



In praise of the design professional corporation

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I am seeing a lot of action on the Design Professional Service Corp.(DPC) front. The DPC is the only entity in which New York permits non-licensed owners of architecture, engineering and other design professional firms. With most other states permitting some form of non-licensed ownership of design professional firms, New York was a bit late to the party but the DPC became a permitted entity effective January 1st, 2012. As Jay Simson, president of ACEC New York, said, "Thank you governor Cuomo, I think the design professionals began lobbying for this when your father was governor."

Up to 24.99% of the outstanding shares of a DPC may be issued to non-licensed professionals; similarly, up to 24.99% of director and officer positions may be held by non-licensed professionals, although the chairperson of the board, president and chief executive officer must be licensed design professionals. The DPC form offers design professional firms greater flexibility in terms of attracting and rewarding business specialists such as financial, marketing and technology professionals who may not be licensed design professionals.

At first, taking advantage of the DPC form presented a series of difficulties for existing design professional firms. While an existing firm could organize an entirely new DPC entity and dissolve the existing entity, this could create tax and business issues. For example, all of the old firm's contracts (from leases to client contracts) would have to be assigned to the new entity, a lot of work and getting consents to contract assignments never a given. A workaround was to keep the old firm in existence and concurrently start up a new DPC that would take on new business and, ultimately, the business obligations. However, since both the NYS Department of State and the State Education Department, which regulates licensed professionals, do not permit two separate entities to have confusingly similar names, either the old or the new firm would have to essentially rebrand, also not an appealing outcome for many firms.

In 2013, the law was augmented so that existing professional corporations (PCs) can simply convert into a DPC, thereby eliminating, the tax, contract and name issues for that large group of firms. The other permitted types of firms, limited liability partnerships and professional service limited liability companies, do not have such conversion rights presently.

In light of the law change, the increased DPC activity makes sense. Those that are starting new firms are electing the DPC for its relatively low start-up costs and the flexibility available when the day comes to bring non-licensed professionals into the firm's management and ownership ranks. Now the PCs also have an easy way to walk through the DPC door. Allowing non-licensed individuals to hold ownership, officer and director positions in design professional firms truly allows firms to focus without restraint on the most qualified candidates for certain business-related positions. Congratulations to all of you who are taking advantage!

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