



RIAS Client Advisory Service

Guidance Note on;

Architects' Certificates

WHAT DO THEY MEAN?

August 2003 revision
First Published: June 1995: Revised November 1998

Architects sign and issue a number of certificates for different purposes. These should not be confused. Other certificates, architects are closely involved with but do not issue. Unfortunately, many architect's clients, developers and their legal agents have scant understanding of the roles and obligations that architects are undertaking in preparation and issue of these certificates.

The following Notes seek to clarify matters.

There are three main types of certificate :-

- 1 Certificates issued under a Standard Form of Building Contract**
- 2 Certificates of Completion for compliance with the Building Standards Regulations**
- 3 Certificates for Building Societies and Lenders**



1 Certificates issued under a standard form of building contract

Architects frequently act as ‘Contract Administrators’ in the terms of standard forms of building Contract such those issued by the Joint Contracts Tribunal (JCT) or the Scottish Building Contact Committee (SBCC). When acting in this capacity, issue of various certificates is generally necessary.

These, typically, are a certification that work has been carried out to the satisfaction of the architect based on the, usually limited, inspections that he/she has made, and consequently payment is due by the developer to the contractor, under the terms of the contract. There are usually ‘Interim’ and ‘Final’ forms, as well as ‘Practical Completion’ and ‘Making Good Defects’. ‘Practical Completion’ signifies transfer of possession of the building to the ‘employer’. ‘Practical Completion’ and ‘Making Good Defects’, trigger release of retentions.

These certificates have been in use for many years and are generally well understood in the construction industry and by experienced clients. Because the contracts do not generally supply a proforma, architects usually use those produced by the RIBA.

The architect has a duty to act professionally and fairly in their issue, though clients often fail to understand that their architect may not be able to act in their ‘best interest’.

Conversely, contractors often allege that architects are acting less than fairly, to their client’s benefit.

Pressures on an architect’s professional independence come especially at handover, when the Certificate of Practical Completion is about due. Issue of the Final Certificate can also raise conflicts of interest.

Issue of these certificates, especially the Certificate of Practical Completion and Final Certificate, is a significant step in terms of transfer of liability for contractors, employers and architects and should not, consequently, be undertaken lightly.

Forms of Contract that require this procedure, are usually only considered economic for larger projects. Few small scale, domestic, projects are done in this way.

In ‘design build’ arrangements, where the architect is working directly for the contractor as a design only sub-contractor, certification of this nature by the architect should not arise. In these circumstances, the ‘employer’ should consider making alternative arrangements for certification of work done and payment due, perhaps by another architect.

The certifier should be particularly careful where their certificate, prepared under one contract, is being relied upon under another contract. This is often the case in commercial contracts where the architect’s Certificate of Practical Completion can be used to signify entry under a lease or where Interim payment Certificates can be used to release funds under a funding agreement or a forward purchase agreement. In such circumstances it may be appropriate for a separate certificate to be issued specifically for that purpose.

2 ‘Certificates of Completion’ for compliance with the Building Standards Regulations

It should be noted that a building which is the subject of a Building Warrant, should only be occupied if that building has been granted a Temporary Occupation Certificate or a Completion Certificate (often loosely known as a ‘habitation certificate’) by the Local Authority.



These, in Scotland, are standard forms prescribed by Act of Parliament that certify that the project has been completed in accordance with the Building Standards (Scotland) Regulations. Only the Local Authority issues them, not designers or constructors. Traditionally, architects or contractors would make application on a prescribed form for the Certificate to be issued, many regarding that form simply as an application for the Local Authority to inspect and issue its 'Certificate of Completion'. However, the terms of the application form are all encompassing, to the point where architects' and contractors' legal advisors and insurers advise that it may be reckless to sign.

Architects and other designers will have knowledge of what is approved in the Building Warrant but not necessarily what has been constructed, and vice versa for contractors.

Under the main standard forms of contract, such as those issued by JCT and SBCC, the contractor has an obligation to construct in accordance with the 'regulations' but many projects, especially the smaller ones, proceed without this type of contract or clause.

The RIAS advises that the developer (building owner) should sign these forms and that any one else should only do so on their behalf, provided that they are clearly authorised to do so as 'agent' for this purpose. The RIAS further recommends that architects should only sign on receipt of a declaration from all other designers and contractors that they have fulfilled their obligations for compliance with the Standards.

It should be noted that

- 1 Architects are recommended to check that their insurers will provide extension of Professional Indemnity cover, prior to provision of this service.
- 2 It should not be assumed that architects have a duty to sign this form or make this declaration as part of their normal service.
- 3 Specific agreement as to whether the architect should act as agent, should be made before commencement of the service, to include a suitable fee and expenses.

From 2005, new arrangements under the Building (Scotland) Act will apply, making it necessary for the 'developer', 'constructor/developer' or 'owner', as appropriate, to certify that the building complies with the building regulations. That certifier may enclose with their certificate, certificates from approved certifiers of construction, that shall be conclusive as to what they are certifying,

3 Certificates for Building Societies and Lenders

These are intended for reliance upon by the Banks and Building Societies when lending to small developers and self-builders, as evidence that the works have been satisfactorily completed before release of funds.

The RIAS has, for several years, published a standard form of 'Architects Certificate for Building Societies'

In the last year a new, similar, form has appeared, required by the Council of Mortgage Lenders (CML). The CML is the watchdog body for the mortgage industry so that it can be anticipated that their form will become the norm.

The new CML form extends the architect's liability to subsequent owners for a limited number of years.

Unfortunately, many legal and selling agents do not understand the limitations of these architects' certificates and assume that they are a form of defect guarantee or insurance relating to the builders work.



The RIAS has reproduced the CML form (by permission). It should be stressed that

- 1 The wording of this form is that of the Council of Mortgage Lenders (CML), extracted from the "CML Lenders Handbook for Solicitors and Independent Qualified Conveyancers Scotland (2002)"
- 2 Architects are recommended to check that their insurers will provide extension of Professional Indemnity cover in the terms of the form, prior to provision of the service.
- 3 This form should not be regarded as a substitute for defects liability insurance such as that provided by NHBC, Premier Guarantee, Zurich Insurance or similar. The RIAS recommends that developers make appropriate arrangements for that cover.
- 4 Developers, sellers and seller's agents should not promote this form as providing that cover.
- 5 This certificate is not a design certificate such as might be issued by a structural or other engineer
- 6 This certificate is not a certificate of work completed and due for payment as would be required under a standard form of construction contract
- 7 This is not a certificate of compliance with the Building Standards Regulations.
- 8 It should not be assumed that architects have a duty to sign this form as part of their normal service.
- 9 Provision of this form should be subject to specific agreement between architects and clients before commencement of the service.
- 10 A suitable fee and expenses should be agreed.

The RIAS is pleased to assist with any questions arising from this leaflet. Please contact us at 15 Rutland Square, Edinburgh EH1 2BE Tel 0131 229 7545 Fax 0131 228 2118

The RIAS also runs a Client Advisory Service which will assist in finding an architect.

The RIAS Consultancy is very experienced in assisting with appointments and dealing with the requirements of public bodies.

The forms are available from the RIAS Bookshops at

15 Rutland Square, Edinburgh EH1 2BE Tel 0131 229 7545 Fax 0131 228 2118
and

Mackintosh School of Architecture, Scott Street, Glasgow Tel 0141 332 9414 Fax 0141 332 9252