

Architect's Participation in the Permit Process Application for Building, Demolition or Conditional Permits

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Summary

Architects are strongly advised **not** to be the applicant for a permit for construction or demolition of a building. The *Building Code Act, 1992* S.O. 1992, Chapter 23 and the 2012 Building Code O.Reg. 332/12, (as amended) prescribe both responsibilities and liabilities for the applicant. Architects avoid this exposure when they do not sign as the applicant. Professional liability insurance policies exclude coverage for some of this liability. Despite the general advice that architects have the owner sign as applicant, there may be circumstances where the architect, in exercising professional judgment, elects to sign the application form as "authorized agent of the owner". In those situations steps must be taken to limit exposure.

This practice tip also contains other information related to the completion of the application form for a building permit, as well as the following information inter-related to building departments:

- Owner commitment to have general review undertaken by architects and/or professional engineers
- Document submission
- Project Close-out
- Partial Services/early termination.

General - Applicant For A Permit To Construct Or Demolish

(See [Application for a Permit to Construct or Demolish](#))

1. Applicant (Section C of form)

- Division C, Section 1.3.1.2. of the 2012 Building Code stipulates that an application for a permit under Section 8 shall be made by the owner of the property or the authorized agent of the owner and that it shall be in a form approved by the Minister.

The *Building Code Act, 1992*, under Section 8.(1.1) states:

"(1.1) An application for a permit to construct or demolish a building may be made by a person specified by regulation and the prescribed form of the form approved by the Minister must be used and be accompanied by the documents and information specified by regulation."

- "Owner" is defined to include the registered owner, a lessee and a mortgagee in possession.
- Ontario Association of Architects (OAA) legal counsel and Pro-Demnity Insurance Company (Pro-Demnity) continue to advise that it is much preferred that the architect **not** be the applicant for an application for a building or demolition permit owing to liability issues. It is recommended that the architect arrange for the owner to sign the application.
- Building officials may, in certain circumstances, issue a conditional permit, in order to allow construction to start in advance of the final permit being issued. The construction under a conditional permit is limited to the scope of the conditional permit.

- The applicant for a conditional permit, or a person who enters into an agreement respecting a conditional permit, clearly takes on far greater responsibility and exposure to liability than the applicant for a conventional permit, and:
 - Assumes all risks in commencing construction,
 - Is directly responsible for obtaining all necessary approvals,
 - May be required to remove the building and restore the site if approvals are not obtained, or deadlines not met.
- The architect's professional liability insurance limits coverage to the performance of professional services to others rendered in the capacity as a holder of a certificate of practice and specifically excludes the performance of services "not usual or customary" for holders of certificates of practice. Pro-Demnity advises that assuming the above responsibilities which are inherent in the role of "applicant" for a conditional permit, would not be considered the "usual and customary" services that are covered by the insurance policy. Other aspects involve "guarantees" which are also not insurable.
- For these reasons, architects are strongly advised **NEVER** to be the applicant for a conditional permit, or party to any agreement with a municipality, etc. with respect to a conditional permit. If asked to be the applicant for a conditional building permit, follow the advice of the OAA and its legal counsel, which is to decline. Explain the reasons, using this document to support this position if appropriate. Assist the client by providing the required application information and documentation that are within the scope of services under the client/architect contract.
- It is, however, recognized that there may be valid reasons for an architect exercising professional judgment to assume the role of an authorized agent of the owner for the purpose of application for a building or demolition permit.
- In these occasions, the architect is strongly encouraged to enter into an appropriate written contract with the client clearly defining and limiting the architect's role and responsibility as the agent of the owner specifically to the application for permit.
- An oral agreement is inappropriate as it could give rise to a question of interpretation at a later date once difficulties have arisen and when it might be in the interest of the owner or others to allege that the agency was much broader than a simple application for a building or demolition permit.
- If, in exercising professional judgment, the architect elects to sign an application for a building or demolition permit as "authorized agent of the owner", include a provision such as the following, which will avoid interference with the insurance coverage, in the written client/architect contract:

It is agreed that the architect shall be the authorized agent of the owner in respect of the property on which the construction or demolition will take place, solely and exclusively for the purpose of an application for a permit under Section 8 of the *Building Code Act, 1992*, as amended and Division C, Section 1.3.1.2, of the 2012 Building Code, O.Reg.332/12 as amended and shall not be an authorized agent of the owner for any other purpose than as specifically provided for in this agreement. **'Owner' includes, in respect of the property on which the construction or demolition will take place, the registered owner, a lessee and a mortgagee in possession.** (1)

Confer with legal counsel and include appropriate provisions in the written client/architect contract, and have the contract signed by both parties.

If a determination is made to sign as "authorized agent of the owner" occurs after the architect's contract with the owner has been signed, either add a change to the contract, or, in the alternative, set out a simple letter agreement with this singular provision and ensure that both parties sign and date it. See Attachment A, the OAA [Authorization of an Agent](#) form accompanying this Practice Tip.

Note that if the client is not the owner as defined in the *Building Code Act*, legal advice may be needed as to an appropriate course of action.

Add the words “for purpose of application for permit only” after “agent” on the application form where the agent’s signature is required will also bring to the attention of the building official (who is not privy to the contract between owner and architect) as to the extent of agency. If the building official refuses to accept the thus ‘modified’ application form, the architect will have made the point to the official that the extent of agency is limited.

Finally, provide services in regard to agency in accordance with the limited scope as set out in the contractual agreement for “authorized agent of the owner” with the client.

Distribution of Plans Examiner’s Notices

The applicant is normally the primary contact for all correspondence or inquiries by the building department. The problem which may arise in this respect is that the plan examiner’s notices are sent directly to the Owner and the architect must rely on the Owner to forward any information which is pertinent to the architect’s services. It is suggested that the architect request that such notices also be copied to them or to the “coordinator of the work of all architects and professional engineers” where the coordinator is other than the architect.

Where the building department or other authority having jurisdiction will not forward the plans examiner’s notices, comments or other correspondence relating to the permit application to the architect, it is recommended that the architect send to the client a letter based on the following wording at the time the permit application is submitted.

“Please be advised that notices, comments and notifications relating to the rezoning/ site plan agreement/ building permit application will be sent by the municipality/ authority having jurisdiction to the applicant. Since we are not the applicant in this case, it is important that you forward or require the coordinator of the work of all architects and professional engineers to forward, in a timely manner, all such communications to us so that we may take any necessary action and respond appropriately in order to avoid unnecessary delays to the project.”

The wording of the preceding paragraph is to be edited to suit the particular application.

For additional information and suggested amendments to OAA standard contracts, refer to “Attachment A Distribution of Plans Examiner’s Notices” appended to this Practice Tip.

2. Tarion Warranty Corporation (Ontario New Home Warranty Program) (Section F of form).

This section must be completed on permit applications for the construction of a new home as defined by the [Ontario New Home Warranties Plan Act](#).

1. “Home” means:

- a) a self-contained one-family dwelling, detached or attached to one or more others by common wall,
- b) a building composed of more than one and not more than two self-contained one-family dwellings under one ownership,
- c) a condominium dwelling unit, including the common elements, or
- d) any other dwelling of a class prescribed by the regulations as a home to which the Act applies, and includes any structure or appurtenance used in conjunction therewith, but does not include a dwelling built and sold for occupancy for temporary periods or seasonal purposes.

The “Yes” box should be checked where the application is for a new home. The “No” box if for other than a new home. If “No” proceed to section G.

Where the answer is “Yes” to question (ii), the registration number of the vendor or builder must be provided.

3. Required Schedules (Section G of form)

(Refer to [Schedule 1: Designer Information](#))

- Architects should not complete the Schedule (1) which accompanies the “Application for a Permit to Construct or Demolish” form approved and issued by the Ministry of Municipal Affairs and Housing (MMAH)
- MMAH is on record as having reiterated that architects are not required to complete this form, and has further set this position out on their Web site.

4. Completeness and compliance with applicable law (Section H of form)

“iv) The proposed building, construction or demotion will not contravene any applicable law.”

Applicable law is defined in the OBC Division 1 Part A 1.4.1.3., and is very broad as it relates to laws other than those governing the design of the building. In order to assist the Owner in completing the application, the architect may verbally advise the Owner that to the best of the architect’s knowledge, the design complies with the laws applicable to the design of buildings.

For additional information on building permit applications, refer to the Ontario Building Officials Association (OBOA) and Large Municipalities Chief Building Officials (LMCBO) documents entitled “Complete Application Best Practice Guide for Chief Building Officials”, issued December 30, 2011; FAQ’s for Complete Application. Best Practice Guide, issued December 30, 2011; and Reference Documents.

(See [Complete Application Best Practice Guide and FAQs](#))

5. Declaration of Applicant (Section I of form)

“2. If the owner is a corporation or partnership, I have the authority to bind the corporation or partnership.”

Many owners will not allow an agent to bind the corporation, which further reinforces the validity of the OAA and Pro-Demnity recommendation that the architect should not be the applicant. However, some building departments insist that the person submitting the application in person is in fact the applicant. Should this be the situation, architects should advise the owner of the need to present the application in person.

Additional Items Related To Building Permit Applications

1. “Owner Commitment to Have General Review Undertaken by Architects and/or Professional Engineers” by Engineers Architects Building Officials (EABO)

(See [EABO Endorsed Review Commitment Form 2014/09](#))

While EABO has produced this standard form, its appearance may vary with different jurisdictions where it has been adapted using the specific jurisdiction’s title.

The duly-completed Commitment for General Review form is required to be completed for all building permit applications where the building required the design and general review of architects and/or professional engineers, as prescribed in both the *Architects Act* and *Professional Engineers Act*.

Where the *Architects Act* does not require the design of the building to be carried out by an architect, even though an architect has done the design, building departments should not be requesting the architect to complete the form. In such cases, it is strictly a contractual relationship between the client and the architect as to the extent of the architect’s services.

2. Document Submission

All construction documents, e.g. drawings and specifications must be sealed and signed regardless of whether they are in electronic or hard copy form. The drawings and specifications should be noted as “Issued for Permit” and not contain any notation that they are not for construction purposes.

Electronic Files

Some building departments now require that the building permit application’s documents be submitted as electronic files. Verify the requirements of each jurisdiction prior to the initial application in order not to cause undue delays in the acceptance and processing of the permits.

Electronic files should contain a notice that the drawings and specifications are copyrighted and cannot be copied, transferred or used for any other purpose than for review for conformance with the Building Code and zoning by-laws.

OBC Data Matrix

All building permit applications must include the Building Code Data Matrix either as a separate document sealed and signed, or as part of one of the permit drawings. Refer to the latest version of PT.03 *Building Code Data Matrix*.

Amendments to Application

Where there are revisions to the “Issued for Permit” documents due to any bid addenda, change orders, change directives and/or supplemental instructions which relate to Building Code requirements, such documents should be filed with the building department. In the situation where such revisions are not accepted in whole or in part, further revisions may be required or the revision cancelled.

Code-related design elements which are not constructed in accordance with the design documents forming the basis for the issuance of a building permit including authorized amendments are deficiencies and should be noted as such in general review reports.

3. Project Close-Out

For those projects requiring the general review of an architect, site visit reports are required to be forwarded to the Chief Building Official. While some architects send a copy of every report, some building officials only request monthly summaries. Prior to granting occupancy, building officials require a final report indicating that the building was built in general conformity with the permit application and any amendments thereto except for the deficiencies noted.

Architects should be sure to send the interim reports and the pre-occupancy report at the appropriate time. Forwarding of the final report should be done once it is written and not delayed until the building department requests it.

Some municipalities are requiring other sign-offs which are redundant to the information already included in the standard or other reporting documents, e.g., fire stopping sign offs, provision of solid waste facilities.

Some of the building department forms include the confirmation of items which are outside the purview of the architect and relate to various consultants or relate to on-going operation issues which are the responsibility of the owner.

The only form endorsed by the OAA is the [EABO Final General Review Report](#) form.

4. Partial Services / Early Termination

Partial Services

In the case where the architect is only retained for partial services, i.e. the provision of permit documents or construction documents, the architect should notify the Chief Building Official when his/her services

have been completed and the architect is no longer involved with the project. This is the case regardless of whether the project requires the general review of an architect.

Early Termination

In the case of termination during any phase-of-service where the application for permit has been filed, the Chief Building Official should be notified immediately. Notification to the building department where general review is required should trigger action from the authorities requiring that a new architect be retained by the owner.

Footnotes:

(1) *Statement in text and in sample agreement (appended to this document) is changed for more clarity and for expanded definition of 'owner'.*

Attachments

Attachment A – [OAA Authorization as an Agent](#) form

Attachment B - [Distribution of Plans Examiner's Notices](#)

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.

Authorization of an Agent

For the purposes of making an “Application for a Permit to Construct or Demolish” in compliance with the 2012 Ontario Building Code

Agreement between:

Owner: _____

and

Architect: _____

Concerning an Application for a Permit to Construct or Demolish for the following project:

Project Name: _____

Project Address: _____

The owner hereby authorizes the architect to act as its agent for the purpose of submitting an Application for a Permit to Construct or Demolish for the above referenced project.

It is agreed that the architect shall be the authorized agent of the owner in respect of the property on which the construction or demolition will take place, solely and exclusively for the purpose of an application for a permit under Section 8 of the *Building Code Act, 1992*, as amended and Division C, Section 1.3.1.2 of the 2012 Ontario Building Code, O.Reg. 332/12 as amended and shall not be an authorized agent of the owner for any other purpose than as specifically provided for in this agreement. “Owner” includes, in respect of the property on which the construction or demolition will take place, the registered owner, a lessee and a mortgagee in possession. This agreement supersedes any other agreement that may relate to the agency of the architect respecting an application for a permit to construct or demolish or to any other application made by the architect on behalf of the owner.

Date of agreement: _____

Owner: _____

Architect: _____

Distribution of Plans Examiner's Notices

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Background

Some building departments or other authorities will only forward communications and permit set mark-ups to the permit applicant. Where the owner or project manager is the permit applicant, and not the architect (as is strongly advised in PT.08), this potentially leaves the architect uninformed as to the comments and potentially any changes to the documents required by the building departments or other authorities. Certainly, the architect must rely on whoever received the communications and permit set from the building department to forward the information to the architect. The standard client/architect contracts are silent about this. To put the onus on the client to forward such communications to the architect, consider inserting wording into non-standard contracts or using supplementary conditions with OAA documents 600, 601, and 800 for Architects and with OAA documents 602, 603, and 801 for Licensed Technologists OAA.

Suggested wording to be added to a non-standard contract:

It is the responsibility of the Client/Owner, upon receipt of notices, comments or notifications relating to the rezoning/ site plan agreement/ building permit applications from the municipality or other authority having jurisdiction to forward or require the coordinator of the work of all consultants to forward, in a timely manner, all such communications to the architect so that any necessary response may be prepared or other appropriate action taken. Failure to do so may result in delays to the project and in additional consultant fees.

or

It is the responsibility of the Client/Owner to provide the architect with a copy of all approved zoning amendments/ site plan agreements/ building permit document sets, including all annotations/ amendments/ conditions in a timely manner upon receipt of same from the authorities having jurisdiction.

In OAA 600, 601, 602, and 603 amend General Condition 4.4.3 by adding "..., and forward in a timely manner all notifications from authorities having jurisdiction to the architect" after the words "development costs".

GC 4.4.3 would then read "... sign applications for permits as the owner, or if the Client is not the owner arrange for the owner to sign and pay for the building permit and all other permits and development costs, and forward in a timely manner all notifications from authorities having jurisdiction to the architect;".

In OAA 800, and 801 amend General Condition 2. (2) by adding "..., and communications from authorities having jurisdiction" after the word "responses".

GC 2.(2) would then read "... timely communication of Client's decisions or responses, and communications from authorities having jurisdiction during the Project;".

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