

**CALIFORNIA CONTRACTORS' LICENSING REQUIREMENTS,
AND THE ADVERSE EFFECTS TO CONTRACTORS FROM THE FAILURE TO BE "DULY LICENSED"
AS REQUIRED BY THE CALIFORNIA CONTRACTOR'S STATE LICENSE LAW**

California law requires that all persons who act as a "contractor" on behalf of a property owner or other person and who performs work or installs fixtures on a property other than for hourly wages must be "duly licensed" as a contractor by the Contractors State License Board,

The License Law requires contractors to establish experience and take a test in the particular speciality category for which they seek a license. They are required to also have a License Bond to protect their customers, and comply with numerous other statutes and regulations.

Corporations or other business entities must have a "responsible" officer or employee who has a license, and must meet other requirements

Who is a "contractor" - and thus the kinds of persons required to have a contractor's license - is set forth in Bur. & Prof. Code §§ 7026 and 7026.1:

7026. "Contractor," for the purposes of this chapter, is synonymous with "builder" and, within the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project development or improvement herein described of any material or article of merchandise. "Contractor" includes subcontractor and specialty contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or any public conveyance. (Emphasis added)

7026.1. The term "contractor" includes all of the following:

- (a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.
- (b) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid, to construct any building or home improvement project, or part thereof.
- (c) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter.. . . .

The license requirements protect the public from incompetent and unscrupulous persons:

“The[se] licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]” (Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal.3d 988, 995 [277 Cal. Rptr. 517, 803 P.2d 370] (Hydrotech); see also Construction Financial v. Perlite Plastering Co. (1997) 53 Cal.App.4th 170, 176–177 [61 Cal. Rptr. 2d 574] (Construction Financial).) It has long been established that the provisions of section 7031 represent “a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties.” (Lewis & Queen v. N. M. Ball Sons (1957) 48 Cal.2d 141, 151 [308 P.2d 713] (Lewis & Queen).) Section 7031 applies “despite injustice to the unlicensed contractor.” (Hydrotech, supra, at p. 995.)” (Emphasis added)

Goldstein v. Barak Construction (2008) 164 Cal. App. 4th 845, 854.

The effect of not having a proper general or specialty license are often drastic, potentially disastrous .for the unlicensed builder!

A. Contractors Who are Not Properly Licensed Cannot Sue to Get Paid.

Bus & Prof Code § 7031 provides in relevant part that:

“(a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a *duly licensed* contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person,

except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.” (Italics and emphasis added)

These laws help encourage contractors to get licensed:

“Regardless of the equities, section 7031 bars all actions, however they are characterized, which effectively seek "compensation" for illegal unlicensed contract work. (Lewis & Queen, supra, 48 Cal.2d at pp. 150-152.) Thus, an unlicensed contractor cannot recover either for the agreed contract price or for the reasonable value of labor and materials. (See Davis Co. v. Superior Court (1969) 1 Cal.App.3d 156, 159 [81 Cal.Rptr. 453]; Grant v. Weatherholt (1954) 123 Cal.App.2d 34, 41-42 [266 P.2d 185].) The statutory prohibition operates even where the person for whom the work was performed knew the contractor was unlicensed. (Pickens, supra, 269 Cal.App.2d at p. 302; Cash v. Blackett (1948) 87 Cal.App.2d 233 [196 P.2d 585].)

“It follows that an unlicensed contractor may not circumvent the clear provisions and purposes of section 7031 simply by alleging that when the illegal contract was made, the other party had no intention of performing. Section 7031 places the risk of such bad faith squarely on the unlicensed contractor's shoulders. "Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place. [Citations.]” (Lewis & Queen, supra, 48 Cal.2d at p. 150, italics added” (Emphasis added)

Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Cal.3d 988, 997-998.

In *Wilson v. Steele* (1989) 211 Cal.App.3d 1053 an owner hired an unlicensed contractor to remodel her home, and the unlicensed contractor required the homeowner to execute a promissory note and deed of trust to secure payment to him for the the unlicensed contractor’s work.

He then sold the note and deed of trust to a third party, who attempted to enforce them.

The court held the note and deed of trust were void as a matter of public policy, as their object was to secure payment to an unlicensed contractor for his work.

The court also held (at 1063-1064) that “if the loan were for construction, the licensing/illegality defense would bar the Steeles from enforcing the [note and deed of trust] irrespective of their status as holders in due course” (Emphasis added) See also, *Appel v. Morford* (1943) 62 Cal.App.2d 36, .

Were the law otherwise, every unlicensed contractor could evade the law and get paid simply by forcing his homeowners to sign a promissory note, or some other subterfuge.

B. Contractors who are Not Properly Licensed can be Ordered to Refund Everything That They Were Paid by the Other Party.

The same Bus & Prof Code § 7031 mentioned above provides in relevant part that:

“(b) Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract. . . .” (Italics and emphasis added)

Even if the work of the unlicensed contractor was perfect, and the other party is perfectly happy with the work done and is using it, and even if the property owner knew that person was unlicensed before the work started that the builder was not licensed, the unlicensed contractor may not sue to recover the amount owed on the contract, and can be forced to pay back to the owner every single penny that it was paid for the work..

“It has long been established that the provisions of section 7031 represent “a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties.” (Lewis & Queen v. N. M. Ball Sons (1957) 48 Cal.2d 141, 151 [308 P.2d 713] (Lewis & Queen).) Section 7031 applies “despite injustice to the unlicensed contractor.” (Hydrotech, supra, at p. 995.)” (Emphasis added)

Goldstein v. Barak Construction (2008) 164 Cal. App. 4th 845, 854.

C. The Licenses of Licensed Contractors who Fail to Buy and Maintain Workers Compensation Insurance for All Their Employees are Automatically Suspended By Operation of Law, and The Contractor Is Considered Not Licensed.

Even if a contractor may have been properly issued or nominally holds an otherwise valid contractors license, if the license is automatically suspended (such as under Bus & Prof. Code §§ 7068.2 or 7125.2,) then the contractor is no longer "duly licensed" "during the performance" of a job, within the meaning of Bus. & Prof. Code § 7031. Likewise, an otherwise validly licensed speciality or general contractor who acts outside the scope of his licensed speciality is also not "duly licensed" under §7031. *Buzgheia v. Leasco Sierra Grove* (1997) 60 Cal. App. 4th 374, 386-387.

The Contractors State License Law (Bus & Prof Code § 7000 et seq), specifically Bus & Prof Code § 7125, mandate that a licensed contractor must procure worker's compensation insurance for all persons who perform work for the contractor, including employees, as well as purported "independent contractors" or "subcontractors" who don't themselves hold a valid Contractors License.

“(a) Except as provided in subdivision (b), the board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance. . . .

(b) This section does not apply to an applicant or licensee who meets both of the following conditions:

(1) Has no employees provided that he or she files a statement with the board on a form prescribed by the registrar prior to the issuance, reinstatement, reactivation, or continued maintenance of a license, certifying that he or she does not employ any person in any manner so as to become subject to the workers' compensation laws of California or is not otherwise required to provide for workers' compensation insurance coverage under California law.

(2) Does not hold a C-39 license “ (emphasis added)

Corporations obviously cannot construct buildings without employees or licensed subcontractors, so it must have insurance for its own workers.

Cal Bus & Prof Code § 7125.2, as revised in 2002, provides that:

The failure of a licensee to obtain or maintain workers' compensation insurance coverage, if required under this chapter, shall result in the automatic suspension of the license by operation of law in accordance with the provisions of this section, . . .

(a) The license suspension imposed by this section is effective upon the earlier of either of the following:

(1) On the date that the relevant workers' compensation insurance coverage lapses.

(2) On the date that workers' compensation coverage is required to be obtained.

(emphasis added)

Under this statute, even where a contractor had workers compensation insurance but just significantly under-reported his payroll in his workers' compensation reports., his license would still be suspended

In the case of *Wright v. Issak* , for example, the Court of Appeal recently upheld a trial court finding that an otherwise validly licensed contractor was not a duly licensed contractor because his license had been automatically suspended by operation of Bus. & Prof. Code, § 7125.2, for his failure to “obtain and maintain” workers' compensation insurance. *Wright v. Issak*, supra, 149 Cal. App. 4th at 1122-1123.

“[T]he date that workers' compensation coverage is required to be obtained” is the date any persons worked on the project.

D. The Dangers and Grave Risks that Property or Home Owners or Others Unknowingly Take in Hiring an Unlicensed Contractor.

While the above laws might seem to some to create an opportunity for an owner or general contractor to hire an unlicensed person at a discount very cheap to what an experienced licensed contractor might charge for the same job, and then still be able to avoid paying the unlicensed builder

and even sue him or her to get back the money you paid them, this is NOT a good idea.

As noted above, the License Law is designed to “provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business”.

Thus, the unlicensed builder, while seemingly relatively cheap upfront, may be no bargain at all if he or she is inexperienced, unskilled, or incompetent.

And the ability to follow building codes is important, as they are designed to protect the safety of building occupants from collapse, fire, leaks, earthquakes and the like.

You put your life and property at great risk when you use someone who might not know what they are doing or how to ensure you have a building that will endure nature and the elements.

Unlicensed contractors in almost every case will not have bonds, liability insurance or workers compensation insurance to protect you, your property, and protect you from liability to the workers or “independent contractors” who work on the property, as insurance companies will not take the risk to insure them.

If a passer-by, neighbor or your own property or possessions are injured by the unlicensed builder during or after the construction work, or if building damage caused by the builder occurs, appears or is later discovered only after the completion of the job, the unlicensed builder will not have liability insurance to protect you from these damage or your potential liability to others.

Similarly, if the worker of the unlicensed contractor is injured on the job, the property owner may potentially be liable and effectively be liable for paying workers compensation benefits to those injured workers, which could be quite large in the case of a serious personal injury..

And under some circumstances, the hirer of the unlicensed builder could be possibly liable for the unpaid wages of the builder's workers on the job.

Finally, if you have had work done by an unlicensed builder, or done without building permits or not in compliance with the Building Codes, you may be legally required to disclose these facts to buyers of your property in a Property Disclosure Statement or other document when you sell the home. Obviously, such a disclosure might affect the sales price of your property, depending on market conditions at the time.

And if you fail to disclose such important facts to the buyer and the buyer later discovers them or is injured by the improper work, you could potentially be liable to the buyer for fraud or other damages!

Information on the license status of contractors can be found at www.cslb.ca.gov , where other advice on the hiring of contractors can also be found.

Even licensed builders may be uninsured or less than fully competent.

Check the builders references thoroughly, required that you be named as an additional insured on all his insurance policies, and require him or her to furnish Certificates of Insurance. And make sure you have a detailed contract and that you understand it.

N.B. No legal advice is intended or given by this information, as the statutes and case law could still change or evolve very substantially.

Please consult a competent construction attorney before preparing or signing any construction contract.

For further information, please visit <http://www.wolfflaw.com>.

To arrange a free initial consultation, call us at 415-788-1881.

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