

LANDSCAPE ARCHITECT LICENSING ACT

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig A. Peterson

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING THE LANDSCAPE ARCHITECT LICENSING ACT; REVISING THE DEFINITION OF THE PRACTICE OF LANDSCAPE ARCHITECTURE; REVISING THE DEFINITION OF AND PENALTIES FOR UNLAWFUL CONDUCT; REVISING THE EXEMPTIONS FROM LICENSURE; AUTHORIZING THE USE OF SEALS BY LICENSEES; REQUIRING ALL SITE PLANS TO BEAR THE SEAL OF A LICENSEE; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

58-53-301, Utah Code Annotated 1953

58-53-501, Utah Code Annotated 1953

58-53-601, Utah Code Annotated 1953

58-53-602, Utah Code Annotated 1953

58-53-603, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

58-53-101, (Renumbered from 58-53-1, as enacted by Chapter 141, Laws of Utah 1988)

58-53-102, (Renumbered from 58-53-2, as last amended by Chapter 274, Laws of Utah 1994)

58-53-103, (Renumbered from 58-53-11, as enacted by Chapter 274, Laws of Utah 1994)

58-53-201, (Renumbered from 58-53-3, as repealed and reenacted by Chapter 297, Laws of Utah 1993)

58-53-302, (Renumbered from 58-53-4, as last amended by Chapters 274 and 313, Laws of Utah 1994)

58-53-303, (Renumbered from 58-53-5, as repealed and reenacted by Chapter 297, Laws of Utah 1993)

58-53-304, (Renumbered from 58-53-8, as last amended by Chapter 297, Laws of Utah 1993)

58-53-401, (Renumbered from 58-53-9, as enacted by Chapter 297, Laws of Utah 1993)

58-53-502, (Renumbered from 58-53-10, as enacted by Chapter 274, Laws of Utah 1994)

REPEALS:

58-53-7, as enacted by Chapter 141, Laws of Utah 1988

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-53-101**, which is renumbered from Section 58-53-1 is renumbered and amended to read:

Part 1. General Provisions

~~[58-53-1].~~ **58-53-101. Title.**

This chapter is known as the "Landscape Architects Licensing Act."

Section 2. Section **58-53-102**, which is renumbered from Section 58-53-2 is renumbered and amended to read:

~~[58-53-2].~~ **58-53-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Landscape Architects Board ~~[established under this chapter]~~ created in Section 58-53-201.

(2) "Fund" means the Landscape Architects Education and Enforcement Fund created in Section ~~[58-53-11]~~ 58-53-103.

(3) "Practice of landscape architecture" means rendering or offering to render any of the following services ~~[for the purpose of landscape preservation, development, or enhancement]:~~

~~[(a) investigation, selection, and allocation of land and water resources for appropriate use;]~~

~~[(b) preparation of feasibility studies;]~~

~~[(c) formulation of graphic and written criteria to govern the planning and design of land construction programs;]~~

~~[(d) preparation, review, and analysis of master plans for land use and development, production of overall site plans, landscape grading, and landscape drainage plans, irrigation plans, planting plans, and construction details;]~~

~~[(e) producing specifications, cost estimates, and reports for land development;]~~

~~[(f) collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed;]~~

~~[(g) negotiation and arrangement for execution of land area projects; and]~~

~~[(h) field observation and inspection of land area construction, restoration, and maintenance.]~~

(a) production of a site plan which may include the design of any of the following:

(i) sprinkler irrigation systems;

(ii) landscape grading and drainage plans; or

(iii) parking lots;

(b) design of any of the following structures incidental to the production of a site plan:

(i) retaining walls; or

(ii) raised platforms, decks, and walkways;

(c) design of any of the following structures incidental to the production of a site plan when the structure does not exceed 1,000 square feet:

(i) covered pavilions;

(ii) gazebos;

(iii) restrooms;

(iv) storage and maintenance facilities; or

(v) other accessory structures; or

(d) collaboration with architects and professional engineers in the design of roads, bridges, buildings, and structures with respect to the functional and aesthetic requirements of the area in which they are to be placed.

(4) "Principal" means a licensed landscape architect having responsible charge of a landscape architectural practice.

(5) "Supervision" with respect to the supervision of an employee of a landscape architect, means that a licensed landscape architect is responsible for and personally reviews, corrects when necessary, and approves work performed by any employee under the direction of the landscape architect, and may be further defined by rule of the division in collaboration with the board.

~~[(4)] (6) "Unlawful conduct" [as defined in Section 58-1-501, includes using the title~~

landscape architect or any other description, words, letters, or abbreviation indicating that the person is a landscape architect when the person is not licensed as a landscape architect under this chapter] is as defined in Sections 58-1-501 and 58-53-501.

~~[(5)] (7)~~ "Unprofessional conduct" is as defined in Section 58-1-501 and as may be further defined by rule ~~[includes:]~~ of the division in collaboration with the board.

~~[(a)~~ affixing a seal or allowing a seal to be affixed to any document of which the landscape architect was neither the author nor in responsible charge of preparation; and]

~~[(b)~~ having a pecuniary interest in the performance of the contract for the work designed, planned, or supervised by the landscape architect without the knowledge and consent of the person employing the landscape architect.]

Section 3. Section **58-53-103**, which is renumbered from Section 58-53-11 is renumbered and amended to read:

~~[58-53-11].~~ **58-53-103. Education and enforcement fund.**

(1) There is created a restricted account in the General Fund known as the "Landscape Architects Education and Enforcement Fund." ~~[to provide revenue for educating landscape architects, the public, and other interested persons concerning the requirements of this chapter and any rule promulgated under this chapter and to enforce the provisions of this chapter, as defined in this section.]~~

(2) The fund ~~[shall be funded by]~~ consists of monies from:

(a) a surcharge placed on application fees for initial, renewal, and reinstatement licensure under this chapter, in an amount established by the division with the collaboration of the board in accordance with Section 63-38-3.2, not to exceed 50% of the ~~[fees]~~ respective fee; and

(b) ~~[monies received by the state by reason of civil penalties ordered and]~~ administrative ~~[fines]~~ penalties collected pursuant to this chapter.

(3) ~~[(a)]~~ The fund shall earn interest~~[-(b) All]~~, and all interest earned on fund monies shall be deposited into the fund.

(4) The director may, with concurrence of the board ~~[and the executive director and in a manner consistent with the duties of the division under this chapter]~~, make distributions from the

fund for the following purposes:

- (a) education and training of licensees under this chapter [by:];
 - ~~[(i) publication of this chapter, related chapters of Title 58 or other titles, rules implementing or related to this chapter, policy statements, and declaratory orders of the division; and]~~
 - ~~[(ii) sponsorship of publications or presentations to educate licensees as to the requirements of this chapter and rules implementing or related to this chapter;]~~
- (b) education and training of the public or other interested persons in matters concerning landscape architectural laws and practices [by publications or presentations]; and
- (c) enforcement of this chapter by:
 - (i) investigating unprofessional or unlawful conduct; and
 - (ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.
- (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.
- (6) ~~[Through the]~~ The division~~[- the board]~~ shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Section 4. Section **58-53-201**, which is renumbered from Section 58-53-3 is renumbered and amended to read:

Part 2. Board

~~[58-53-3].~~ 58-53-201. Creation of board -- Duties.

- (1) There is created the Landscape Architects Board consisting of four landscape architects and one member of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
- (4) The board shall designate one of its member on a permanent or rotating basis to:
 - (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(5) A board member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 5. Section **58-53-301** is enacted to read:

Part 3. Licensing

58-53-301. Licensure required--License classification.

(1) A license is required to engage in the practice of landscape architecture except as specifically provided in Section 58-53-304 or 58-1-307.

(2) The division shall issue a license under this chapter to a qualified person in the classification of landscape architecture.

Section 6. Section **58-53-302**, which is renumbered from Section 58-53-4 is renumbered and amended to read:

[58-53-4]. 58-53-302. Qualifications for licensure.

(1) ~~[An] Each~~ applicant for ~~[a license to practice]~~ licensure as a landscape ~~[architecture under this chapter]~~ architect shall:

(a) submit ~~[to the division a written]~~ an application ~~[on]~~ in a form prescribed by the division;

(b) pay a fee as determined by the department under Section 63-38-3.2;

(c) ~~[have completed a high school course of study or its equivalent approved by the division]~~ provide satisfactory evidence of good moral character;

(d) (i) have graduated and received an earned bachelors or masters degree from a ~~[nationally accredited school, college, or university approved by the division, having successfully completed a curriculum in]~~ landscape architecture program meeting criteria established by rule by the division in collaboration with the board; or

(ii) have completed ~~[as an employee of a governmental agency or private enterprise]~~ not less than eight years of supervised practical experience in landscape architecture ~~[under the direction of one or more landscape architects; which experience is of a grade and character acceptable to the division, at least four of the years shall be continuous and immediately precede the filing of the~~

application] which meets the requirements established by rule by the division in collaboration with the board; and

(e) have successfully passed [an examination approved] examinations established by rule by the division in collaboration with the board.

(2) Satisfactory completion of each year of a landscape architectural [course] program described in Subsection (1)(d)(i) is equivalent to one year of experience for purposes of Subsection (1)(d)(ii).

~~[(3) The division may issue a license without examination to an applicant who is licensed as a landscape architect in another state or country whose license requirements are equivalent to the requirements of this state.]~~

~~[(4) The requirements of this section are waived for any person who applies for a license before July 1, 1989, and who has practiced landscape architecture, as defined in Subsection 58-53-2(3), for a period of not less than two years prior to April 25, 1988.]~~

Section 7. Section **58-53-303**, which is renumbered from Section 58-53-5 is renumbered and amended to read:

[58-53-5]. 58-53-303. Term of license -- Expiration -- Renewal.

(1) [Each] The division shall issue each license [issued] under this chapter [shall be issued] in accordance with a two-year renewal cycle established by rule. [A renewal period may be extended or shortened] The division may by renewal extend or shorten a license expiration date by as much as one year to [maintain established] stagger the renewal cycles [or to change an established renewal cycle] it administers.

(2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 8. Section **58-53-304**, which is renumbered from Section 58-53-8 is renumbered and amended to read:

[58-53-8]. 58-53-304. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following [persons] may engage in the [practice of landscape architecture subject to the stated circumstances and

limitations] stated limited acts or practices without being licensed under this chapter:

(1) ~~[an individual property owner doing work on his own premises; or]~~ a person preparing a site plan as defined in Subsection 58-53-102(3), for a one-, two-, three-, or four-family residence not exceeding two stories in height, exclusive of the basement;

(2) ~~[a city planner, horticulturist, nurseryman, gardener, or landscape contractor, as these terms are generally used, except that these persons may not use the designation "landscape architect" or any description, words, or letters of abbreviation tending to convey the impression that he is a licensed landscape architect.]~~ a person designing sprinkler irrigation systems when licensed as a landscape contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(3) a person licensed to practice professional engineering or professional structural engineering under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(4) a person licensed to practice architecture under Title 58, Chapter 3a, Architects Licensing Act;

(5) unlicensed employees of a person licensed under this chapter while preparing site plans as defined in Subsection 58-53-102(3), under the supervision of a landscape architect; and

(6) an organization engaged in the practice of landscape architecture, provided that:

(a) the organization employs a principal; and

(b) all individuals employed by the organization, who are engaged in the practice of landscape architecture, are licensed or exempt from licensure under this chapter.

Section 9. Section **58-53-401**, which is renumbered from Section 58-53-9 is renumbered and amended to read:

Part 4. License Denial and Discipline

~~[58-53-9].~~ **58-53-401. Grounds for denial of license -- Disciplinary proceedings.**

Grounds for ~~[refusal]~~ refusing to issue a license to an applicant, for ~~[refusal]~~ refusing to renew the license of a licensee, ~~[to revoke, suspend, restrict, or place]~~ for revoking, suspending, restricting, or placing on probation the license of a licensee, ~~[to issue]~~ for issuing a public or private reprimand to a licensee, and ~~[to issue]~~ for issuing cease and desist orders shall be in accordance with

Section 58-1-401.

Section 10. Section **58-53-501** is enacted to read:

Part 5. Unlawful and Unprofessional Conduct - Penalties

58-53-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) using the title landscape architect or any other description, words, letters, or abbreviation indicating that the person is a landscape architect if the person has not been licensed under this chapter; and

(2) engaging in or representing oneself as engaging in the practice of landscape architecture as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure under Section 58-1-307 or 58-53-304.

Section 11. Section **58-53-502**, which is renumbered from Section 58-53-10 is renumbered and amended to read:

[58-53-10]. 58-53-502. Citations -- Penalty for unlawful conduct.

(1) (a) If upon inspection or investigation, the division concludes that a person has violated Subsections 58-1-501(1)(a) through (d) [~~or Subsection 58-53-2(4)~~], Section 58-53-501, or Section 58-53-603 or any rule or order issued with respect to [~~Subsection 58-53-2(4)~~] Section 58-53-501, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or [~~Subsection 58-53-2(4)~~] Section 58-53-501 or any rule or order issued with respect to [~~Subsection 58-53-2(4)~~] Section 58-53-501, as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or [~~Subsection 58-53-2(4)~~] Section 58-53-501 or any rule or order issued

with respect to [~~Subsection 58-53-2(4)~~] Section 58-53-501.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section [58-53-9] 58-53-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon any person whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(e) If within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(i) The director or his designee shall assess fines according to the following:

- (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;
- (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000; and
- (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000

for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division does not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

~~[(2)]~~ (3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

Section 12. Section **58-53-601** is enacted to read:

Part 6. Seals

58-53-601. Seal -- Design and implementation.

Every landscape architect shall have a seal, the design and implementation of which shall be established by rule by the division in collaboration with the board.

Section 13. Section **58-53-602** is enacted to read:

58-53-602. Site plans to be sealed.

(1) Any site plan prepared in this state shall bear the seal of a landscape architect licensed under this chapter, except as provided in Section 58-53-304, in Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, in Title 58, Chapter 3a, Architects Licensing Act, or by the codes adopted under Title 58, Chapter 56, Utah Uniform Building Standards Act.

(2) Any final site plan prepared by or under the supervision of the licensed landscape

architect shall bear the seal of the landscape architect when submitted to a client, or when submitted to a building official for the purpose of obtaining a building permit, even if the practice is exempt from licensure under Section 58-53-304.

Section 14. Section **58-53-603** is enacted to read:

58-53-603. Seal -- Authorized use.

A landscape architect may only affix the landscape architect's seal to a site plan when the site plan:

- (1) was personally prepared by the landscape architect;
- (2) was prepared by an employee, subordinate, associate, or drafter under the supervision of a licensee, provided the licensee or a principal affixing the seal assumes responsibility;
- (3) was prepared by a licensed landscape architect in this state or any other state provided that the licensee in this state affixing the seal:
 - (a) performs a thorough review of all work for compliance with all applicable laws and rules and the standards of the profession; and
 - (b) makes any necessary corrections before submitting the final site plan:
 - (i) to a building official for the purpose of obtaining a building permit; or
 - (ii) to a client who has contracted with a landscape architect for the production of a site plan, when the landscape architect represents, or could reasonably expect the client to consider, the site plan to be complete and final;
- (4) was prepared by a person exempt from licensure as a landscape architect, provided that the licensee in this state affixing the seal:
 - (a) performs a thorough review for compliance with all applicable laws and rules and the standards of the profession; and
 - (b) makes any necessary corrections before submitting the final site plan:
 - (i) to a building official for the purpose of obtaining a building permit; or
 - (ii) to a client who has contracted with a landscape architect for the production of a site plan, when the landscape architect represents, or could reasonably expect the client to consider, the site plan to be complete and final; or

(5) meets any additional requirements established by rule by the division in collaboration with the board.

Section 15. **Repealer.**

This act repeals:

Section **58-53-7, Seals.**