



NEW JERSEY REGISTER
Copyright © 2016 by the New Jersey Office of Administrative Law

VOLUME 48, ISSUE 19

ISSUE DATE: OCTOBER 3, 2016

RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ARCHITECTS**

48 N.J.R. 2028(a)

Proposed Amendments: N.J.A.C. 13:27-3.1, 6.2, 6.3, and 8.9

Proposed New Rules: N.J.A.C. 13:27-6.5 and 8.10

Click here to view Interested Persons Statement

Digital Signing and Sealing of Documents

Authorized By: New Jersey State Board of Architects, Charles Kirk, Acting Executive Director.

Authority: N.J.S.A. 45:3-3 and 45:3A-13.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-168.

Submit comments by December 2, 2016, to:

Charles Kirk, Acting Executive Director
New Jersey State Board of Architects
124 Halsey Street
PO Box 45001
Newark, New Jersey 07101
or electronically at: <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>

The agency proposal follows:

Summary

The Department of Community Affairs and a number of municipalities have contacted the Board of Architects (Board) requesting amendments to its rules to permit the electronic transmission of digitally signed and sealed documents. N.J.A.C. 13:27-6.3(c) currently states that "[a]n architect shall seal construction documents only with seal presses purchased or exchanged through the Board." N.J.A.C. 13:27-6.2(a)5, (b)5, (c)5, and (d)5 also require an architect's title block to contain space for the "handwritten signature of the architect in responsible charge." N.J.A.C. 13:27-8.9 requires licensed landscape architects to have seals established and issued by the Board, and requires the return of the seal press containing the seal to the Board if the Board suspends, fails to renew, or revokes a license. Although the rules for licensed landscape architects do not specifically require a "handwritten" signature and the use of a pressure seal in the title block on construction documents, the Board seeks to clarify, through this rulemaking, that landscape architects, like architects, would have the option of using either a handwritten or digital signature, and a seal press or digital seal.

In the past, the Board has considered whether it should permit digital signing and sealing of documents, but each time the Board addressed the issue, it concluded that then-current technology could not ensure the security of a digitally signed and sealed document. The Board is now persuaded that sufficient technological safeguards exist to protect the security of digitally signed and sealed documents. As a result, the Board has determined that the use of digital signatures and seals should be permitted by architects and landscape architects, so long as the criteria set forth in proposed new N.J.A.C. 13:27-6.5 and 8.10, as appropriate, are met. The Board notes that the New Jersey State Board of Professional Engineers and Land Surveyors recently adopted rules permitting the use of digital signatures and seals. The Board has also observed that professional boards in many other states permit the digital signing and sealing of documents.

The Board proposes to amend N.J.A.C. 13:27-3.1 to define the terms "electronic transmission," "seal," and "signature." The Board proposes to amend N.J.A.C. 13:27-6.2 to eliminate the word "handwritten" from the requirement that a title block contain the signature of the architect in responsible charge. The Board proposes to amend N.J.A.C. 13:27-6.3 to add a provision that would permit documents to be sealed with either digital or pressure seals, as long as the digital signatures and seals comply with the criteria set forth in proposed new N.J.A.C. 13:27-6.5.

Under proposed new N.J.A.C. 13:27-6.5(a), a digital signature and seal will possess the same weight, authority, and effect as a handwritten signature and a pressure seal, if the digital sealing and signing process meets the requirements of the Digital Signature Standard established by the National Institute of Standards and Technology. The Digital Signature Standard (2014 version) is incorporated into the proposed new rule by reference and the required criteria for a digital seal and signature are outlined in proposed new N.J.A.C. 13:27-6.5(a)1i through iv.

Proposed new N.J.A.C. 13:27-6.5(b) will require an architect to maintain a digital copy of an electronically transmitted document for future verification purposes. The document being retained must also be digitally signed and sealed.

Proposed new N.J.A.C. 13:27-6.5(c) sets forth requirements regarding the size and appearance of a digital signature and seal. The proposed new regulation will also require the digital signature and seal to be readily available for Board review upon request.

Proposed new N.J.A.C. 13:27-6.5(d) will make architects responsible for the use of their private digital keys and sets forth the procedure that architects must follow if their keys are lost or compromised.

The Board proposes to amend N.J.A.C. 13:27-8.9 to permit landscape architects to digitally sign and seal documents so long as the digital signature and seal meet the requirements of proposed new N.J.A.C. 13:27-8.10.

Under proposed new N.J.A.C. 13:27-8.10(a), a digital sealing and signing process that meets the requirements of

the Digital Signature Standard established by the National Institute of Standards and Technology possesses the same weight, authority, and effect as a handwritten signature and a pressure seal. The Digital Signature Standard (2014 version) is incorporated into the proposed new rule by reference and the required criteria for a digital seal and signature are outlined in proposed new N.J.A.C. 13:27-8.10(a)1i through iv.

Proposed new N.J.A.C. 13:27-8.10(b) will require a landscape architect to maintain a digital copy of an electronically transmitted document for future verification purposes. The document being retained must also be digitally signed and sealed.

Proposed new N.J.A.C. 13:27-8.10(c) sets forth requirements regarding the size and appearance of a digital signature and seal. The proposed new regulation will also require the digital signature and seal to be readily available for Board review upon request.

Proposed new N.J.A.C. 13:27-8.10(d) will make landscape architects responsible for the use of their private digital keys and sets forth the procedure that landscape architects must follow if their keys are lost or compromised.

The Board has provided a 60-day comment period for this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Board believes that the proposed amendments and new rules will have a positive impact upon architects, landscape architects, and the clients they serve. The proposed amendments and new rules will allow licensees to compete for jobs or contracts where the electronic [page=2029] submission of digitally signed and sealed documents is the preferred or required method of submission. In particular, government entities prefer electronically submitted documents and the adoption of the proposed amendments and new rules acknowledge and implement this preference.

The proposed amendments and new rules will enable licensees to quickly and easily transmit documents to their clients. Clients will benefit because they will receive documents immediately. The electronic submission of digitally signed and sealed documents is also an ecologically friendly method of submission that reduces the use of paper and, as a result, trees and other resources. The proposed amendments and new rules may also enable both licensees and clients to reduce their need for physical storage space.

Economic Impact

The Board believes that the proposed amendments and new rules may have an economic impact on licensees, to the extent that licensees elect to hire digital signature companies to have their signatures and seals digitally generated in accordance with the proposed amendments and new rules. However, the proposed amendments and new rules do not require the use of an outside service; a licensee may create his or her own digital signature and seal provided it meets the requirements of N.J.A.C. 13:27-6.5 and 8.10, as applicable. Furthermore, this cost may be offset by decreased expenses for paper and other materials, lower shipping fees, and decreased storage requirements.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rules are subject to State statutory requirements and are not subject to any Federal requirements or standards.

Jobs Impact

The Board does not believe that the proposed amendments and new rules will result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments and new rules will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

Since the Board currently licenses 7,345 architects and 693 landscape architects, they may be considered "small businesses" under the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq. The Board does not believe that licensees will need to employ any professional services to comply with the proposed amendments and new rules because the use of digital signatures and seals would not be mandatory. Licensees could also digitally sign and seal documents without the use of outside professional services, if licensees create digital signatures and seals that meet the requirements of N.J.A.C. 13:27-6.5 and 8.10. The proposed amendments and new rules do not impose reporting requirements, but do impose recordkeeping and compliance requirements on licensees electing to digitally sign and seal documents as set forth in the Summary above.

Housing Affordability Impact Analysis

The proposed amendments and new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in the average costs associated with housing because the proposed amendments and new rules would only permit licensees to sign and seal documents digitally.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments and new rules would permit licensees to sign and seal documents digitally.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. ARCHITECTURAL PRACTICE AND RESPONSIBILITY

13:27-3.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

"Electronic transmission" means the transmission of electronic data files from one electronic device to another. The term includes manual delivery of electronic data storage media from one person or entity to another.

...

"Seal" means a digital or impression type seal meeting the requirements of N.J.A.C. 13:27-6.5 and 8.10 and affixed to a document by a licensee.

"Signature" means a digital or handwritten signature of a licensee affixed to a document in accordance with N.J.A.C. 13:27-6.5 and 8.10.

SUBCHAPTER 6. GENERAL REQUIREMENTS FOR A TITLE BLOCK**13:27-6.2 Title block contents; requirements by form of architectural practice**

(a) When the architect practices as an individual or sole proprietor the title block shall contain:

1.-4. (No change.)

5. The name, license number, and space for the [handwritten] signature of the architect in responsible charge, and the date when signed.

(b) When a partnership or limited liability partnership of two or more licensed architects or closely allied professionals, in which at least one partner is an architect, practice architecture, the title block shall contain:

1.-4. (No change.)

5. The name, license number, and space for the [handwritten] signature of the architect in responsible charge, and the date when signed.

(c) When professionals practice architecture as a professional service corporation organized under N.J.S.A. 14A:17-1 et seq., the title block shall contain:

1.-4. (No change.)

5. The name, license number, and space for the [handwritten] signature of the architect in responsible charge, and the date when signed.

(d) Title block contents for a general business corporation or limited liability company authorized to practice architecture under a Certificate of Authorization issued pursuant to N.J.A.C. 13:27-4.8 shall contain:

1.-4. (No change.)

5. The full name, license number, and space for the [handwritten] signature of the architect in responsible charge, and the date when signed.

(e)-(h) (No change.)

13:27-6.3 Signing and sealing construction documents

(a)-(b) (No change.)

(c) Construction documents and the title pages of the specifications for filing with a public agency or for the owner's legal documentation requirements may be digitally signed and sealed if the digital signature and seal meet the requirements of N.J.A.C. 13:27-6.5. An architect using a seal press shall seal construction documents only with seal presses purchased or exchanged through the Board.

13:27-6.5 [(Reserved)] Digital signatures and seals

(a) A digital signature and seal shall possess the same weight, authority, and effect as handwritten signature and pressure seal when the following criteria are met:

1. The digital signing and sealing process satisfies the requirements of the Digital Signature Standard (DSS) established by the National Institute of Standards and Technology, FIPS PUB 186-4 (2014), which is incorporated herein by reference, as amended and supplemented. This standard may be obtained at: <http://cryptome.org/2013/07/NIST.FIPS.186-4.pdf>. The digital signature and seal must be:

i. Unique to the licensee;

[page=2030] **ii. Verifiable by a trusted third party or some other approved process as belonging to the licensee;**

iii. Under the licensee's direct and exclusive control; and

iv. Linked to a document in such a manner that the digital signature and seal is invalidated if any data in the document is changed. Once the digital signature and seal are applied to the document, the document shall be available in read-only format if the document is to be digitally transmitted.

(b) A licensee who digitally signs and seals a document shall maintain a digital copy of the electronically transmitted document that has also been digitally signed and sealed for future verification purposes.

(c) The pictorial representation of the digital signature and seal shall be readily available to the Board upon request and shall be produced in a manner acceptable to the Board. It shall contain the same words and shall have substantially the same graphic appearance and size as when the image of the digitally transmitted document is viewed at the same size as the document in its original form.

(d) Licensees are responsible for the use of their private digital keys. A lost or compromised key shall not be used and the licensee shall cause a new key pair to be generated in accordance with the criteria set forth in (a) above. A licensee shall take all reasonable steps to ensure that a compromised key is invalidated, and shall inform all affected clients that the digital key has been compromised.

SUBCHAPTER 8. LICENSED LANDSCAPE ARCHITECTS

13:27-8.9 Seal and signature

(a)-(d) (No change.)

(e) Construction documents and the title pages of the specifications for filing with a public agency or for the owner's legal documentation requirements may be digitally signed and sealed if the digital signature and seal meet the requirements of N.J.A.C. 13:27-8.10.

13:27-8.10 [(Reserved)] Digital signatures and seals

(a) A digital signature and seal shall possess the same weight, authority, and effect as handwritten signature and pressure seal when the following criteria are met:

1. The digital signing and sealing process satisfies the requirements of the Digital Signature Standard (DSS) established by the National Institute of Standards and Technology, FIPS PUB 186-4 (2014), which is incorporated herein by reference, as amended and supplemented. This standard may be obtained at the following website: <http://cryptome.org/2013/07/NIST.FIPS.186-4.pdf>. The digital signature and seal must be:

i. Unique to the licensee;

ii. Verifiable by a trusted third party or some other approved process as belonging to the licensee;

iii. Under the licensee's direct and exclusive control; and

iv. Linked to a document in such a manner that the digital signature and seal is invalidated if any data in the document is changed. Once the digital signature and seal are applied to the document, the document shall be available in read-only format if the document is to be digitally transmitted.

(b) A licensee who digitally signs and seals a document shall maintain a digital copy of the electronically transmitted document that has also been digitally signed and sealed for future verification purposes.

(c) The pictorial representation of the digital signature and seal shall be readily available to the Board upon request and shall be produced in a manner acceptable to the Board. It shall contain the same words and shall have substantially the same graphic appearance and size as when the image of the digitally transmitted document is viewed at the same size as the document in its original form.

(d) Licensees are responsible for the use of their private digital keys. A lost or compromised key shall not be used and the licensee shall cause a new key pair to be generated in accordance with the criteria set forth in (a) above. A licensee shall take all reasonable steps to ensure that a compromised key is invalidated, and shall inform all affected clients that the digital key has been compromised.