

Joint Ventures

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Summary

Architects often consider a joint venture (JV) with another architect or non-architect for a project. A JV does not have a precise legal meaning. It could be a new partnership or corporation or just a simple association. Unless a new partnership or corporation is set up for the JV with a new Certificate of Practice, the actual names of each individual firm must be maintained and kept intact.

Because there is no precise legal definition for a JV, setting out the terms and sharing of fees and services in a written agreement between the parties is vital to avoid disputes in any JV arrangement.

Trust, transparency and accountability are vital to a successful JV relationship.

Background

At times, architects wish to team up with another practice to offer a proposal of service to a client for a project because together the proposal is stronger than either one could provide individually, where each brings a special strength, or perhaps because one is located closer to the project site. Two or more practices may consider marketing themselves as a group and may even include engineering or interior design firms to provide “full services” or “one-stop shopping”.

Questions architects often ask are, “How do we do a Joint Venture without making a new company – or do we have to?” and “Should we just associate or have a Joint Venture? What exactly do we have to do to form a JV?”

The term “joint venture” is roughly defined as two or more entities associating, but the term does not occur in OAA regulations nor does it have a precise legal definition. Architects stating that they are in joint venture is no different than an architect stating they are “in association with” an engineer they engage to work on a project. The same association can be with another architect.

Several approaches to associating as a JV are described below. In each case, unless a new separate Certificate of Practice is set up with a new name for the practice, the individual practice names must be kept intact such as “**A Architect and Z Architects Inc. in Joint Venture**”. It is **not** acceptable to create a new name such as “**A²Z Architects**”, as that new practice does not exist, does not have a Certificate of Practice or insurance in that name. Where the existing practice names are kept intact the individual Certificates of Practice cover the services the JV offers or provides and the individual insurance each firm has also remains intact.

Formal

Two or more practices may want to set up a ‘formal’ JV for a large project with the expectation that the JV will dissolve once the project is completed. Whatever the reason, the method described as formal is for the firms to establish a new separate practice with a new name via a new Certificate of Practice. Standard procedures for setting up the new practice apply including: application to the Registrar for the Certificate of Practice, obtaining insurance(s), organizing banking and other business arrangements.

The Certificate of Practice requires that there is an architect designated to personally supervise and direct (PS&D) the new practice. An architect cannot be the designated PS&D for more than one practice. The firms could also retain their own individual Certificates of Practice if desired. The normal timeframe for processing will apply so that for an RFP submission situation this method would likely not be practical.

Semi-formal

Possibly for an RFP proposal submission, the firms state that they are “in joint venture” (or “in association with”). The individual practice names are kept intact as noted above. Notification to the OAA is not required unless one firm is not licensed in Ontario, in which case that firm notifies the Registrar that they are included in a proposal for an Ontario project and if awarded the project will obtain a Certificate of Practice.

It is very important to make a memorandum of understanding (MOU) or agreement of joint venture, at the onset, to document the division of responsibilities and compensation. The agreement should say who is in charge, who is the principle designer, how the production of construction documents, and construction contract administration tasks will be divided, who will do the accounting and so on.

What differentiates the semiformal from informal is that the client/architect contract names the Architect as “A Architect and Z Architects Inc. in Joint Venture”, and both architects sign the contract. Both practices are responsible for the services and both are liable to the client and others in the “jointly and severally responsible” situation. You should obtain legal, insurance and accounting advice.

Normally the architect designated as “in-charge” seals the drawings, but it could be an architect from either firm.

Cheques are issued from the client payable to: “A Architect and Z Architects Inc. in Joint Venture”. A separate bank account is set up in that name with signing authorities to deposit or cash the cheques, etc. Accounting is best done by one practice with all the details of fees, breakdowns of other consultants’ fees, allowances for reimbursables, all invoicing, monies in and out tracked monthly and the information shared between the JV practices.

You may need to discuss with the client the choice of having one practice in the JV being the prime and signing the contract (informal) or having both sign the contract (semi-formal). Some clients may prefer to have one firm identified as being in charge; others may wish the alternative. Also, clients may ask to have some of the information of roles and responsibilities of each firm to be described in the client/architect contract so that they too know who will be doing what and who is in charge.

Informal

The suggested way to offer services, to minimize complications contractually, is for one practice to be the prime consultant and other(s) to be associated as subconsultant(s). This informal arrangement can still be called a JV because as noted, a JV is simply stating firms are associating. The prime consultant would sign the contract with the client on behalf of the JV. An agreement of joint venture or MOU is still extremely important to avoid disputes later.

Marketing

Marketing, such as on a website, two or more firms as a “potential arrangement” for clients is not recommended.

Because the goal and intent is indeed to give the impression that the group is a larger entity than the members are individually, there is the constant likelihood of misleading the public, because in fact this larger entity does not exist with a Certificate of Practice. It is surprisingly easy to slip into pitfalls - for example, by simply listing different cities as “office locations”, or including “examples of projects” of the larger entity vs. examples of individual Certificate of Practice holders.

Suggested Procedure

1. Determine if a 'formal' setup with a new Certificate of Practice is desired. If so, follow appropriate procedures.
2. If other than a formal setup, decide on the type of JV to be arranged. Use the current firm names with the addition of "in joint venture" or "in association with".
3. Prepare an agreement of joint venture or MOU documenting the split of work and compensation, responsibilities in each of the phases, the principal in charge, the lead designer, the address of record and other matters.
4. Dividing the services into, as many pieces as is practical and assigning responsibility for each may assist to avoid a duplication of effort or gaps in services. It can be more effective to have an uneven split for various portions of the work. Doing everything 50:50 can lead to duplication where it is not needed.
5. Careful and transparent internal accounting is required to keep a tally of all costs, billings, payments received from the client and distribution of funds. One firm should be designated for the accounting role.
6. Decide how you intend to sign the client/architect contract - one firm or both - discuss with the client and be consistent with the MOU/joint venture agreement
7. Review the insurance each firm has; determine what is appropriate including possible single project policy or top-up required to balance coverage.
8. Consult your legal counsel, accounting and insurance advisors.
9. This Practice Tip is intended as guidance for JV's between architectural practices. For assistance on JVs with others contact the OAA Practice Advisors.

References

RAIC Canadian Handbook of Practice (CHOP) - Organization of an Architectural Practice - Volume 2 - Chapter 2.1.1, and CH-21 Checklist for Joint Venture Agreement.

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.
