



LICENSING NEWS

ARCHITECTURE • INTERIOR DESIGN • LANDSCAPE ARCHITECTURE

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CHAIRMAN'S COLUMN

An Ethical Dilemma

Rarely a day goes by that we don't see a headline or news story reporting the consequences of unethical conduct. These stories of corruption, greed and unethical behavior at blue chip companies, such as Enron and WorldCom, vividly demonstrate the way unethical behavior touches and impacts innocent people and shape our perspective on corporate ethics.

Last year, the Harvard Business School's graduating class was asked to compose an oath of ethics. The writers of the document pledged to act with integrity and guard against decisions that put personal ambition ahead of what is best for their employer and society. Unfortunately, only half of the graduating class was willing to sign the oath! These graduates will go on to become leaders of business, law and politics, and one day we may need to place a high degree of trust and power in their hands. But, if they refuse to pledge their allegiance to a code of ethics while they are still in school, what behavior can we expect from them in the real world when money, power and personal prestige are at stake?

Compromised integrity.

During a recent meeting of the National Council of Architectural Registration Boards (NCARB), these concerns came back to me as I listened with disappointment to a report on NCARB's challenges in dealing with the growing problem of candidates cheating on the ARE exam. After a thorough investigation, the Council determined eight candidates (none from Texas) had cheated on the licensing exam. Cheating has occurred before (all examinations have measures to mitigate the risks), but this time the difference was the pervasiveness of the cheating due to accessibility of information via the Internet and the willingness of previous candidates to propagate the content of text materials. Some test-takers were memorizing questions and posting the questions, often verbatim, to the ARE Forum. Upon hearing this news, I wondered whether these people understood they had crossed an ethical line, tarnishing not only their reputation but negatively affecting the entire practice of architecture.

Cheating: What's the big deal?

So, what is the real harm in knowing the questions and answers for some of the exam sections? There is not enough room in this publication for me to explain

Accessibility Review Deadline Now 20 Days After Plan Issuance

Design professionals across Texas should be aware of a change in the state's requirement regarding submittal of plans for accessibility review. In short, the five-day window for submittal is now a 20-day window.

HB 1055 of the 81st Legislature changed the requirement for a design professional with overall responsibility to submit (issue) construction documents for accessibility review from 5 days to 20 days. This change to the Texas Architectural Barriers Act Section 469.102(b) became effective on September 1, 2009.

Find more information at the Texas Department of Licensing and Regulation's Web site, www.license.state.tx.us/ab/ab.htm.

Registered Interior Designers: One word tells your whole story.

Winston Churchill wrote volumes upon volumes of books during his lifetime, so it's no surprise that he's a wealth of great quotes. Here's one that Registered Interior Designers (RIDs) across Texas might keep in mind:

"To improve is to change; to be perfect is to change often."

These words provide an excellent lens for understanding the recent legislative change to titling restrictions for interior design. By now, most RIDs know about the simple change: previously only a TBAE registrant could refer to him- or herself as an "interior designer," and now only a TBAE registrant can refer to him- or herself as a "Registered Interior Designer."

So that's the whole issue in a nutshell. But RIDs might be wondering: What's the path forward? What does this mean for me and my practice?

Let's start with TBAE's perspective, as a regulatory board: our interest is in the health, safety, and welfare of the public—and that's our only interest. We don't promote the profession, or the industry, or any individual or group of professionals (registered or not registered). We promote a safe built environment, simple as you please.

There are many ways we protect the public, but in this story we're focused here on one method: ensuring that the public is not misled in seeking the services of a design professional and ensuring that those professionals maintain the minimum professional standards set by law.

That's where Registered Interior Designers come in, of course. If you're an RID, you're voluntarily holding yourself to a higher professional standard than someone who isn't registered. We understand that, because we were the ones charged with enforcing a regulatory mechanism to ensure the safety of the public. That regulatory mechanism is well known to RIDs: mandatory continuing education, criminal background checks, the "statement of jurisdiction" that's required on contracts, for starters.

Likewise, RIDs themselves understand that they're holding themselves to a higher standard, and doing so voluntarily. (Both before and after the titling change, anyone could and can engage in the practice of interior design.)

So here's where we've arrived. TBAE knows what registration means. So do RIDs like you. But does your prospective client know?

Since RIDs promote a safe and healthy built environment, it's fair for an RID to use the registration he or she earned as a tool to show clients, prospective clients, and others that he or she has gone the extra mile in the design profession.

So when a prospective client sees the term "RID" on your business card or Web site and asks you what "RID" means, don't be shy! Tell them about all you've done to earn registration, and how that can set you apart. You've earned your registration and the right to call yourself a Registered Interior Designer. Now make it work for you.



Cathy L. Hendricks
Cathy L. Hendricks, RID
Executive Director

ARE candidates: \$500 in reimbursement available, so come and get it!

Money is tight these days for most everyone, so it's a good idea to watch for bargains. Even better than a bargain is the rare instance of free money, and TBAE is delivering just that for ARE candidates.

A decade ago, the Texas Legislature created the Architect Registration Examination Financial Assistance Fund, or

AREFAF. While it's often called a "scholarship" for ARE-takers, really it's more of a reimbursement. Here are some details:

- AREFAF offers a one-time reimbursement of \$500 to qualified applicants for taking the ARE; about 50 test-takers receive the award each year, to the tune of about \$25,000 total disbursement.
- Applications can be done online (while logged in to your TBAE account) or by downloading the application form from www.tbae.state.tx.us. You also may request an application

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An Ethical Dilemma

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all the ways in which it is wrong, illegal and unethical. I think back to those Harvard graduates who refused to agree to an oath of ethical integrity for all of their future actions. Would any of you be interested in hiring or placing your client's trust in a person who had knowingly cheated on the Architect Registration Exam?

I have had the opportunity to work on the ARE committee that develops test content. It was the most challenging committee I have ever been involved with and involves thousands of hours of work each year. It takes approximately two years for each test question to be developed, tested, analyzed and approved before it ever becomes part of the exam. Any disclosure of the question to a candidate before the test voids an enormous amount of hard work.

The real costs, and the real payers.

NCARB took disciplinary action upon the candidates who cheated (loss of testing privileges and test results, etc.), but the consequences immediately spread beyond those individuals and to the rest of the candidates. In order to reformulate the tainted test questions, the Council was forced to pay for an unscheduled complete redevelopment of the compromised exam sections. Because of these extraordinary development expenses, the Council was forced to raise the cost of the exam by an additional \$40 for every candidate. Furthermore, additional staff members were hired and assigned to deal with this increasing problem. All NCARB certificate holders will ultimately also bear those additional costs.

Of course it is easy to say, "Don't cheat." But a recent enforcement matter that came before our Board broadens the ethical discussion. This enforcement case involved a nonregistrant who represented to his own firm that he was a registered design professional for several years and through greater and greater responsibility. The firm, of course, had assumed a level of ethical conduct in its employee. By the time the truth was finally uncovered, the firm had devoted many resources to the imposter and in the end the nonregistrant

agreed to pay thousands of dollars in penalties and compromised the integrity of the firm—the consequences of the choice of one individual.

What you can do about it.

So what should be done? There are several things a practitioner can do to help keep his or her practice and profession sound:

First, verify the claimed registrations of all new hires. This can easily be done on the TBAE Web site. If someone claims to be an architect or landscape architect or interior designer, look him or her up and verify his or her Texas registration number.

Second, stay close to your new hires, especially if the new hires are sitting for the exam. Serve as an IDP mentor as well as an employer and help them to know that good ethical practice is a valuable asset for everyone to have.

Third, take a strong position of leading by example and clearly illustrating the role of ethical conduct in all your own business practices.

Your interns, who may be studying for and taking their licensing exams, may encounter a wide range of information regarding the exams on the Internet. Online information must be viewed critically. Certainly there are appropriate hints, tips and best practices for test-taking out there, but so is information that is squarely in the realm of cheating—and the line between what is acceptable and what is cheating is not always clear. By setting an example and having an expectation of ethical conduct in your practice, you help clarify and model ethical behavior for your employees.

Let your interns and other employees know that it's easier than ever to cut corners, but it's also easier than ever to get caught.



A handwritten signature in black ink, appearing to read "Alfred Vidaurri, Jr." with a stylized flourish at the end.

Alfred Vidaurri, Jr., AIA, AICP
Chair

For news, low-cost continuing education, and much more, visit us at

www.tbae.state.tx.us

Enforcement fines: How they're calculated

We work hard to make each issue of *Licensing News* informative, helpful, and even interesting. Despite all that, we have found from many anecdotal reports that one section of this newsletter remains far and away the most-read: the Disciplinary Action section. Indications are that the Disciplinary Action section is the first to be read and the most likely to be talked about around the water cooler in your office.

But have you ever wondered just how TBAE staff and Board Members determine the amount of fines and other related aspects of enforcement actions? Here's a glimpse of how a typical enforcement case wends through the process.

As a side note, TBAE doesn't publish names and information about enforcement cases out of pique or as a provocation. It's required by law, intended as a deterrent, and non-negotiable.

After a case is investigated thoroughly and all the facts are determined, staff consults the TBAE penalty matrix. This is a sort of checklist used to determine appropriate baseline penalties, and includes considerations like seriousness of the violation, economic harm, and disciplinary history of the respondent. Each of these topics requires staff to determine whether the misconduct was minor, moderate, or major; each of the three tiers is defined by law, and each carries a specific dollar range in penalties.

Those dollar ranges in penalty amounts recently were raised, it should be noted.

Once the enforcement case is pegged neatly into the penalty matrix, other factors are considered in determining the fine and other measures ultimately presented to the Board for consideration.

Mitigating factors can sometimes reduce a respondent's burden. Full cooperation, responsiveness, and honesty always help in this regard.

As you might expect, aggravating factors can increase a respondent's penalty. Often these factors include ignoring communications from the investigations or legal divisions (which can be a separate violation), dishonesty, and other forms of noncooperation.

Once the facts are determined, the penalty matrix is consulted, and other factors are considered, typically the respondent will agree to a certain penalty amount and sometimes other measures. This written, signed agreement is called an Agreed Order.

Finally, each case is presented to the full Board during a scheduled, public meeting. At that time, a Board attorney will lay out the case for the Board Members, who will then discuss the facts, ask questions of legal and investigations staff, and decide the case. Often the Board will accept the agreed-to settlement presented by staff, though in some cases some tweaking is in order as a result of Board discussion.

ARE scholarships

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by calling (512) 305-8544; by e-mail to gail.hile@tbae.state.tx.us, by writing to TBAE at P.O. Box 12337, Austin, Texas, 78711-2337, or by faxing a request to (512) 305-8900.

So who's eligible? Applicants must meet the following criteria:

- Have resided in Texas for at least eighteen months immediately preceding the date of application
- Have completed sections of the exam for which the combined fees total at least \$500
- Have been approved for examination by TBAE and paid all required fees

- Have not been disciplined or been the subject of a pending enforcement proceeding by an architectural registration board
- Meet established financial requirements. On December 1, 2006, the income maximums (adjusted gross income as shown on most recent income tax return) were raised to \$52,000 (filing status single) and \$75,000 (filing status married).
- Have paid for the ARE fees him- or herself; if your firm is paying or reimbursing you for ARE fees, obviously you're not eligible.

There's no way to get the \$500 unless you apply for it, so don't delay!



Continuing Education: Record-keeping, Audits, and Enforcement

Q: Do I need to send TBAE all my continuing education (CE) documentation?

A: Not at all. Just keep your documentation and have it ready if we request it. If you do get such a request, that means you've been selected for an audit. We understand nobody likes to be scrutinized by the IRS, TBAE, or your 6th grade science teacher. But if you've got your documentation in order, the process is quite painless.

Q: How does TBAE select registrants for auditing?

A: It's a completely random selection. A certain percentage of registrants are selected at random each year, so that means (in theory) you could go your entire career without an audit, or your number could be drawn half a dozen times.

Q: How long should I keep my CE documentation?

A: Keep your documents for five years; it's required by rule. TBAE won't audit an Active license more than five registration periods in the past. (A registration period is the same as your renewal period—remember, the period ends on the last day of your birth month!)

Q: What types of documentation should I keep?

A: First, keep your CEPH Log (available for download from the TBAE Web site). Frequently, CE providers will give you a course completion certificate indicating proof of attendance. Definitely keep those certificates, since they will have all the relevant information on them. It's also a great idea to retain a course program or outline, a sheet on which you took notes from the course, or anything else that serves to indicate you were present and paying attention. In the case of self-study (three of your required eight hours can be self-study), be sure to print out materials you found online, or photocopy any written materials, and keep those.

Q: What happens if I don't comply?

A: TBAE uses a penalty matrix to determine the severity of an infraction before determining an enforcement recommendation. (The full Board must approve all enforcement matters.) To get a sense of what a typical CE violation will cost a registrant, see the Disciplinary Actions section of each issue of this newsletter.

Q: TBAE publishes names and information about CE offenders?

A: It does, and the agency is actually required by law to do so. The logic behind it is that publication of enforcement and penalty information will serve as a deterrent.

REGISTRATION ROUNDUP

Birthday coming up? Don't forget to renew!

By now, hopefully all registrants know that their registration needs renewing by the end of the month in which they were born. But a reminder is always helpful, so here it is, bigger than Dallas:

Remember to renew your license by the end of your birth month!

You'll get a renewal reminder about two months before your registration expires—actually, you'll get two (a postcard and an email reminder). At that point, you're encouraged to log in to your account to renew—and if you run into a problem logging in, just call us! (See story below.)

Who ya gonna call?

Sooner or later, you'll need to call TBAE to check a fact, get some help, or clear up something or other you overheard in the hallway. In such a case, you know exactly what information you need, but perhaps not specifically who at TBAE to talk to.

Here's a handy guide to find the best information source at TBAE for the most common topics.

Exams, applications, scores, and internship:
Jackie Blackmore, **512-305-8527**

Reciprocity, out-of-state registration:
Nancy Castillo, **512-305-8526**

Continuing Education, audits:
Tony Whitt, **512-305-8528**

Does this project require an architect?
Jack Stamps, **512-305-6982**

Problems logging into your account: Anyone on staff!
(Just call the main number, **512.305.9000**; we're all trained to help get you logged in.)

Disciplinary Action

The following enforcement cases were decided at the July and October 2009 Board meetings. Each case is based on the applicable rule in effect at the time of the violation, and was considered by Enforcement staff and the Board in light of its unique facts. Individual rules may change between the time a violation occurs and the time the case is publicized. The rules provided on the TBAE Web site (www.tbae.state.tx.us) include the adoption and amendment date(s) for each rule.

Cases Involving Registrants:

W. W. Crochet, Sr. (Houston, Texas)

Mr. Crochet, an emeritus architect, was assessed an administrative penalty of \$610.00 for preparing architectural plans for an 80,000 square foot commercial warehouse. A structure of this size and character exceeds the permissible scope of practice for an emeritus architect.

Jackie Depew (Austin, Texas)

An administrative penalty of \$1,200.00 was assessed upon Ms. Depew for failing to act with reasonable care and competence and failing to apply the technical knowledge and skill expected of a reasonably prudent interior designer in the remodeling of a home. Ms. Depew and her firm, Depew Design Interiors, entered into a contract to provide interior design services at a single family dwelling and retained subcontractors to remove wallpaper, re-texture, paint and design an entertainment center. All work performed by the subcontractors was substandard and should have been prevented or corrected by Ms. Depew as part of the legal duties between her and the homeowner.

George Garcia (McAllen, Texas)

An administrative penalty of \$5,000.00 was assessed against Mr. Garcia for failing to submit architectural plans for accessibility review to the Texas Department of Licensing and Regulation no later than the fifth day after the plans were issued.

The Board noted that this was Mr. Garcia's third enforcement action and, as such, must be treated as a major violation of Board rules, warranting a \$5,000.00 penalty. He was also ordered to attend the Texas Accessibility Academy sponsored by TDLR within 90 days.

Randall Hickey (Houston, Texas)

An administrative penalty of \$500.00 was assessed against Mr. Hickey for his failure to sign, and to inscribe the date of signing, upon landscape architectural plans in violation of Board rules 1.101(1) and 1.103(a). He had placed his seal upon the documents but failed to sign and date them as required by Board rules.

Horace Hooper (Joshua, Texas)

Mr. Hooper, a person not registered to engage in the practice of architecture, was assessed an administrative penalty of \$1,750.00 for preparing architectural plans for a nonexempt structure—a 7,000 square foot church. The Board stressed the nonexempt nature of a church by stating that a church "is a nonexempt structure regardless of its size and must always have architectural plans and specifications prepared and issued by an architect..."

Leslie Karako (Ennis, Texas)

Mr. Karako, an architect in good standing with the Board, was assessed an administrative penalty of \$6,050.00 for sealing and issuing architectural plans prepared by a non-architect without having exercised effective 'supervision and control' over the work of the nonregistrant. As stated in earlier cases, the Board emphasized that the obligation of an architect to exercise 'supervision and control' over the work of a nonregistrant imposes a legal duty to maintain "an *effective* and *affirmative* relationship with the individual performing the work rather than a *passive* or *subordinate* relationship." The Board stressed that it 'is incumbent upon an architect to be able to show that he or she in fact engaged in an *active* and *participatory* fashion during *all phases* of the design process from the commencement of architectural drawings to final issuance." [Under rules recently adopted by the Board the failure to exercise requisite 'supervision and control' is presumed to be a major violation of Board rules which may result in the assessment of a \$5,000.00 per sheet penalty.]

Bennet Liu (Irving, Texas)

An administrative penalty in the amount of \$10,000.00 was assessed against Mr. Liu for attempting to bribe a building official with the City of Irving in 2000. Mr. Liu offered to pay \$1,000.00 to the building inspector in order to expedite the processing of building permits.

John-Loke Low (Coppell, Texas)

An administrative penalty of \$2,000.00 was assessed against Mr. Low for issuing architectural plans for the Mattie Nash Myrtle Davis Recreation Center in Dallas, Texas after his registration had expired for failing to timely submit renewal materials. Mr. Low subsequently renewed his registration and is in good standing with the Board.

John Paul Schoenfield (San Antonio, Texas)

An administrative penalty of \$700.00 was assessed against Mr. Schoenfield for his second failure to submit architectural plans for accessibility review to the Texas Department of Licensing and Regulation no later than the fifth day after issuance. He was also ordered to attend the Texas Accessibility Academy.

Cases Involving Non-Registrants:

In addition to the administrative penalty assessed in the case of Mr. Israel Pena and Mr. Stephen Brett Carter, below, the Board issued cease-and-desist ORDERS requiring each of them to refrain from practicing, or

offering to practice, architecture and to cease and desist from any further use of a form of the title “architect” to describe himself and/or his business in Texas until he becomes registered to practice architecture.

Stephen Brett Carter (Dallas, Texas)

An administrative penalty of \$20,000.00 was assessed for engaging in the unauthorized practice of architecture while employed at the design firm of Hellmuth Obata + Kassabaum, L.P. from 2003 through March 2007. The evidence established that during this period Mr. Carter misled his employer into believing that he had become registered, thereby resulting in his promotion to the position of Project Architect/Associate and then to Senior Associate. Mr. Carter was also ordered to attend supplemental continuing education programs and to work under the mentorship of an architect for four years commencing upon his registration as an architect in Texas.

Tammy Goldberg-Simi (Houston, Texas)

Ms. Goldberg-Simi, a person not registered to engage in the practice of architecture, was assessed an administrative penalty of \$2,000.00 for offering to provide architectural services in the design of a single family dwelling. The facts established that she executed a “Proposal for Architectural Services” to design a single family dwelling with the project owners. While a single family residence is “exempt” under the Architects’ Practice Act (meaning that anyone may design a single family residence as long as the person does not represent himself or herself to be an architect) the language of the “Proposal for Architectural Services” resulted in the project owners reasonably believing that Ms. Goldberg-Simi was an architect and, therefore, the limited exemption did not apply because of such representation.

The administrative penalty took into account the fact that Ms. Goldberg-Simi, after commencement of enforcement proceedings by the Board, paid the project owners restitution in excess of \$14,000.00 and agreed to state on any future “Proposals for Architectural Services” that she is not registered to engage in the practice of architecture.

Stephanie Moore Hager (Dallas, Texas)

Ms. Moore Hager, a person not registered to engage in the practice of architecture, was assessed an administrative penalty of \$1,200.00 for offering to provide “in house architectural services” on her firm’s Web site during the period September 11, 2008—September 23, 2008. The Board made clear that under appropriate circumstances a business entity, in addition an individual may be subject to the Board’s enforcement jurisdiction for violation of the Architects’ Practice Act and may be held liable for administrative penalties along with the person(s) who engaged in the conduct giving rise to the violation.

Israel Pena (Boerne, Texas)

An administrative penalty of \$2,000.00 was assessed for offering architectural services. The evidence established that from July 2, 2008 through August 6, 2008 Mr. Pena represented on his business Web site, AUTHENTIC CUSTOM HOMES, INC. BY ISRAEL PENNA & ASSOCIATES, the capacity to provide “design build” services which was described on the Web site as “the process that brings professional architectural design and custom construction together.” In addition, Mr. Pena published on his Web site the false statement that one of his employees “has almost ten years of CAD experience in commercial architecture.” Neither Mr. Pena, nor anyone in the firm, are registered as architects in Texas.

Larry Reven (Kingsland, Texas)

Mr. Reven, a person not registered to engage in the practice of architecture, was assessed an administrative penalty in the amount of \$3,000 for preparing architectural plans for a nonexempt structure—a church. In order to stress the fact that a church *always* requires the participation of an architect in its design, the Board noted that “[t]he architectural plans and specifications for the construction of a church, regardless of size, must always be prepared and issued by an architect or under the effective supervision and control of an architect.” A church, regardless of its size, is a non-exempt structure.

Continuing Education Violations:

The following registrants were found to be in violation of the Board’s mandatory continuing education requirements set forth in the rules regulating the practice of architecture (Rule 1.69), landscape architecture (Rule 3.69) and interior design (Rule 5.79), and/or for failing to comply with 22 Tex. ADMIN. CODE 1.171, 3.171, or 5.181 which requires a registrant to answer an inquiry from the Board within thirty days. Each Respondent was assessed an administrative penalty as indicated below.

Penalty amounts vary due to the specific circumstances of each case. The administrative penalty will be greater when a registrant falsely states compliance, since “lying about completing the requirements” is a separate offense from “not completing the requirements.”

Thomas E. Batenhorst (N. Richland Hills, TX) \$1,200.00

Steven Hardin Brodie (Sausalito, CA) \$1,200.00

Truth A. Camina (San Antonio, TX) \$1,200.00

Kent M. Farrar (Weatherford, TX) \$500.00

Lloyd A. Hart (Houston, TX) \$500.00

Bryan F. Horn (Sugar Land, TX) \$250.00

Victor Hugo Salas (San Antonio, TX) \$250.00

Richard S. Thompson (San Antonio, TX) \$1,200.00

Machelle Treanor (Dallas, TX) \$1,200.00



TEXAS Board of Architectural Examiners

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Change of Address

Please make sure that we have your current address so we may mail your renewal notice to you in a timely fashion.

You may update your own record by logging in to your online account on our Web site, www.tbae.state.tx.us. You can also mail or fax **512.305.8900** the address change along with your signature. We will send renewal reminders to registrants at the e-mail address on file with TBAE, so be sure to keep your valid and unique email address updated.

Next Board Meeting Schedule

The next Board meeting is scheduled for May 13-14, 2010. It will be held in the Hobby Building, 333 Guadalupe, Austin, Texas. The agenda for this meeting will be posted on TBAE's Web site approximately 7 to 10 days prior to the meeting. The following meetings scheduled for 2010 will take place in August and October.

EXECUTIVE DIRECTOR

Cathy L. Hendricks, RID

BOARD MEMBERS

Alfred Vidaurri Jr., AIA/AICP

Chair, Architect Member; Term ends 1/31/15

Lew Vassberg, RID/AAHID

Vice-Chair, Registered Interior Designer Member; Term ends 1/31/11

James S. Walker II, AIA

Secretary-Treasurer, Architect Member; Term ends 1/31/11

Chuck Anastos, AIA – Architect Member; Term ends 1/31/13

Corbett "Chase" Bearden – Public Member; Term ends 1/31/15

Rosemary A. Gammon, PAHM – Public Member; Term ends 1/31/11

H.L. Bert Mijares, AIA – Architect Member; Term ends 1/31/15

Brandon Pinson – Public Member; Term ends 1/31/13

Diane Steinbrueck, RLA – Landscape Architect Member; Term ends 1/31/15

It is the mission of the Texas Board of Architectural Examiners to ensure a safe built environment for Texas by regulating the professions of architecture, landscape architecture, and interior design.

www.tbae.state.tx.us