

Comments of the Independent Regulatory Review Commission



State Architects Licensure Board Regulation #16A-4111 (IRRC #3263)

Digital Signature and Seal

October 21, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the August 22, 2020 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Architects Licensure Board (Board) to respond to all comments received from us or any other source.

1. Clarity and lack of ambiguity.

In response to Regulatory Analysis Form (RAF) Question #7, the Board states that one purpose of the proposed regulation is “to update its current regulation on seals to make them as consistent as possible with the other design professional boards in Pennsylvania, which are the State Registration Board of Professional Engineers, Land Surveyors and Geologist and the State Board of Landscape Architects.” Additionally, the Board responds to RAF Question #10 that “providing consistency regarding all seals will help eliminate confusion among clients in the public and private sector and those members of the public who may view documents prepared by design professionals.” Inasmuch that the Board, the State Board of Professional Engineers Land Surveyors and Geologists (regulation #16A-4712: Digital Signature and Seal) and the State Board of Landscape Architects (regulation #16A-6112: Digital Signature and Seal) each have nearly identical regulations addressing digital signature and seal, we ask the Board to work with the State Board for Professional Engineers, Land Surveyors and Geologists and the State Board of Landscape Architects to ensure that the final-form regulations of each are consistent and clear for the regulated community.

2. Section 9.140. Definitions. – Clarity.

"Digital seal"

The Board proposes to define "Digital seal" as "an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to seal the document." [Emphasis added.] The Board should revise this definition by deleting "person" and inserting "licensee" or "architect." This same comment applies to the use of "person" in the definition of "digital signature."

“Sole control”

Should this definition also include “signature” since the term is used in Sections 9.141a(a) and (b) that pertain to signatures and seals?

“Verification”

Should this definition also include “seal” since the term is used in Sections 9.141a(a)(2) and (b)(2) that pertain to signatures and seals?

3. Section 9.141. Requirement. – Clarity; and Implementation procedures.

Subsection (a)

Section 9.141(a) of the Board's rules and regulations require a licensee to obtain a seal authorized by the Board, which bears their name, license number and the legend, "Architect." A stamp design identical to the prescribed seal may be obtained and used in lieu of, or in conjunction with, the seal. Is it the Board's intent for the digital seal design and the Board-approved seal to be identical? Must a licensee apply for a traditional seal before using a digital seal? How does the use of an "electronic sound" or "process" satisfy the requirement in Section 9.141(a)? We ask the Board to clarify in the final-form regulation whether the digital seal and the Board-approved seal design are to be identical and whether a licensee must first obtain a traditional seal before using a digital seal. The Board should also explain how a digital seal in the form of a sound or process complies with this subsection.

Subsection (b)

Paragraph (2) is being amended to allow the use of digital seals to appear on all subsequent pages of plans. What is the Board's intent with this amendment? Is it to require that a digital seal appear on all pages of final or complete documents that are digitally sealed or can licensees use a traditional seal on the first page, and use either a digital or facsimile seal on all subsequent pages of the plans? The Board should clarify its intent in the Preamble to the final-form rulemaking and amend the regulatory language in the Annex, if necessary.

Although the language in Paragraph (4) is not being amended by this proposal, it raises questions regarding the implementation of this regulation regarding violations. Section 12(c) of the Architects Licensure Law requires that upon forfeiture, revocation, suspension or annulment of a certificate, or upon expiration of a certificate without renewal, the architect must surrender his or her seal or stamp to the Board. How does the Board plan to address violations with regards to a licensee's digital seal? What are the responsibilities and obligations of an architect whose digital signature or seal is compromised or stolen?

Section 9.141(b)(1) states that an architect may use their seal and signature only when the work being sealed and signed was prepared by the architect or under the architect's "personal

supervision, direction and **control.**” [Emphasis added.] For consistency, should “control” be “sole control?”

Section 9.141(b)(5) refers to “architectural documents” and in Section 9.141a “Drawings, reports and documents” is used. The Board should make certain that it is using terms consistently throughout the regulation or explain why it is unnecessary to do so.

4. Section 9.141a. Digital signature and seal. – Clarity and lack of ambiguity.

Subsection (a) and (b)

Subsections (a) and (b) refer to “Drawings, reports and documents” and in Section 9.141(b)(5) the term “architectural documents” is used. The Board should make certain that it is using terms consistently throughout the regulation or explain why it is unnecessary to do so.

Subsection (c)

National Council of Examiners in Engineering and Surveying Model Rule 240.20(H) (relating to seals) contains the following sentence: “A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in Section H above.” This sentence is not included in the proposed regulation. Why did the Board omit this provision? For clarity, the Board should consider adding a requirement relating to the processes required under subsections (a) and (b).

Subsection (c) sets forth the technical standards of a hard copy printed from an electronic document. In reference to alterations to an electronic file, why is a digital seal not included? We ask the Board to add digital seals to the alteration provisions in this subsection.

5. Miscellaneous. – Clarity.

The Preamble of the proposed regulation cites the Digital Signature and Electronic Authentication Law, a bill introduced in the United States Congress that was not enacted. As this is not an enacted law, the citation should either be deleted in the Preamble to the final-from regulation or replaced with any successor legislation.