



Clarification simplifies D.P.C. status: Clarification to the language

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In 2011, legislation was passed that allowed for the creation of a new category of corporations called Design Professional Corporations or D.P.C.s. Chapter 550 of the Laws of 2011 allowed design professional firms the flexibility of offering an ownership interest up to 25% to non-licensees. The law also required that all directors and officers must continue to be licensed design professionals. The purpose of this law was to allow design professional corporations to attract and retain key personnel by affording them an opportunity to share an equity position in the corporation. At the same time, the requirement that ownership and management continue to be controlled by design professionals assured that the public health and safety remained paramount.

Early attempts to implement the new law, however, revealed that clarification was necessary to allow Professional Corps., or P.C.s, to become D.P.C.s in a way that would be efficient for the firm and for regulating entities. The primary problem was that the original law required P.C.s wishing to convert to create a brand new identity, resulting in undue cost and confusion, and generating excessive paperwork for the State Education Department (SED), the entity under which P.C.s and D.P.C.s are granted status. During the 2012 Legislative Session the laws original sponsors, assemblyman Ron Canestrari and senator Ken LaValle agreed to sponsor a clarification bill that was passed and recently signed by the governor.

Changes to Legislation

The clarifying language in the new bill allows for a seamless transition, permitting a P.C. to convert to, or elect, D.P.C. status, while maintaining the same legal entity. The law was never intended to force a firm to create a new entity while the original entity is dissolved gradually. The costs associated with this would be burdensome on a firm and would be bad for business in New York. Additionally, requiring a P.C. to create a brand new entity would have doubled the number of firms that SED had to keep track of. Design firms frequently add or delete professions they are authorized to practice - and change their names to reflect these professions - and SED keeps track of all such changes. The conversion of a P.C. to a D.P.C. should not present any additional challenges.

Allowing a simple conversion to a D.P.C. will also protect the public interest. If two firms with similar names are both registered to practice, the public would be unsure which firm is providing the service, creating a confusion that is unnecessary and perhaps harmful to the client and the public at large. Allowing the simple transition of an existing P.C. to a D.P.C. will make it easier for New York firms to be owned and operated by New Yorkers, in contrast to the frequent practice of New York firms selling to out-of-state interests, many of which have significant non-licensee ownership structures.

ACEC New York worked with the legislature and SED to craft legislation that allowed for this simple conversion. This is cost and time effective for all impacted parties - design firms, entities they do

business with and state agencies, including the Education Department - all the while following the rules and laws that govern the design professional community. The process that is now in place will ensure a transition that benefits both the firm and the SED. As ACEC New York drafted this legislation, we were mindful of the Department's responsibilities in ensuring D.P.C.s are compliant with the law.

The bottom line is that the existence of D.P.C.s in NYS is good for the state. Nearly every other state in the country offers a similar corporate structure that allows firms to offer shares in the company in order to retain talent and personnel. New York's competitiveness both nationally and internationally has been enhanced by the passage of this law. Not only will firms be able to attract and retain key personnel but the requirement that majority ownership and management continue to be controlled by design professionals assures that public health and safety will not be jeopardized.

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