

# Comments of the Independent Regulatory Review Commission



## State Board of Landscape Architects Regulation #16A-6112 (IRRC #3265)

### 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 Board of Landscape Architects (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 regulations on seals to make them as consistent as possible with the other design professional boards in Pennsylvania, which are the State Architects Licensure Board and the State Registration Board [for] Professional Engineers, Land Surveyors and Geologists.” Additionally, the Board responds to RAF Question #10 that “[p]roviding consistency regarding all seals will help eliminate confusion among clients in the public and private sectors and those members of the public who may view documents prepared by design professionals.” Inasmuch that the Board, the State Architects Licensure Board (regulation #16A-4111: Digital Signature and Seal) and the State Registration Board for Professional Engineers, Land Surveyors and Geologists (regulation #16A-4712: Digital Signature and Seal) each have nearly identical regulations addressing digital signature and seal, we ask the Board to work with the State Architects Licensure Board and the State Registration Board for Professional Engineers, Land Surveyors and Geologists Regulation to ensure that the final-form regulations of each are consistent and clear for the regulated community.

#### 2. Section 15.32a. Definitions. – Clarity and lack of ambiguity.

##### *“Digital seal”*

The Board proposes to define “digital seal” as “[a]n 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 “registrant.” This same comment applies to the use of “person” in the definition of “digital signature.”

Further, the definition of “digital seal” provides for an “electronic sound, symbol or process” to seal a document. How would a digital seal in the form of a sound or process meet the requirements of Section 15.33 (relating to seals)?

*“Sole control”*

Should this definition also include “signature” since the term is used in Section 15.33a(a) and (b) (relating to digital signature and seal) that pertain to both signatures and seals?

*“Verification”*

Should this definition also include “seal” since the term is used in Section 15.33a(a) and (b) that pertain both to signatures and seals?

### **3. Section 15.33. Seals. – Clarity and lack of ambiguity; Implementation procedures.**

A landscape architect is required to obtain an authorized seal or stamp bearing the text listed subsection (c). We have three questions. First, do the requirements in subsection (c) also apply to a digital seal? Second, is a digital seal a facsimile of the authorized seal? Third, is a licensee required to obtain a traditional seal before using a digital seal? We ask the Board to answer these questions in the Preamble to the final-form regulation. In addition, the final-form regulation should be clarified so that the requirements “are as consistent as possible with respect to both traditional seals and digital seals” as stated in RAF Question #10.

Further, the Board explains in the Preamble of the proposed regulation that the amendment to subsection (c) “aligns with the sample of the visual depiction of the seal.” However, the sample of the seal does not depict the required text. To improve clarity, we ask the Board to provide an accurate sample in the final-form regulation or explain why it is not necessary to do so.

### **4. Section 15.33a. Digital signature and seal. – Clarity and lack of ambiguity.**

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 alterations provisions in this subsection.

## **5. RAF – Clarity; Economic or fiscal impact.**

The following questions were not adequately answered in the RAF submitted with the proposed regulation. We ask the Board to update the RAF submitted with the final-form regulation to address the following:

- The response to RAF Question #15 states conflicting percentages of self-employed landscape architects and does not include an estimated number of small businesses;
- The responses to RAF Questions #20, #21 and #23 do not include costs estimates for local and state governments; and
- The response to RAF Question #23 does not contain costs and savings for six fiscal years.

## **6. 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-form regulation or replaced with any successor legislation.