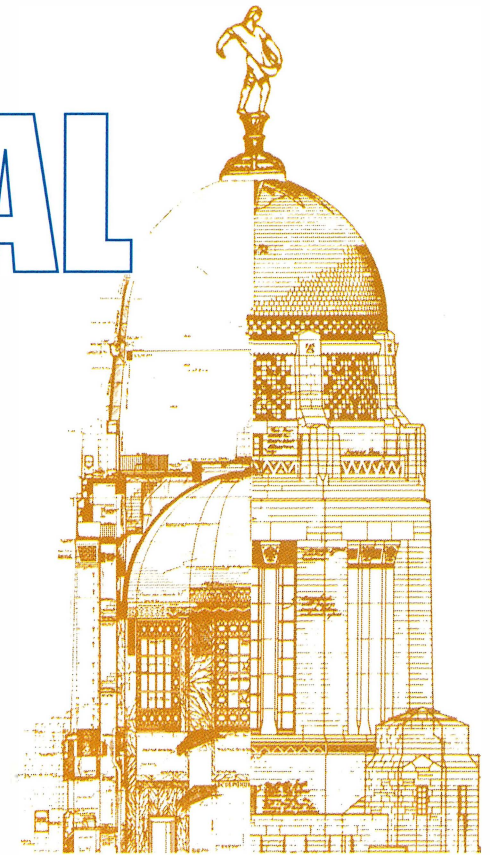
board" and that the organization has "been issued a certificate of authorization." Rule 7.2 sets out the minimum organizational requirements.

"Organization" is defined in § 81-3418 as "a partnership, limited liability company, corporation, or other form of business entity." (Public service providers are not organizations under the Act). This definition reaches every form of business entity, irrespective of the number of employees or licensees working for, or with, the entity.

As noted above, a common misconception is that a Certificate of Authorization is not required for a corporation or limited liability company which is owned solely by a licensee; particularly when the licensee does not have any professional employees. This mistake is often expressed as, "I am a sole proprietor because I do not have any employees." The law, however, does not turn upon having employees or being a sole owner.

The law is concerned about whether the licensee has elected to practice within the protections of a business entity. The decision to do so is generally intended to shield personal assets from liability for professional actions. To be sure, that reasoning is not improper or unethical. However, every such business entity is required to have a valid Certificate of Authorization which, among other things, establishes the particular licensee who is in responsible charge of the professional practice.

The correct interpretation of the Act is also evident from the information provided on the Board's website. In particular, the website explains that a "sole proprietor" is not required to have a Certificate of Authorization. "Sole proprietor" is defined as "an individual without a partnership, corporation, or other type of organization."



Thus, the status as a sole proprietor depends entirely upon the absence of any business organization.

The rule is very simple – a Certificate of Authorization is required for every partnership, corporation, limited liability company, or other form of business organization through which engineering and/or architecture is being practiced, or offered, in Nebraska. It does not matter whether there is only one owner, or whether there are hundreds. Nor does it matter whether the business employs other professionals. If in doubt, look at your tax returns.

If you receive a Form K-1 for your professional income, you are part of a business organization and that organization requires a Certificate of Authorization. Similarly, if you file a partnership or corporate tax return for your professional practice, you are required to have a Certificate of Authorization.

The Certificate of Authorization requirement has been part of the E&A Act for many years and each licensee has a duty to know and comply with the Act. Failure to obtain the necessary certificate is difficult to justify to the Board and licensees should expect to be assessed the appropriate fees, as well as possible civil penalties, for the period during which there was no certificate.

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