

## Participation in the Permit Process - Application for Building, Demolition or Conditional Permits

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### Summary

This Practice Tip highlights key risks and other considerations when supporting a client in the building permit application process, including an overview of key sections of a typical permit application form and external references.

This Practice Tip also contains other information related to the completion of the application form for a building permit, including the following information related to, or of interest to, building departments:

- Owner commitment to have general review undertaken by certificate of practice (CoP) holders and/or professional engineers;
- Document submission (including electronic submissions);
- Project close-out; and
- Partial services / early termination.

It also provides two attachments:

- Attachment 1 – “OAA Authorization as an Agent” form; and
- Attachment 2 – Distribution of Plans Examiner’s Notices

### Background

CoP holders are recommended to not be the applicant for a permit for construction or demolition of a building. Ontario’s *Building Code Act, 1992* S.O. 1992, Chapter 23 and the Building Code, (as amended) prescribe both responsibilities and liabilities for the applicant. CoP holders avoid exposure to this liability when they do not sign as the applicant.

Professional liability insurance (PLI) policies may exclude coverage for some of this liability. Despite the general advice that CoP holders have the owner sign as applicant, there may be circumstances where the CoP holder, 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 liability exposure. This would include ensuring a letter of authorization explicitly limiting the scope of the agency is in place. Review the concept of agency with a lawyer prior to becoming an agent as the legal implications so you understand the full extent and limits of what you are committing to.

### PART A - Overview of the “Application for a Permit to Construct or Demolish” Form

This section highlights key considerations when assisting clients with applications:

Refer to the standard [“Application for a Permit to Construct or Demolish” form from the Ministry of Municipal Affairs and Housing](#):

## 1. Section C. Applicant

- Division C, Section 1.3.1.2. of the Ontario 2024 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. 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.
- The OAA and Pro-Demnity Insurance Company (Pro-Demnity) continue to recommend the CoP holder not be the applicant for an application for a building or demolition permit owing to liability issues. It is suggested the CoP holder arrange for the owner to sign the application.
- In certain circumstances, building officials may issue a conditional permit 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. Issuance of a conditional permit may be subject to payment of a deposit used to ensure the site is returned to its original condition should a full permit not be issued or the project otherwise not proceed in a timely manner.
- The applicant for a conditional permit, or a person who enters into an agreement respecting a conditional permit, may take on far greater responsibility and exposure to liability than the applicant for a conventional permit. They:
  - may assume all risks in commencing construction;
  - may be directly responsible for obtaining all necessary approvals; and
  - may be required to remove the building and restore the site if approvals are not obtained, or deadlines not met.
- The CoP holder’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 CoP holders. Pro-Demnity suggests 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 covered by the PLI policy. Other aspects involve “guarantees” which are also not insurable. Consult with Pro-Demnity to understand how this may apply to your specific situation.
- For these reasons, CoP holders are not recommended 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 recommendation of the OAA, which is to decline. Explain the reasons, using this document to support this position, if appropriate. CoP holders may assist the client by providing information required for the application and documentation that is within the scope of their services under the architectural services contract.
- It is, however, recognized that there may be valid reasons for a CoP holder, exercising professional judgment, to assume the role of an authorized agent of the owner for the purpose of an application for a building or demolition permit.
- On these occasions, the CoP holder is encouraged to enter into an appropriate written contract with the client clearly defining and limiting the CoP holder’s role and responsibility as the agent of the owner, specifically to the application for permit.
- An oral agreement is inappropriate as it could later give rise to a question of interpretation, 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 CoP holder elects to sign an application for a building or demolition permit as "authorized agent of the owner," include in the written architectural services contract a provision such as that in the following template, which may avoid interference with the professional liability insurance coverage:

"It is agreed that the architect (or licensed technologist) 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 Ontario Building Code, O.Reg. 163/24 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.**"

(Note: The statement in the text and in the sample agreement appended to this document, is changed for more clarity and for the expanded definition of "owner.")

It is recommended to confer with both legal counsel and Pro-Demnity and include appropriate provisions in the written architectural services contract, and have the contract signed by both parties.

If a determination is made to sign as "authorized agent of the owner" after the CoP holder'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 before the application is submitted. See Attachment 1, OAA Authorization of an Agent template form, which accompanies this Practice Tip as an example.

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.

Adding 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 CoP holder) as to the extent of agency. If the building official refuses to accept the thus 'modified' application form, the CoP holder will have made the point to the official that the extent of agency is limited.

Finally, provide services regarding 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. When the owner is the applicant, the plans examiner's notices are sent directly to them. The owner should be advised to forward to the CoP holder in a timely manner any information pertinent to the CoP holder's services.

For additional information and suggested amendments to OAA standard contracts, refer to Attachment 2, "Distribution of Plans Examiner's Notices" which accompanies this Practice Tip.

## **2. Section F. Tarion Warranty Corporation (Ontario New Home Warranty Program)).**

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 walls,
- b) a building composed of more than one and not more than two self-contained one-family dwellings under one ownership,

- c) a condominium unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation, or
- d) any other dwelling of a class prescribed by the regulations as a home to which this 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; (“logement”)

Check the “Yes” box when the application is for a new home and the “No” box if otherwise. 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.

Note: In 2021, the Home Construction Regulatory Authority (HCRA) was designated by the Government of Ontario as the regulatory authority under the *New Home Construction Licensing Act, 2017*. Historically, Tarion had been both the insurer and the delegated administrative authority that was responsible for licensing home building and vendors in Ontario. For more information and access to the HCRA Directory, consult its [website](#).

### 3. Section G. Required Schedules

- As stated as Note 2 on the application form itself, CoP holders should not complete the “[Schedule 1: Designer Information](#)” which accompanies the “Application for a Permit to Construct or Demolish” form approved and issued by the Ministry of Municipal Affairs and Housing (MMAH). Section 1 is for other designers, typically Building Code Identification Number (BCIN) holders.

### 4. Section H. Completeness and compliance with applicable law

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

Applicable law is defined in the OBC Division A Part 1, 1.4.1.3., and is very broad as it relates to laws other than those governing the design of the building. To assist the owner in completing the application, the CoP holder may verbally advise the owner that, to the best of the CoP holder’s knowledge, the design complies with the laws applicable to the design of buildings, leaving it to the owner to attest to those laws that relate to other than 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 are part of the Best Practice Guide and Reference Documents.

### 5. Section I. Declaration of Applicant

“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 CoP holder should not be the applicant. However, some building departments insist that the person submitting the application in person, or online, is in fact the applicant. Should this be the situation, CoP holders should advise the owner of the need to present the application in person or to be the person logging in and submitting online.

## Part B - Additional Items Related to Building Permit Applications

### 1. Consult Other OAA Resources

Refer to [Regulatory Notices](#) and [Practice Tips](#) on related topics such as general review. Refer also to Professional Requirements for the Built Environment in Ontario on the [OAA Website](#).

## 2. Standard form “[Owner Commitment to have General Review Undertaken by Architects and/or Professional Engineers](#)” by Engineers, Architects, and Building Officials (EABO)

While EABO has produced this standard form, first published back in 2014, its appearance may vary in different jurisdictions where it has been adapted using the specific jurisdiction’s title and format.

The duly completed “Commitment for General Review” form is required to be completed for all building permit applications where the building required the design by certificate of practice holders and/or professional engineers, as prescribed in both the *Architects Act* and *Professional Engineers Act*, and where the building code requires general review.

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

## 3. Document Submission

All design documents submitted as part of an application for a building permit (e.g. drawings, specifications, and reports) must be sealed and signed by the responsible professional, regardless of whether they are in electronic or hard copy form. For further information, refer to [Regulatory Notice RN.01 OAA Professional Seal](#). 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 and Submissions

Increasingly, building departments require the building permit application and related documents be submitted as electronic files online. Verify the requirements of each jurisdiction as early in the project as possible so the required effort can be reflected in the fee proposal. In any event, this should be done prior to the initial application to prevent 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 bylaws.

### Inclusion of an OBC Data Matrix

All building permit applications must include a Building Code Data Matrix, either as a separate sealed and signed document, or as part of one of the permit drawings. Refer to the latest version of [Practice Tip PT.03 Building Code Data Matrices](#). The data matrix should be based on the matrices included in PT.03 and provide at least the minimum information needed to allow the building department to assess building code compliance.

### Amendments to an Application or Permit

Where there are revisions to the “Issued for Permit” documents (e.g. due to bid addenda, contract negotiations, change orders, change directives, and/or supplemental instructions related to building code requirements) they should be filed with the building department. In the situation where such revisions are not accepted in whole or in part by the authorities having jurisdiction, further revisions may be required or the revision cancelled.

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

## 4. Occupancy and Project Close-Out

For those projects requiring general review by a CoP holder, site visit reports are required to be forwarded to the Chief Building Official (CBO). CBOs often request that such reports also be sent to the building inspector assigned to the project. This is a reasonable request so the reports get to the inspector in a timely manner.

While some CoP holders send a copy of every report, some building officials only request monthly summaries, which highlight building code-related issues. As this may require additional effort, the need for a separate report to the municipality should be determined before the CoP holder's fee is determined.

Prior to granting occupancy, building officials require a final report indicating the building was built in general conformity with the documents submitted with the permit application and any amendments thereto except for the deficiencies noted. It is preferable this report follow the EABO-recommended format and content.

CoP holders should send the interim reports and the pre-occupancy report at the appropriate time. The final report should be forwarded once it is written rather than delayed until the building department requests it.

Some municipalities require other sign-offs that 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, compliance with accessibility requirements, etc.).

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

Review the wording of any forms originating with authorities having jurisdiction or with the client's lenders as they tend to significantly increase the CoP holder's liability because of how they are worded, or may include items that are not part of the usual and customary practice of architecture. Additionally, they may create a conflict of interest.

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

In 2023, EABO completed the development of a new customizable, industry-standard form—Required Occupancy Documents Checklist—that helps identify documents a municipality may require prior to granting occupancy. This form was also endorsed by OAA Council.

## **5. Partial Services / Early Termination**

### **Partial Services**

In the case where the CoP holder is only retained for partial services (e.g. the provision of permit documents or construction documents), the CoP holder should notify the Chief Building Official when the CoP holder's services have terminated or been completed and the CoP holder is no longer involved with the project. This is the case regardless of whether or not the project requires the general review of a CoP holder.

### **Early Termination**

In the case of termination during any phase-of-service where an 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 CoP holder be retained by the owner.

## **Attachments**

Attachment 1 – OAA Authorization as an Agent form

Attachment 2 – Distribution of Plans Examiner's Notices

## **References**

Ontario Building Code

*Building Code Act*

OAA Regulatory Notices and Practice Tips

EABO forms such as Required Occupancy Documents Checklist

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*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.*

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## Authorization of an Agent

For the purposes of making an “Application for a Permit to Construct or Demolish” in compliance with the 2024 Ontario Building Code

Agreement between:

Owner: \_\_\_\_\_

and

OAA Certificate of Practice (CoP) Holder:

\_\_\_\_\_

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

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

The owner hereby authorizes the CoP holder 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 CoP holder 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 2024 Ontario Building Code, O.Reg. 163/24 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 CoP holder respecting an application for a permit to construct or demolish or to any other application made by the CoP holder on behalf of the owner.

Date of agreement: \_\_\_\_\_

Owner: \_\_\_\_\_

OAA Certificate of Practice Holder: \_\_\_\_\_



## Distribution of Plans Examiner’s Notices

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### Background

The applicant for a Permit to Demolish or Construct is normally the primary contact for all correspondence or inquiries by the building department. Some building departments or other authorities will only forward communications and permit set mark-ups to the permit applicant. Having the owner or project manager as the permit applicant, rather than the certificate of practice (CoP) holder (as recommended in Practice Tip PT.08), must rely on whoever received the communications and permit set comments from the building department to forward the information to the CoP holder in a timely manner. Otherwise the CoP holder will be unaware of the comments and changes to the documents required by the building departments or other authorities.

### Suggested Approach

Architectural services contracts should address how the distribution of plans examiner’s comments will occur. It is suggested that the CoP holder request 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 CoP holder.

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 holder, it is recommended that the holder send to the client a letter based on the following wording at the time the permit application is submitted if it is not already addressed in the contract.

“Please be advised that notices, comments, and notifications relating to the rezoning, site plan agreement, building permit, or other 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.”

To put the onus on the client to forward such communications to the holder, consider inserting wording into non-standard contracts or using OAA 600-2021 or OAA 800-2021 standard contracts that now include appropriate wording in GC02 and GC05 respectively.

Suggested examples of wording which may 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, or other similar 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 CoP holder 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 CoP holder with a copy of all approved zoning amendments, site plan agreements, and building permit document sets, including all annotations, amendments, and conditions, in a timely manner, upon receipt of same from the authorities having jurisdiction.

*Note:* The wording of the preceding examples should be edited to suit the particular application. When needed for clarity, replace the words “CoP holder” in these examples with “Architect” or “Licensed Technologist” as appropriate.

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