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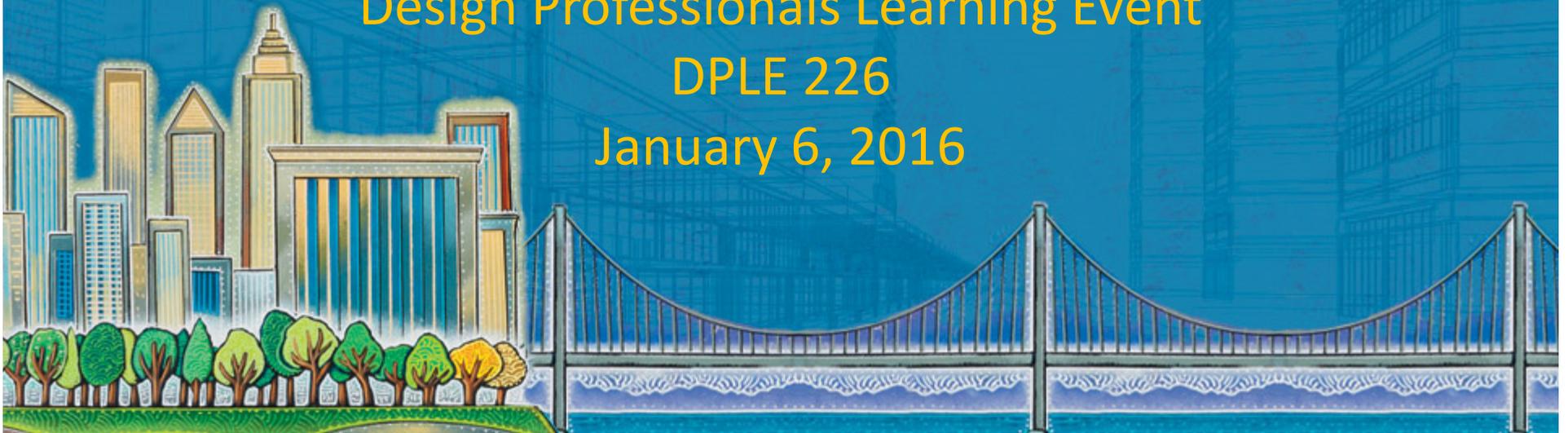
DIFFERENT WORKS

Building Codes: Gravity Is The Only Law That Can Be Certified!

RLI Design Professionals
Design Professionals Learning Event

DPLE 226

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With Special Thanks to

Kent Stair

Carlock, Copeland & Stair, LLP





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■ Course Description

Design Professionals are often asked— by proposed contracts, lender requested documents, or in other ways— to certify that their designs will, or do, comply with all building codes and other applicable laws.

This course will address the reasons why certifications of those types should never be given; the ways in which such requests can be reasonably resisted; and the alternative words that can be used to fulfill the fair expectations of the requesting parties.



■ Learning Objectives

Participants will learn, or better understand:

- The nature of building codes as laws that are subject to a variety of interpretations;
- The uncertainties of the legal process by which differing interpretations of law are resolved;
- Specific strategies for reasonably and successfully explaining to Owners, Lenders or others why compliance with codes cannot be certified;
- Alternative language that can be prudently proposed and used to replace the problematic certifications that have been requested.



■ If I see you on a snowmobile, what are two things I might say?



■ I might say...

- To the best of my knowledge, information and belief, you're nuts.
- I'll guarantee that if you're on a mountain trail, you're eventually going down.



- How can I make that guarantee?

Confidence in the law of gravity!

Do I have that much confidence in any other law?



...You kidding?!



■ Why should my concern over the law be your concern in the design professions?

Because bad things can happen to people who don't think about what they're doing.



Image source: [Wordpress.com](https://www.wordpress.com)

■ Rule #1 of Contracts

Don't execute a contract under which you execute yourself. In other words, watch out for the “red flag words” throughout this presentation!



■ Owner's Proposed Contract

- Consultant warrants that the designs and specifications it has prepared or has caused to be prepared shall meet all applicable statutes, codes, regulations and ordinances,
- and Consultant shall indemnify Owner from claims and costs arising out of errors and omissions relating to such statutes, codes, regulations and ordinances in effect at the time of acceptance by the Owner of the final design and specifications.



■ Rule #1 of Certifications



Don't say or do something stupid just because someone asks you to do so.



■ Lender's Proposed Certificate

With the understanding that **Lender is relying upon this Certificate** the undersigned architectural firm ("Architect"), hereby **certifies** to Lender and such other parties as follows:



■ Lender's Proposed Certificate

The Plans comply with all applicable federal, state and municipal laws, ordinances, rules and regulations of every nature and description, including, without limitation, zoning, building and fire codes and ordinances, and subdivision control and environmental laws, rules and regulations, including, without limitation, the Federal Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and the Americans With Disabilities Act, as amended.



■ Lender's Proposed Certificate

The Project, if constructed substantially in accordance with the Plans, will likewise comply with all laws, ordinances, rules and regulations of every nature and description relating to the construction and intended use thereof, and will comply with **all** covenants, conditions, easements and restrictions to which the Project is subject.



■ Why can't you violate those rules??



Sadly, you can!



■ Why shouldn't you violate those rules??



■ How can you avoid violating those rules??

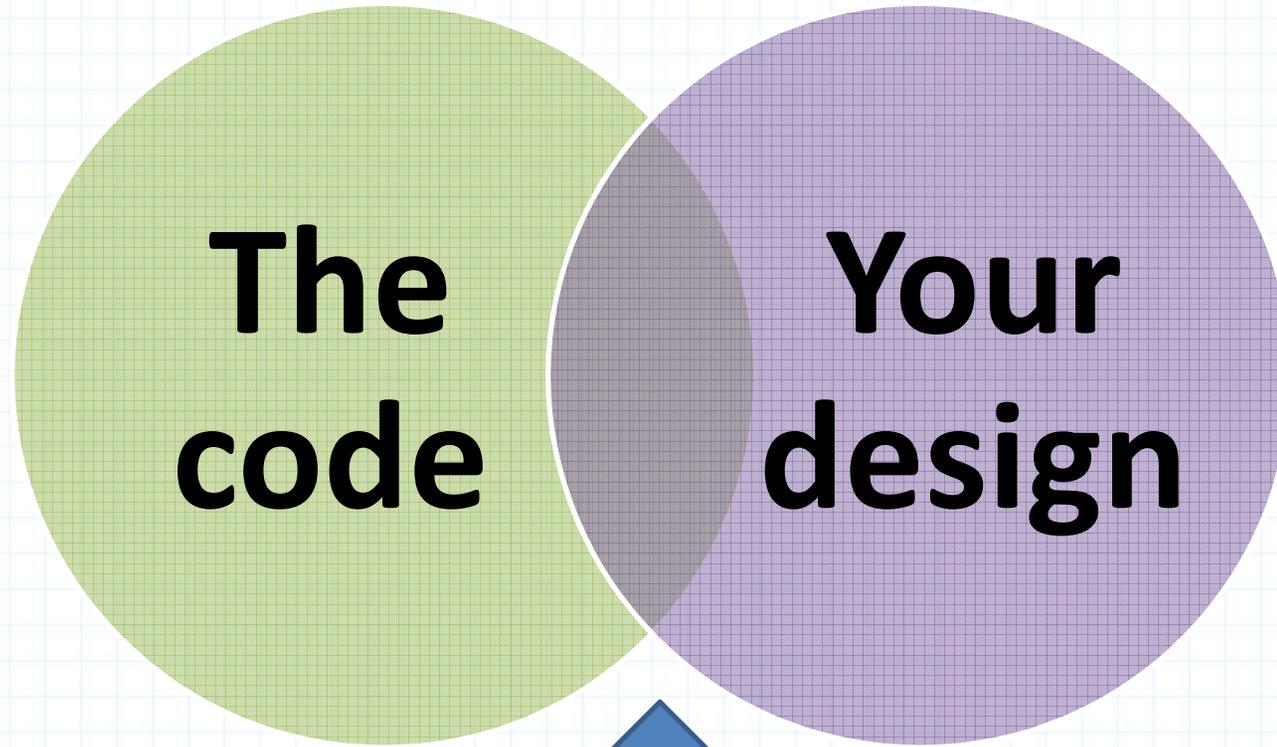
By having enough understanding of the law to understand why you can't certify compliance with a law.



- Isn't the Code the Code?



- What is subject to interpretation?



Your design in reference to the code





**Who might ultimately
play some role
in the outcome?**



■ Drafters of Codes and Laws...and...

Design
professionals

Owners

Code
Officials

Lawyers

Expert
witnesses



■ Judges, Juries, Arbitrators, or Mediators



Is this all academic nonsense, or does it ever really turn into anything?



- In other words...

**What is the legal process by which
this cast determines
“code compliance”?**



■ Let's talk about:

School Board of Broward County, Florida

v.

Pierce Goodwin Alexander & Linville

137 So.3d 1059 (2014)

2.1.3 As to all services provided to this Agreement, the Project Consultant [the architect] shall furnish services by experienced personnel and under the supervision of experienced professionals licensed in Florida and shall exercise a degree of care and diligence in the performance of these services in accordance with the customary professional standards currently practiced by firms in Florida *and in compliance with any and all applicable codes, laws, ordinances, etc....*



■ Here's more about:

School Board of Broward County, Florida

v.

Pierce Goodwin Alexander & Linville

137 So.3d 1059 (2014)

2.1.4 As to any drawings, plans, specifications or other documents or materials provided or prepared by Project Consultant or its Sub-Consultants, the Project Consultant agrees same:

...

.4 Comply with all applicable laws, statutes, rules and regulations, building codes and Owner's [the school board] guidelines and regulations, which apply to or govern the Project ...



■ And a little more about:

School Board of Broward County, Florida

v.

Pierce Goodwin Alexander & Linville

137 So.3d 1059 (2014)

2.1.5 All professional design services and associated products or instruments of those services provided by the Project Consultant shall:
.1 Be in accordance with all applicable codes, laws, and regulations of any governmental entity, including, but not limited to, [list of regulatory entities] with the Owner serving as the interpreter of the intent and meaning of ... any other applicable code[.] (emphasis added).





**Is it just Building Codes,
or do the Lenders
want you to say more
(and more and more)??**



■ Lender's Proposed Certificate

The Site is zoned _____, and **such zoning classification permits** the construction and intended use of the Project as contemplated in the Plans. **We have examined all relevant laws, ordinances, rules, regulations and restrictions and have determined that** the following restrictions and requirements are applicable to the Project:



■ Lender's Proposed Certificate

We are familiar with the on-the-ground conditions of the Site, and the **Site conditions are such that all provisions of law relating to the filling, dredging, excavation or other usage of lands classified as wetlands or lands which are subject to periodic flooding or have thereon standing or moving bodies of water are not applicable to the construction of the Project.**



■ Lender's Proposed Certificate

Satisfactory methods of access to and egress from the Project and adjoining or nearby public ways are available, sufficient to meet all applicable requirements of public authorities.



■ Lender's Proposed Certificate

The Project includes on-site parking sufficient to satisfy all zoning and other governmental requirements ...



■ Lender's Proposed Certificate

Sanitary public water supply, storm sewer facilities, sanitary sewer facilities, natural gas, electricity, telephone, and **all other required utilities are available, sufficient to meet all applicable requirements of public authorities, at or within the lot lines of the Site, without the necessity of any off-site improvements, or any on-site improvements other than as shown in the Plans, and unconditional permission has been obtained to tie the Project into each of such services and facilities.**



■ Lender's Proposed Certificate

All permits, licenses, certificates, consents and approvals (including but not limited to Borrower's development plan for the Project) required in connection with the commencement of construction of the Project, including without limitation curb-cut permits, building permits and permits relating to utilities, have been duly, validly and unconditionally issued by the appropriate governmental agencies (federal, state and local) and private authorities and agencies.



■ Lender's Proposed Certificate

There are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, codes, rules, permits, certificates or agreements for or relating to the Project.



- Is “NO” a proper response??



■ Are there Guidelines?

What should you say and do when Owners or Lenders want you to say and do more than you can and should, as it relates to compliance with codes and other laws?



■ Re Contracts:

- Always tie your commitment to the exercise of the standard of care
- Never certify, warrant or otherwise promise
- Never indemnify against finding of non-compliance
- If pressed, explain the inability to certify or warrant, and explain coverage issues
- Seek legal counsel if/as necessary



■ Acceptable Contract:

“Consultant will exercise due care to design the Project to meet the requirements of applicable statutes, codes, and other laws.”



■ Re Lender's Certificates:

- Always remember you have significant leeway in what you do and do not sign
- Never be pressured by untimely or overbearing requests
- Give only opinions or statements based on knowledge, information or belief
- Give the same explanations for refusals to “certify” compliance with law or other legal conclusions
- Use counsel if/as necessary



■ Lender's Proposed Certificate

“... the undersigned architectural firm ("Architect"), hereby states as follows:



■ Lender's Proposed Certificate

To the best of the Architect's knowledge, information and belief, the Plans comply with appropriate interpretations of applicable laws.





Thank you for your time!

QUESTIONS??

This concludes The American Institute of Architects
Continuing Education Systems Program

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Alayne McDonald, Client Risk Management Coordinator
Alayne.McDonald@rlicorp.com

Barbara Sable, AVP, Professional Enterprise Risk Solutions
Barbara.Sable@rlicorp.com

