

LEMBAGA ARKITEK MALAYSIA

Tingkat 17, Ibu Pejabat JKR, Jalan Sultan Salahuddin, 50582 Kuala Lumpur
Peti Surat 12695, 50786 Kuala Lumpur, Tel : 03-26982878 / 26967087 Fax : 03-26936881
E-mel : info@lam.gov.my , Web : www.lam.gov.my

GENERAL CIRCULAR NO. 2/2007

GUIDELINES ON LETTER OF RELEASE

1. This General Circular replaces the current General Circular No. 1/1998 pertaining to the above Guidelines.
2. A Professional Architect on being approached or instructed to proceed with professional work for which he knows or can ascertain by making reasonable enquiries that another Professional Architect *has been engaged* by the registered proprietor ^(Note 1) and/or his bona-fide agent ^(Note 2) of the site or part of the site concerned to provide the full basic services or any part thereof as provided in the Architects (Scale of Minimum Fees) Rules 1986 shall, before proceeding with such work, communicate in writing with that Professional Architect and obtain a letter of release from him or obtain such letter through his prospective client, provided that this requirement may be waived at the discretion of the Board.

(Note 1 : "registered proprietor" shall mean individuals, group of individuals, trustees, agencies, statutory organisation, corporations or any other legal entities whose names and/or legal identities are endorsed on the title of the land or any other instruments which provide legal ownership to the land.)

(Note 2 : "bona fide agent" shall mean individuals, group of individuals, trustees, agencies, statutory organisations, corporations or any other legal entities who have been empowered by the "registered proprietor" to represent him in relation to the development of the land.)

3. The words "*has been engaged*" referred to in paragraph 2 above is as defined under paragraph 7 of the Conditions of Engagement of a Professional Architect under the Third Schedule (Part One) of the Architects Rules 1996 as follows :

"7(1) A Professional Architect shall obtain the written agreement of the client in respect of his remuneration for architectural consultancy services to be provided by him pursuant to subparagraph 1(1) ^(Note 3) within sixty days from the date the notification regarding such remuneration is duly served on the client;

- (2) Notwithstanding subparagraph (1) above, where the client's agreement in writing is not obtained within the period as stipulated in subparagraph (1) but the client agrees by his conduct to the conditions of engagement and the scale of professional fees and charges, the client shall for the purposes of subparagraph (1) be considered to have agreed to such conditions of engagement and scale of professional fees and charges."

(Note 3 : Subparagraph 1(1) of the Conditions of Engagement of a Professional Architect under the Third Schedule (Part One) of the Architects Rules 1996 stipulates the following : -

"A Professional Architect who carries on business as an architectural consultancy practice shall provide architectural consultancy services as described in the scope of services incorporated in the Memorandum of Agreement between the Professional Architect and the client").

4. Listed below are the circumstances when a Letter of Release is not required :

- 4.1 When a Professional Architect is approached by either the purchaser or lessee of a building where a Certificate of Fitness for Occupation or Certificate of Completion and Compliance has already been issued;
- 4.2 When the registered proprietor engages a Professional Architect for a mixed development as the overall planner only and the development would be implemented in phases where the registered proprietor wishes to engage other Professional Architects for the various phases ^(Note 4);

(Note 4 : In this case the Professional Architect should clarify his appointment at the inception to avoid disputes with the registered proprietor).

5. The Board may use its discretion to waive the requirement for a "Letter of Release". Listed below are examples of circumstances under which the Board may exercise such discretion :

- 5.1 When the first Professional Architect refuses to issue a Letter of Release after his engagement has been terminated by the client and all outstanding fees and disbursement settled in full;
- 5.2 When there is a dispute on the quantum of fees and disbursement payable to the Professional Architect and such dispute has been submitted for determination by mediation, arbitration or other means of dispute resolution.

The Board may, pursuant to paragraph (ea) of section 4(1) of the Architects Act 1967, act as a stakeholder for fees in dispute to be deposited with it until the award of the mediation, arbitration or any dispute resolution is made. The Board shall determine the quantum of fees to be deposited based on the documents submitted by both parties. Any benefits accrued from such deposit shall be retained by the Board;

- 5.3 When the first Professional Architect has commenced legal proceedings for the recovery of his fees or to contest the termination;
- 5.4 When the party who has commissioned the Professional Architect for a project refuses the Professional Architect's claim for fees in the event of termination and decided to proceed with legal action instead of mediation or arbitration and counterclaim against the Professional Architect;
- 5.5 When a Professional Architect has been appointed to only provide advisory services for the development of a site even when other Professional Architects may also have been appointed to provide similar services;

- 5.6 When the party who has commissioned the Professional Architect for a project has been declared insolvent by the court and placed under receivership ^(Note 5),

(Note 5 : This excludes projects that are completed under any form of rescue arrangements as may be arranged with approval of Bank Negara for which a Letter of Release will still be necessary).

- 5.7 When the Professional Architect has been engaged by the registered proprietor to provide basic services and turnkey contractors are invited to submit tenders for design and build including financing where several Professional Architects were engaged by the respective tenderers provided the first Professional Architect's services have been terminated and his fees fully paid;
- 5.8 When there is a change in ownership of the site or part of the site with a transfer of liability to the new registered proprietor;
- 5.9 When a Professional Architect engaged on a project has either been suspended or had his name removed from the Register of Professional Architects by the Board for any reason whatsoever.

Provided always that the fees and other disbursement that are due to the Professional Architect in respect of the project concerned, up to the time of his suspension or the removal of his name from the Register of Professional Architects, have been paid to the Professional Architect. In the event of a dispute arising on either the quantum or validity of the Professional Architect's claim, the matter shall be submitted to the Board for determination by mediation, arbitration or other means of dispute resolution;

- 5.10 When the Professional Architect has terminated his appointment with the client after construction work on the project has already started, has notified the approving authority and received the approving authority's agreement to his withdrawal as the submitting person;
- 5.11 When the Professional Architect dies or is incapacitated and his architectural consultancy practice has no legal capacity to carry out his services and responsibility.
6. The procedure that must be followed in meeting the requirements of these Guidelines shall comprise the following steps: -
- 6.1 The Professional Architect shall be required to take the initiative to write to the first Professional Architect to enquire if his services have been properly terminated and all outstanding fees settled. If this has been completed, the first Professional Architect shall be obliged to issue a Letter of Release to enable the second Professional Architect to accept the commission;
- 6.2 The first Professional Architect, upon receipt of the enquiry from the second Professional Architect, shall ensure that a reply be given promptly and in any case within fourteen (14) days of the date of receipt of the second Professional Architect's letter. The first Professional Architect shall not unreasonably withhold the issuance of the letter of release;

- 6.3 In the event the first Professional Architect claims that there are outstanding fees due to him, he must reply to the enquiry within fourteen (14) days of receipt of the letter, which shall be sent either by registered post or recorded delivery, and to advise the second Professional Architect on the position of his claims;
- 6.4 Upon receiving the first Professional Architect's reply, the second Professional Architect must advise the client on the relevant provisions of the Code of Professional Conduct and Conditions of Engagement as provided under the Second and Third Schedules of the Architects Rules 1996 respectively;
- 6.5 In the event a reply is not received by the second Professional Architect within the time limit provided in paragraph 6.3 above, the matter may be referred to the Board who shall have the sole discretion of waiving the necessity for a Letter of Release or stipulating conditions to be fulfilled prior to the waiver being granted.

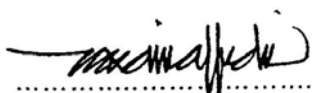
7. Ignorance of another Professional Architect's Involvement.

In circumstances where a Professional Architect, having accepted a commission in good faith and without knowing before hand that another Professional Architect had been involved in the project and when subsequently the involvement of another Professional Architect was made known to him, shall take the following steps :-

- (a) Immediately notify his client in writing of the situation and of his obligations under these Guidelines,
- (b) To comply with the procedure as stipulated under paragraph 6 above.

This General Circular shall come into effect on the date of this General Circular.

By Order of the Board of Architects Malaysia,



(Ar. Zuraina Leily Awalludin)
Registrar

21 May 2007.