

Potential Ramifications for Unlicensed Contractors in California

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Please note that this article is only intended to provide some general educational information regarding the ramifications of contracting without a license. Deciding whether or not you or your company may have violated the contractor's license laws is a decision you should make only after reviewing the current laws, facts, and circumstances of your situation with an experienced construction law attorney.

"Don't hire the first contractor who comes along. It's better to wait for a licensed contractor than to rush into repairs with an unlicensed contractor," said CSLB Registrar Steve Sands. "Take your time and protect yourself against con artists who will take your money and run -- or incompetent contractors who will perform shoddy work. Hire only licensed contractors and check them out with the Board." Contractors State License Board News Release January 13, 2005.

In February 2004, the Contractors State License Board ("CSLB") warned consumers about the dangers of hiring unlicensed contractors during National Consumer Protection Week (February 1-7, 2004). A blitz of CSLB undercover sting operations conducted in the San Francisco Bay Area during January 2004 underscored the risk of hiring unlicensed contractors. At stings in San Rafael (January 15), Sunnyvale (January 21-22), San Francisco (January 28), and Burlingame (February 4), a total of 81 suspected unlicensed contractors were cited for contracting without a license.

In June 2004, the CSLB issued a warning to consumers today about the dangers of hiring unlicensed contractors. In cooperation with the Moreno Valley Building Department, the CSLB's Statewide Investigative Fraud Team ("SWIFT") has conducted four undercover sweep operations in Palm Springs, Temecula and Moreno Valley over the past two months. SWIFT investigators cited a total of 41 unlicensed contractors in these sweeps. Sixteen licensed contractors were also cited for violations of workers' compensation laws and operating with suspended licenses.

More and more, the CSLB is taking aggressive actions against unlicensed contractors. While most contractors are not unscrupulous intending to deceive the public, there are many contractors who lose their license for various reasons, but nonetheless continue to contract with homeowners, general contractors, subcontractors, and material suppliers. What those contractors do not realize is that there are severe ramifications for contracting without a license in California. This article will discuss some of those ramifications.

The ramifications of not having a license fall into three general categories: (1) restrictions on unlicensed contractors' rights to collect compensation; (2) criminal charges; and (3) citations from the Registrar of Contractors.

I. Restrictions on unlicensed contractors' rights to collect compensation.

California *Business & Professions Code* § 7031 sets forth the basic restrictions on an unlicensed contractor's right to collect compensation for work that requires a license. Unlicensed contractors cannot file a lawsuit to collect compensation for the performance of any act or contract where a license is required, regardless of the merits of the lawsuit.¹ As recently as 1999, the California courts have made the issue very clear. Because of the strength and clarity of the California legislature's policy of protecting consumers from unscrupulous contractors, *Business & Professions Code* § 7031 applies despite any alleged injustice to the unlicensed contractor. It represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying unlicensed contractors the right to sue for compensation.²

On the other hand, a person who utilizes the services of an unlicensed contractor can bring a lawsuit to recover all of the money paid to the unlicensed contractor for performance of any act or contract where a license is required.³ This penalty operates even where the person for whom work was performed knew that the contractor was unlicensed; § 7031 places the risk of such bad faith squarely on the unlicensed contractor's shoulders.⁴ If security is taken to secure payment for the performance of any act or contract for which a license is required, an unlicensed contractor will be unable to foreclose on that security because the underlying security agreement will be deemed unenforceable.⁵

In short, if you are a contractor and you want to be paid for your services, you had better be licensed. If not, the property owner or the other party with whom you have contracted will be able to avoid its responsibility to pay you, the California Courts will provide no assistance to such unlicensed contractor, and you may be required to return payments received for the work you performed without a license.

II. Criminal charges.

In April 2004, the CSLB teamed with Stanislaus County investigators to arrest an unlicensed contractor on allegations of felony burglary, theft from an elder adult, diversion of construction funds, elder adult abuse and fraudulent use of a contractor's license number.

An investigation conducted by the CSLB resulted in the sentencing of a criminal, who posed as a landscaper and illegally took \$187,000 from an 84-year-old woman, and was sentenced in Sacramento Superior Court on April 14, 2004, to four years in state prison and

¹ Cal. B. & P. Code § 7031(a).

² ICF Kaiser Engineers, Inc. v Superior Court, 75 Cal. App. 4th 226, 233 (1999, 2nd Dist.).

³ Cal. B. & P. Code § 7031(b).

⁴ Hydrotech Systems, Ltd. v Oasis Waterpark, 52 Cal. 3d 988 (1991).

⁵ Cal. B. & P. Code § 7031(c).

ordered to pay \$187,000 in restitution. The investigation was initiated by the Sacramento County Adult Protective Services and pursued by the CSLB.

In July 2004, at an undercover sting held in Sacramento, the CSLB cited suspects, who call themselves “consultants” but acted as unlicensed swimming pool contractors. The sting was held to send a message that swimming pool contracting requires a license and that consumers need to be aware of the risks they take when hiring such illegal consultants.

These cases are only the tip of the iceberg.

A. Misdemeanors generally.

Most criminal charges discussed herein are misdemeanors. California *Penal Code* § 19, which defines misdemeanors, provides that: “Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.”⁶

B. Contracting without a license generally.

California *Business & Professions Code* § 7028 prohibits contracting without a license. It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within California without having a valid license.⁷ If there is a previous conviction for contracting without a license, the court will impose a fine of 20 percent of the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed or four thousand five hundred dollars (\$4,500), whichever is greater, and the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. That is left to the court to decide.⁸

C. Specific conduct is also illegal.

1. Advertising rules.

California *Business & Professions Code* § 7027.1 prohibits an unlicensed contractor from advertising that it holds a valid license. It is a misdemeanor for any person to advertise for work that requires a license if that person does not hold a valid license in the classification advertised, except that a licensed building or engineering contractor may advertise as a general contractor.⁹ A violation of section 7027.1 is punishable by a fine of not less than seven hundred dollars

⁶ Cal. Pen. Code § 19 (emphasis added).

⁷ Cal. B. & P. Code § 7028(a).

⁸ Cal. B. & P. Code § 7028(b) (emphasis added).

⁹ Cal. B. & P. Code § 7027.1(a).

(\$700) and not more than one thousand dollars (\$1,000) in addition to any other punishment imposed.¹⁰

2. Fraudulent use of another's license.

California *Business & Professions* Code § 7027.3 prohibits any contractor from fraudulently using another contractor's valid license. Any person, licensed or unlicensed, who willfully and intentionally uses, with intent to defraud, a contractor's license number that does not correspond to the number on a currently valid contractor's license held by that person, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both that fine and imprisonment. This is in addition to any other penalties that are available.¹¹

3. Participating in public works.

California *Business & Professions* Code § 7028.15 prohibits unlicensed contractors from participating in public works. It is a misdemeanor for any person to submit a bid to a public agency in order to work as a contractor without being licensed, unless very specific exceptions apply.¹² If there is a previous conviction for bidding on public works without a license, the court will impose a fine of 20 percent of the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed or four thousand five hundred dollars (\$4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.¹³ The bid submitted to a public agency by an unlicensed contractor is considered nonresponsive and is automatically rejected by the public agency. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed is void.¹⁴

D. Particular fields have additional criminal penalties.

Contracting without a proper license of certification in a particular field can also lead to criminal charges.

1. Asbestos and underground storage tanks.

California *Business & Professions* Code § 7028.1 imposes criminal penalties for unlicensed work on asbestos or underground storage tanks. It is a misdemeanor for any contractor to perform or engage in asbestos-related work without certification. It is also a misdemeanor to perform or engage in a removal or remedial action, or to bid for the installation or removal of, or to install or remove, an underground storage tank, without certification.¹⁵

¹⁰ Cal. B. & P. Code § 7027.1(c).

¹¹ Cal. B. & P. Code § 7027.3.

¹² Cal. B. & P. Code § 7028.15(a).

¹³ Cal. B. & P. Code § 7028.15(b) (emphasis added).

¹⁴ Cal. B. & P. Code § 7028.15(e).

¹⁵ Cal. B. & P. Code § 7028.1.

A contractor in violation of § 7028.1 is subject to one of the following penalties: Conviction of a first offense is punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000), and by possible revocation or suspension of any contractor's license. Conviction of a subsequent offense requires a fine of not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment, and a mandatory action to suspend or revoke any contractor's license.¹⁶

2. Natural disasters and states of emergency.

California *Business & Professions Code* § 7028.16 imposes very severe penalties against unlicensed contractors doing repairs following a natural disaster or a state of emergency. If an unlicensed contractor does repairs to a residential or nonresidential structure for damage caused by a natural disaster for which a state of emergency or major disaster is declared, such conduct is punishable by a fine up to ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.¹⁷

Thus, if you are an unlicensed contractor, you run the risk of not only not being paid for the work, but the risk of being put in jail and being fined by the State of California.

III. Citations from the Registrar of Contractors.

The last area of ramifications is citations of the Registrar of Contractors who works through the CSLB. Many contractors are familiar with the fact that the CSLB conducts investigations regarding alleged contractors law violations. What many contractors do not realize, however, is the extent to which they may be punished for the violation.

A. The power to issue citations.

California *Business & Professions Code* sections 7028.6 gives the Registrar of Contractors the power to issue citations to contractors for license violations.¹⁸

B. Civil penalties.

California *Business & Professions Code* §§ 7028.6, 7028.7 and 7028.13 set forth the general guidelines for civil penalties associated with the Registrar's citations. If there is probable cause, the Registrar can issue citations containing abatement orders and civil penalties against persons contracting without a license.¹⁹ Each citation contains an abatement order and a civil penalty of not less than two hundred dollars (\$200) nor more than fifteen thousand dollars

¹⁶ Cal. B. & P. Code § 7028.1 (emphasis added).

¹⁷ Cal. B. & P. Code § 7028.16 (emphasis added).

¹⁸ Cal. B. & P. Code § 7028.6.

¹⁹ Id.

(\$15,000).²⁰ The Registrar may also apply to the Superior Court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the abatement order.²¹

C. Criminal implications.

California *Business & Professions* Code § 7028.17 provides for criminal penalties for non-compliance with citations. The failure of an unlicensed individual to comply with a citation after it is final is a misdemeanor.²²

D. Injunctive relief.

California *Business & Professions* Code § 7028.3 also gives the Registrar the right to seek the “extraordinary” remedy known as an injunction against an unlicensed contractor. If it appears to the Registrar that any person who does not hold a contractor’s license in any classification is contracting without a license or has violated any other law related to a contractor’s licensure, the Registrar may apply for an injunction (temporary or permanent) restraining such person from acting in the capacity of a contractor.²³

IV. Conclusion

The California legislature has made it very clear that it will not protect unlicensed contractors in nearly every situation. Unlicensed contractors cannot sue to get paid for their work, but are still liable to their suppliers and laborers. The parties for whom unlicensed contractors perform work are under no legal obligation to pay the unlicensed contractor. A disgruntled customer is very likely to contact the CSLB to complain about an unlicensed contractor. Often, the CSLB investigations lead to criminal charges and citations from the CSLB, with jail time and penalties.

So what can unlicensed contractors do to avoid these harsh results?

GET LICENSED! There are many construction law attorneys and contractor’s license schools located throughout California who can help unlicensed contractors get their license and prevent any of the foregoing ramifications.

If you have any questions or comments regarding this article, please do not hesitate to contact Scott Green at Green & Campbell, LLP.

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²⁰ Cal. B. & P. Code § 7028.7.

²¹ Cal. B. & P. Code § 7023.13.

²² Cal. B. & P. Code § 7028.17(a).

²³ Cal. B. & P. Code § 7028.3.