

California Architects Board: Enforcement Due Process

June 5, 2025

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DUE PROCESS What Does it Require?



Notice and Opportunity to be Heard

(Gov. Code § 11425.10.)

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The Basics: Who's Involved?

Parties

- ▶ Complainant
 - ▶ Executive Officer
 - ▶ Represented by the Attorney General's Office
- ▶ Respondent
 - ▶ Licensee
 - ▶ Applicant
 - ▶ Individual / business alleged to have engaged in unlicensed activity
 - ▶ May be represented by an attorney

Decision-Maker

- ▶ California Architects Board
 - ▶ In disputed cases, utilizes the proposed decision drafted by the Administrative Law Judge as a neutral party to rule on the admission and exclusion of evidence. The proposed decision shall be drafted in a form that may be adopted by the Board as the final decision in the case.

(Gov. Code §§ 11502, 11512, 11517.)

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Notice/Opportunity to be Heard

- ▶ The Executive Officer, aided by the Deputy Attorney General, files an accusation or statement of issues against a respondent
- ▶ The accusation or statement of issues and other required documents are served on the respondent to the address of record
- ▶ The respondent has 15 days to file a notice of defense after the date of service to request a hearing
 - ▶ Must be in writing and signed by (or on behalf of) the respondent and include the respondent's mailing address
 - ▶ A courtesy form is included, but no specific format is required
- ▶ If the respondent fails to file a notice of defense within 15 days, they have waived their right to a hearing
 - ▶ BUT - the Executive Officer and Board have the discretion to grant a hearing anyway

(Gov. Code §§ 11505, 11506.)

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How are Cases Resolved When a Formal Hearing is Requested?



- ▶ Stipulated Settlement
- ▶ Proposed Decision
- ▶ Default Decision

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Stipulated Settlement: "The Stip"



- ▶ A negotiated agreement to resolve a matter without going to hearing
- ▶ Board Staff and Deputy Attorney General (DAG) develop the proposed terms
- ▶ The respondent must agree to the terms and sign the proposed stipulation before the Board will consider it
- ▶ The Board may speak to/receive a supportive memo from the DAG about the proposed terms

(Gov. Code § 11415.60; standard terms and conditions of settlement.)

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Stipulated Settlement: Options

The Board considers the stipulated settlement on the matter in closed session. The Board may:

- ▶ **Adopt**
 - ▶ The signed stipulation will be sent back to the Board Staff for service
 - ▶ Board Staff adds the effective date based on date of service
- ▶ **Reject and set the matter for hearing**
 - ▶ The unsigned stipulation will be returned to Board Staff with a memo explaining why it was rejected
 - ▶ The Board may create proposed terms for a counter-offer
 - ▶ Board Staff works with the DAG to notify the respondent and reattempt negotiation or schedule the matter for hearing

(Gov Code § 11415.60, standard terms and conditions of settlement)

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Proposed Decision: Administrative Hearing

- ▶ Hearing is presided over by an Administrative Law Judge (ALJ), employed by the Office of Administrative Hearings (OAH)
- ▶ A Notice of Hearing is mailed to the respondent at least 10 days before the hearing
- ▶ Each party has the right to present evidence and examine and cross-examine witnesses
- ▶ Complainant: represented by the Attorney General's Office
- ▶ Respondent: may appear on their own or be represented by an attorney at their expense

(Gov. Code §§ 11425.10, 11425.50, 11509, 11512, 11513, 11517.)

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Proposed Decision Disciplinary Case (Accusation)

- ▶ ALJ reviews the law and evidence
- ▶ ALJ determines if the Board met clear and convincing evidence (high probability of truth) that the Architects Practice Act was violated.
- ▶ Proposes level of discipline to be imposed by the Board based on the Disciplinary Guidelines
- ▶ May include cost recovery for reasonable costs of investigation and enforcement of the case based on actual costs incurred by the Board and factors to determine costs are reasonable for the case

Licensing Case (Statement of Issues)

- ▶ Proposes the granting or denial of an initial license
- ▶ Respondent has burden to prove the license should be issued by preponderance of the evidence "more likely than not"
- ▶ Initial license may be granted, immediately revoked with revocation stayed, and placed on probation with terms and conditions
- ▶ Disciplinary Guidelines
- ▶ Cost recovery not available

(Gov. Code §§ 11512, 11517; Bus. & Prof. Code § 125.3; *Zuckerman v. State Bd. Of Chiropractic* (2002) 29 Cal.4th 32)

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Proposed Decision: Five Options

- ▶ **100 days** from the date the Board receives the Proposed Decision, the Board **must**:
 - ▶ **Adopt** the Proposed Decision in its entirety;
 - ▶ **Make minor or technical changes** to the Proposed Decision;
 - ▶ **Mitigate** (reduce) the proposed penalty and adopt the rest of the Proposed Decision.
 - ▶ **Reject** (non-adopt) the Proposed Decision and decide the case on the record, including the transcripts and exhibits introduced by both parties at the hearing. The parties must be given the opportunity to present either oral or written argument;
 - ▶ **Reject and Remand** (return) the Proposed Decision to the ALJ to take additional evidence;

(Gov. Code § 11517.)

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Default Decision

- ▶ Issued when the respondent:
 - ▶ Fails to file a notice of defense after proper service and opportunity to be heard; OR
 - ▶ Fails to appear at the hearing after requesting a formal hearing
- ▶ The Board may then take action without further notice to the respondent, specifically to issue a default decision closing the case

(Gov. Code § 11520.)

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Petitions After a Decision is Issued



- ▶ Petition to Vacate Default Decision
- ▶ Petition for Reconsideration
- ▶ Petition for Modification or Early Termination of Probation
- ▶ Petition for Reinstatement

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Petitions

- ▶ **Petition to Vacate Default Decision**
 - ▶ Must show good cause to reopen the case
- ▶ **Petition for Reconsideration**
 - ▶ Applicant or licensee submits a request to have the Board reconsider its decision
- ▶ **Petition for Modification or Termination of Penalty**
 - ▶ License was put on probation and licensee believes there is good cause to request a change in the terms.
- ▶ **Petition for Reinstatement**
 - ▶ License was previously revoked or suspended and petitioner is seeking to have license reinstated

(Gov. Code §§ 11520, 11521, 11522.)

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Petition to Vacate Default Decision

- ▶ Default Decision issued and served on the respondent
- ▶ Within **7 days** after the date of service, the respondent may request, in writing, that the Default Decision be "vacated"
- ▶ No particular form is required
- ▶ The Board has the discretion to vacate the decision and grant a hearing for "good cause"

"Good cause" includes, but is not limited to:

- ▶ Respondent did not receive the accusation
- ▶ Mistake, inadvertence, surprise, excusable neglect

(Gov. Code § 11520.)

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Petition for Reconsideration*

- ▶ The Board, Respondent (licensee), or Complainant (Executive Officer) can request a reconsideration of the Decision.
- ▶ At the Board's discretion to grant or deny.
- ▶ Usually based on a change in circumstances or additional information that if known, the Board would have issued a different decision.
- ▶ No specific form is required.
- ▶ The power to order a reconsideration **expires:**
 - ▶ 30 days after the Decision was served on the respondent **OR**
 - ▶ On the effective date of the Decision **OR**
 - ▶ At the end of a limited stay granted to allow a party to file the petition for the sole purpose of considering a petition that has been filed.

(Gov. Code § 11521.)

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Petitions to Modify/Early Termination of Probation or Reinstatement

- ▶ After no less than one year after a decision by the Board is issued, a Respondent may petition for modification of the decision terms or to be reinstated if the license was revoked.
- ▶ Respondent bears the burden of proof that the Board should amend its order or the license should be reinstated.
- ▶ The Board may review the petition orally or in writing, with argument submitted by the Deputy Attorney General.

(Gov. Code § 11522)

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Questions?

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