

# Bulletin 42: Bankruptcy

January 2011

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## **!** IMPORTANT:

The AIBC transitioned to the Professional Governance Act on February 10, 2023. **This document has not yet been updated to reflect the new legislation and updated Bylaws.** Although there may be outdated terms and references in this document, note that the **general concepts and requirements remain the same**. If you have any concerns or questions, please contact [practiceadvice@aicb.ca](mailto:practiceadvice@aicb.ca). For more information about the transition, go to [aicb.ca/PGA](http://aicb.ca/PGA).

## **1.0 Overview**

1.1 By virtue of the *Architects Act*, AIBC Bylaws and the *Code of Ethics and Professional Conduct*, the AIBC's regulatory mandate to protect the public interest extends to matters involving a member's personal or firm bankruptcy. The AIBC recognizes that bankruptcy events happen in every business and walk of life, can be triggered by events that may be beyond an architect's control and are not necessarily a professional conduct matter. However, the AIBC must make reasonable inquiries to help ensure that the public interest is protected, and that the institute's Bylaws and council rules have been upheld.

## **2.0 History**

2.1 Further to its rule-making authority under Section 5 of the *Architects Act*, AIBC Council passed a resolution in 1986 requiring members in bankruptcy to inform the institute, undergo an 'investigation' and, in the case of removal from the register as a result of non-payment of annual fees that may have been a result of bankruptcy, to undergo an examination prior to reinstatement. These rules were published in previous iterations of Bulletin 42, last updated in December 2000.

2.2 By resolution dated January 11, 2011, council has updated the rules as follows:

- A. Council requires any AIBC member, associate, licensee or firm ("registrant") that has filed for assignment or been petitioned into bankruptcy or receivership (including any filing under the *Companies' Creditors Arrangement Act*), to so advise the institute's Director of Professional Conduct within 30 days of the filing or petition and to undergo an investigation by the Institute to ascertain the circumstances surrounding the financial problems.
- B. Upon receipt of this notification, the Director of Professional Conduct will deliver an information request letter to the registrant, with a reasonable deadline for response. The information request letter will ask the registrant to provide relevant information, including:
  - a description of firm (if any) and practice;
  - list of staff/contract staff and monies owed to them;

- list and description of current commissions/projects, including whether any Letters of Assurance have been issued;
  - statement of intention whether architectural services will continue to be provided or how transition of services to another firm or individual will take place;
  - list of all subconsultants engaged, including history of amounts owed and amounts received for payment to subconsultants;
  - statement of amounts owed to third-party service providers or suppliers;
  - statement of amounts held in trust and of any retainer amounts received for services not yet rendered;
  - description of how the individual and/or firm intends to maintain the standard of reasonable care and competence expected of B.C. architects and associates; and
  - other relevant information related to protecting the public interest and helping assess compliance with the *Architects Act*, AIBC Bylaws and Council Rulings.
- C. The registrant's response to the information request letter will be provided to the AIBC's Investigations Committee for review. Based on this information, the Investigations Committee will determine whether it is necessary to initiate a formal complaint and investigation pursuant to Rule 3.2 of the AIBC's *Rules for the Professional Conduct Process*. If a complaint is initiated, it will follow the *Rules* and processes already in place. If no complaint is commenced, the member will be asked to provide follow-up information to the AIBC, such as the trustee's report(s), to ensure that any material changes over the course of the bankruptcy are identified. Non-compliance with an information request and any follow-up by the AIBC may constitute unprofessional conduct.
- D. Council requires any former member who was suspended, removed from the AIBC register or otherwise 'defaulted' under the non-payment of annual fees provisions of Section 73 of the *Architects Act*, and in which respect bankruptcy is understood to have been a factor in such removal, to provide satisfactory evidence of the circumstances surrounding the financial problems as a pre-condition to reinstatement. This information will be sought through an investigation by the AIBC as described in these rules. Council may require the member to pass an examination before reinstatement as prescribed in the *Architects Act*.

### **3.0 Statutory and Bylaw Authority**

3.1 Bylaws 34.4, 34.5 and 34.15; and, in regard to reinstatement, Section 74 of the *Architects Act*, state as follows:

34.4 An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

34.5 An architect shall conduct the architect's affairs in a professional manner and refrain from any act which would reflect unfavourably on the profession as a whole.

34.15 An architect receiving monies for services provided by others shall not use such monies for the architect's own purposes, and shall distribute them promptly to those so entitled.

74 The Council may require a person whose name has been removed from the register for failure to pay annual fees to pass an examination before reinstatement.

Please refer also to AIBC Bulletin 2: "Reinstatement of Members" regarding reinstatement requirements, generally.

### **Bulletin Amendment History (1994 – 2018)**

2023: February. Document updated with PGA transition disclaimer, stating that some language may not reflect the new legislations and updated Bylaws. Although there may be outdated terms and references, the general concepts and requirements remain the same.

2018: July. No changes to bulletin content. New template applied.

2011: Second Edition. Detail on the rationale for the reporting and investigating of bankruptcy matters and revised council rules to assist members, associates and firms in understanding their responsibilities in bankruptcy situations.

1994: First Edition. Updated in December 2000.

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