

PUBLIC
LAW

New rules on professional qualifications and abilities required from project authors with regard to urban operations that also apply to public works.

THE NEW LEGAL REGIME OF PROFESSIONAL QUALIFICATION FOR WORKING UP PROJECTS, SUPERVISE AND EXECUTE CONSTRUCTION WORKS

On July 3rd, Law number 31/2009 was published, setting out the new legal regime that defines the qualifications that architectural and engineering project authors must possess, in order to elaborate those projects, as well as the qualifications required to supervise and direct construction works.

The entry into force of the new legislation will only occur on **November, 1st 2009**, with the exception of the regulation regarding the protocols that must be signed between the public entities representative of the architects, engineers and other technicians, which will define and govern the specific qualifications that are deemed as adequate to the elaboration of projects, supervision and direction of a construction work.

This new Law regulates the professional qualifications and abilities that are required **from project authors** with regard to **urban operations, including allotment procedures**. These regulations also apply to **public works**, as defined in our Code for Public Contracts (Decree-Law number 18/2008, dated January 29th).

On the other hand, this Law also regulates the qualifications required for **project coordinators and supervision technicians**, whether they are supervising a public work or a private one. Albeit the fact that these types of technicians were referred in the general legislation, truth is that, before this Law, their role and legal regime was not yet foreseen.

In what concerns the general qualification for the elaboration of a construction works project, some innovations are introduced with Law 31/2009. For instance:

- the rule that in order to develop architectural or engineering projects, you must have a “project team”, consisting of an ensemble of architects, landscape architects, engineers, technical engineers, without prejudice of the intervention of other certified technicians, in construction works related to conservation of buildings and interior alteration works, exempted from any legal procedure, according to the Legal Regime for Construction and Land Development (Decree-Law number 555/99, dated December 16th);
- the demand for **written contract**, under the penalty of nullity, for the providing of services regarding the preparation of projects;
- the definition of “project coordinator” and its qualifications, as the technician who has the responsibility to guarantee the compatibility the various engineering and

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architectural projects. The project coordinator must be a part of the “project team” in the elaboration of any projects that will undergo licensing or prior communication procedures, under the terms of Decree-Law number 555/99, as well as public contract procedure;

- the general provision that project authors must have the necessary skills, according to the specific project, stating that:
 - a) architectural projects are developed by architects with valid registry with the public entity representative of the architects;
 - b) landscape projects are elaborated by landscape architects with valid registry with their public representative association;
 - c) engineering projects are elaborated by engineers or technical engineers who have the necessary capacity according to the nature, complexity and dimension of the construction work at hand. Their capacity is accredited by means of protocol established by the public entities representative of the engineers and technical engineers.
- the stipulation of a set of duties for project authors, namely the obligation to provide technical assistance to the construction work.

Obligation for every project author, construction work supervisor or director, to have an insurance contract.

In addition, one other significant provision of Law 31/2009 is the **liability to which technicians may be subjected should they cause damages**, by violating contractual or any legal duties with actions or omissions, to any third parties that have acquired any kind of rights over the projects, construction works or buildings.

We point out that this legal diploma also stipulates the liability, regardless of fault, for damages caused by representatives of the technicians, whether they are legal representatives, employees, agents or any other person which collaborated with them in their work.

Another significant provision is the **obligation for every project author, construction work supervisor or director, to have an insurance contract** that covers the above mentioned liability, i.e., the liability arising from damages caused by any action or inaction, during the provided service.

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