

STATE OF FLORIDA
BUILDING COMMISSION

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	9/11/2015
File #	2015-07648

In the Matter of

AMERICAN SOCIETY OF INTERIOR DESIGNERS

Petitioner.

DS 2015-085

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (Commission) by a Petition from Martin R. Dix, Esquire, for the American Society of Interior Designers (ASID) and Lucille McKey (Petitioners), which was received July 9, 2015. Based on the statements in the petition submitted by the Petitioner, the Commission states the following:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. Petitioner's representative in this matter is Martin R. Dix, Esquire of Akerman LLP, 106 East College Avenue, Suite 1200, Tallahassee, Florida 32301.
3. Petitioner ASID is a professional organization which represents and advocates for interior designers registered pursuant to Section 481.213(1), Florida Statutes (2014). Petitioner Lucille McKey is an interior designer registered pursuant to Section 481.213(1), Fla. Stat.
4. Petitioner seeks clarification regarding the applicability of Sections 107.1 and 202 of the Florida Building Code, Building, 5th Edition (2014) as to whether registered interior designers are included in the definition of "registered design professionals" and may sign and seal interior design plans for building permits for interior construction.

5. Specifically, the Petitioner requests answers to the following questions:

A. Does the Florida Building Code's definition for "registered design professionals" include Florida registered interior designers who may sign and seal interior design plans, drawings, specifications and reports?

B. Does the Florida Building Code's definition for "registered design professionals" include Florida registered interior designers who may sign and seal interior design plans, drawings, specifications, or reports which may, in some instances, be submitted for the issuance of building permits for interior construction?

Conclusions of Law

6. The Commission has the specific statutory authority pursuant to Section 553.775(3)(a), Florida Statutes (2014) to interpret the provisions of the Florida Building Code by entering a declaratory statement.

7. Section 553.73(2) of the Florida Statutes (2015) states:

The Florida Building Code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, hospice residential and inpatient facilities and units, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements. Further, the Florida Building Code must provide for uniform implementation of ss. 515.25, 515.27, and 515.29 by including standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required therein, which are consistent with the intent of s. 515.23. Technical provisions to be contained within the Florida Building Code are restricted to requirements related to the types of materials used and construction methods and standards employed in order to meet criteria specified in the Florida Building Code. Provisions relating to the personnel, supervision or training of personnel, or any other professional

qualification requirements relating to contractors or their workforce may not be included within the Florida Building Code, and subsections (4), (6), (7), (8), and (9) are not to be construed to allow the inclusion of such provisions within the Florida Building Code by amendment. This restriction applies to both initial development and amendment of the Florida Building Code.

8. Section 202, Definitions, Florida Building Code, Residential, 5th Edition (2014)

states:

[A] REGISTERED DESIGN PROFESSIONAL. An individual who is registered or licensed to practice their respective design profession as defined by the statutory requirements of the professional registration laws of the state or *jurisdiction* in which the project is to be constructed.

9. Section 107.1, Submittal Documents, Florida Building Code, Building, 5th Edition

(2014) states:

General.

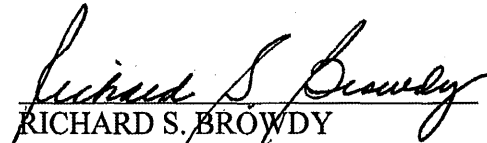
Submittal documents consisting of *construction documents*, statement of *special inspections*, geotechnical report and other data shall be submitted in two or more sets with each *permit* application. The *construction documents* shall be prepared by a *registered design professional* where required by Chapter 471, *Florida Statutes* or Chapter 481, *Florida Statutes*. Where special conditions exist, the *building official* is authorized to require additional *construction documents* to be prepared by a *registered design professional*.

10. In response to Petitioner's question A, the term "registered design professional," as defined in the 5th Edition (2014) Florida Building Code, Building includes any registered design professional so long as they are practicing within the scope of their license, which includes those licensed under Chapters 471 and 481, Florida Statutes.

11. In response to Petitioner's question B, the term "registered design professional," as defined in the 5th Edition (2014) Florida Building Code, Building includes any registered design

professional so long as they are practicing within the scope of their license, which includes those licensed under Chapters 471 and 481, Florida Statutes.

DONE AND ORDERED this 9th day of September, 2015 in Jacksonville, Duval County, State of Florida.


RICHARD S. BROWDY
Chairman, Florida Building Commission

NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes (2014), and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1000 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by Section 35.22(3), Florida Statutes (2014).

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 11th day of September, 2015.



Agency Clerk's Office
Department of Business and Professional Regulation
& Florida Building Commission
1940 North Monroe Street
Tallahassee, Florida 32399-1000

Via U.S. Mail

American Society of Interior Designers
Att: Jim Brewer
718 7th Street Northwest
4th Floor
Washington, DC 20001

Lucille McKey
4615 Ponce de Leon Boulevard
Coral Gables, Florida 33146

Martin R. Dix, Esquire
Akerman LLP
106 East College Avenue
Suite 1200
Tallahassee, Florida 32301

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager
Codes and Standards Section
Department of Business and Professional
Regulation
1940 North Monroe Street
Tallahassee, Florida 32399
Mo.Madani@myfloridalicense.com

Marjorie Holladay
Joint Administrative Procedures Committee
Pepper Building, Room 680
Tallahassee, Florida 32399-1300

**BEFORE THE STATE OF FLORIDA
FLORIDA BUILDING COMMISSION**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/9/2015
File #	

In Re: American Society of Interior Designers')
and Lucille McKey's)
Petition for Declaratory Statement)
before the Florida Building Commission)

DS 2015-085

**American Society of Interior Designers' and Lucille McKey's Petition for
Declaratory Statement Before the Florida Building Commission**

The American Society of Interior Designers ("ASID") and Lucille McKey (Registered Interior Designer Number 564), by and through their undersigned counsel, file this Petition for Declaratory Statement pursuant to Section 553.775(3)(a), and Section 120.565, Florida Statutes ("FS"), and Rule 28-105.002, Florida Administrative Code ("FAC"). As grounds therefore, Petitioners state:

1. ASID and Ms. McKey are requesting that the Florida Building Commission ("Commission") declare that the term "registered design professionals," under the Florida Building Code ("Code"), includes registered interior designers who may sign and seal documents as permitted by statute.

2. Petitioners' names addresses and telephone numbers are:

American Society of Interior Designers
ATT: Jim Brewer, VP Government & Public Affairs
718 7th Street NW, 4th Floor
Washington, DC 20001

Phone: 202-546-3480

and

Lucille McKey
4615 Ponce de Leon Blvd.
Coral Gables, FL 33146

Phone: 305-661-1675

3. For the purposes of this Petition, ASID and Ms. McKey shall be contacted through their attorney:

Martin R. Dix
Akerman LLP
106 East College Avenue, Suite 1200
Tallahassee, FL 32301

E-mail: martin.dix@akerman.com
Phone: 850-224-9634
Fax: 850-222-0103

4. ASID is the leading professional organization for interior designers and has three chapters in the state of Florida. ASID represents hundreds of the Florida members that are registered interior designers pursuant to Section 481.213(1), FS. ASID exists to represent, protect, and advocate for its members' interests in a variety of areas, including protecting interior designers' practice rights, regulatory issues and the application of state building codes that relate to duties and responsibilities of registered interior designers.

5. Ms. McKey is a registered interior designer pursuant to Section 481.213(1), FS.

6. Ms. McKey and ASID members who are registered interior designers are authorized under Section 481.221(3), FS, to sign and seal all drawings, plans, specifications, or reports ("interior design documents") they prepared or issued and filed for public record. Florida registered interior designers, like Ms. McKey and most Florida members of ASID, are also permitted by statute to sign and seal interior design documents, which may in some instances be submitted for the issuance of building permits for interior design construction, under Section 481.2131(1), FS.

7. Specifically, pursuant to Section 481.2131, FS, and Rule 61G1-16.003, FAC, registered interior designers are defined as qualified design professionals who have met the requirements to become licensed through education, examination and experience. These

professionals are authorized to sign and seal all drawings, plans, specifications or reports "relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings."

According to the Council for Interior Design Qualification ("CIDQ"), "Interior design is a multi-faceted profession in which creative and technical solutions are applied within a structure to achieve a built interior environment. Designs are created in response to and coordinated with the building shell and acknowledge the physical location and social context of the project. Designs must adhere to code and regulatory requirements, and encourage the principles of environmental sustainability. The interior design process follows a systematic and coordinated methodology, including research, analysis and integration of knowledge into the creative process, whereby the needs and resources of the client are satisfied to produce an interior space that fulfills the project goals."

(See <http://www.ncidqexam.org/about-interior-design/definition-of-interior-design/>.)

How Lucille McKey's and ASID's Interests are Substantially Affected

8. Ms. McKey is a registered interior designer and has been licensed as such since 1989. She often prepares interior design documents for consumers and for submittal to building officials for a building permit. Because these plans are construction plans, the building officials require that they be signed and sealed.

9. Many of ASID's members are Florida registered interior designers and, as such, also often prepare interior design documents for customers. Because these interior design documents are construction plans, the Florida Building Code, building officials and the laws and rules regulating registered interior designers require that they be signed and sealed.

10. Many of ASID's members and Ms. McKey have had building officials mistakenly refuse to accept interior design documents signed and sealed by Florida registered interior designers.

11. Ms. McKey and ASID's Florida registered interior design members are substantially affected in that they are precluded from providing the full array of services that can be lawfully provided by registered interior designers when these local governments wrongly interpret the Florida Building Code to not allow registered interior designers to sign and seal interior design documents.

12. Ms. McKey and ASID through its members are financially affected when these building officials wrongly interpret the Florida Building Code to not allow registered interior designers to sign and seal interior design documents as it delays construction and may cause a person or entity not to retain the services of a registered interior designer.

13. Possibly because of confusion on the interpretation of the Code, local governments, enforcement districts and state agencies authorized to enforce the Code under Section 553.80, FS, have mistakenly refused to accept signed and sealed design plans from registered design professionals such as Ms. McKey and ASID Florida members. This confusion negatively impacts these professionals' ability to conduct business and directly impacts their licenses in violation of statutory authorization. This will certainly produce a negative economic impact not only for the interior design businesses, but also for all small businesses that are financially supported directly or indirectly by the practice of interior design in the state of Florida.

If the Petition is not granted, Ms. McKey and ASID members will continue to be unlawfully regulated by building officials who mistakenly refuse to accept signed and sealed

documents, which registered interior designers are statutorily authorized to sign and seal. We therefore ask the Commission to grant the Petition.

The Laws on Which the Declaratory Statement is Sought

14. Florida law allows the Florida Building Commission to issue declaratory statements under Section 120.565, FS, to any substantially affected person relating to the enforcement or administration by local governments of the Florida Building Code or the Florida Accessibility Code for Building Construction. Section 553.775, FS.

15. An individual who desires to be licensed as a registered interior designer in Florida must pass a licensing examination administered by the Florida Board of Architecture and Interior Design and must be certified by the Board to have satisfied the education and experience requirements under Section 481.209, FS.

16. Ms. McKey and ASID members who are Florida registered interior designers are authorized under Section 481.221(3), FS, to sign and seal all drawings, plans, specifications, or reports they prepared or issued and filed for public record. Florida registered interior designers, like Ms. McKey and members of ASID, are also permitted by statute to sign and seal design documents, which may in some instances be submitted for the issuance of building permits for interior construction, under Section 481.2131(1), FS.

17. Rule 61G1-16.003, FAC, provides:

61G1-16.003 Use of Seal.

The personal seal, signature and date of the architect or interior designer shall appear on all architectural or interior design documents to be filed for public record and shall be construed to obligate his partners or his corporation. A corporate seal alone is insufficient. Documents shall be signed personally and sealed by the responsible architect or interior designer. Final official record documents (not tracings, etc.) shall be so signed. The signing and sealing of the specification index sheets shall be considered adequate. All drawing sheets and pages shall be so signed and sealed. An architect or interior designer shall not

affix, or permit to be affixed, his seal or name to any plan, specifications, drawings, or other related document which was not prepared by him or under his responsible supervising control as provided in Rule Chapter 61G1-23, F.A.C. An architect or interior designer shall not use his seal or do any other act as an architect or interior designer unless holding at the time a certificate of registration and all required renewals thereof.

18. Section 202 of the Code defines a "registered design professional" as "an individual who is registered or licensed to practice their respective design profession as defined by the statutory requirements of the professional registration laws of the state or jurisdiction in which the project is to be constructed."

19. While the Code's definition for "registered design professional" appears to incorporate by reference the laws governing registered interior designers, the Code does not mention "Florida registered interior designers" in any provision, but presumably they are included.

20. Section 107.1 of Chapter 1 of the Florida Building Code recognizes that registered design professionals can prepare construction documents where it states:

Chapter 1: 107.1: Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by Chapter 471, Florida Statutes, or Chapter 481, Florida Statutes. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

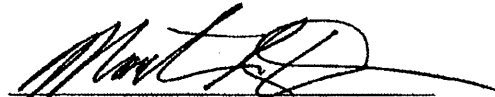
21. The Florida Building Code Section 107.3.4.2 specifically provides that local officials may "upon good cause shown] accept or reject plans sealed by persons licensed under Chapters 471, 481, or 489, Florida Statutes." Petitioners ask that the Commission clarify that building officials must accept signed and sealed interior design documents prepared by registered interior designers.

Wherefore, Petitioners request that the Commission issue a Final Order determining the answer to the following questions:

A. Does the Florida Building Code's definition for "registered design professionals" include Florida registered interior designers who may sign and seal interior design plans, drawings, specifications or reports?

B. Does the Florida Building Code's definition for "registered design professionals" include Florida registered interior designers who may sign and seal interior design plans, drawings, specifications or reports which may, in some instances, be submitted for the issuance of building permits for interior construction?

Respectfully submitted this 9th day of July, 2015.



Martin R. Dix
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martin.dix@akerman.com

July 9, 2015

VIA E-MAIL

Mo Madani
Office of Codes and Standards
Department of Business and Professional Regulation
1940 North Monroe Street, Suite 90
Tallahassee, Florida 32399

**Re: Petition for Declaratory Statement on Behalf of
American Society of Interior Designers and Lucille McKey**

Dear Mr. Madani:

Attached is a Petition for Declaratory Statement to be filed on behalf of the American Society of Interior Designers and Lucille McKey. Per our discussion, you indicated delivery to you via PDF would be sufficient and that you would ensure it was properly filed with the Commission Counsel and/or the Agency Clerk, and we appreciate your doing so. Please forward a copy of the date stamped petition once filed.

Please contact me should you require anything further.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin R. Dix".

Martin R. Dix

MRD/pld

Attachment

cc: April Hammonds (via e-mail)
Jim Brewer, ASID (via e-mail)
Lucille McKey (via e-mail)
David Roberts (via e-mail)

akerman.com

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