

## Clarifying the Contractors State License Law

Present by: Pam Scholefield, Esq., P.E.\*

### 1. Who Has to Be Licensed?

- a. As defined in Business & Professions Code, Section 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.
- b. For any “project” where the total combined costs of labor and materials exceed \$500 (including materials purchased by, or work done by, the owner or others), and the work is considered “casual, minor, or inconsequential.” (See Bus. & Prof. Code, Section 7048).

### 2. Exemptions Under Section 7044.

- a. Owner-Builder: An owner who builds or improves a structure on his or her property, provided that both of the following conditions are met:
  - (1) None of the improvements are intended or offered for sale.
  - (2) The property owner personally performs all of the work or any work not performed by the owner is performed by the owner’s employees with wages as their sole compensation.
- b. **“Flippers” take note:** An owner who builds or improves a structure on his or her property intending to sell, provided that both of the following conditions are met:
  - (1) The owner directly contracts with licensees who are duly licensed to contract for the work of the respective trades involved in completing the project.

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*Anything but Typical*

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(2) For projects involving single-family residential structures, no more than four of these structures are intended or offered for sale in a calendar year. This subparagraph shall not apply if the owner contracts with a general contractor for the construction.

c. Homeowner: A homeowner improving his or her principal place of residence or appurtenances thereto, provided that all of the following conditions exist:

- (1) The work is performed prior to sale.
- (2) The homeowner has actually resided in the residence for the 12 months prior to completion of the work.
- (3) The homeowner has not availed himself or herself of the exemption in this paragraph on more than two structures more than once during any three-year period.

**3. Harsh Penalties for Violations.**

a. Summary for the Unlicensed Contractor:  
"Your customer gets it all FREE, even if your work is perfect."

b. Business & Professions Code, Section 7031:

(a) [...] 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, ... where a license is required by this chapter without alleging that they were 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, ....

(b) [...], 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.

(d) ... When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

**4. Landmark Case – 2005. MW Erectors, Inc., v. Niederhauser Ornamental and Metal Works Company, Inc. (36 Cal. 4<sup>th</sup> 412)**

a. Brief Summary of Facts. See attached.

b. Holding:

- (1) Where applicable, section 7031(a) bars a person from suing to recover compensation for any work done under an agreement for services requiring a contractor's license unless proper licensure was in place at all times during such contractual performance.
- (2) Section 7031(a) does not allow a contractor who was unlicensed at any time during contractual performance nonetheless to recover compensation for individual acts performed while he or she was duly licensed.
- (3) The statutory exception for substantial compliance is not available to a contractor who had not been duly licensed before beginning performance under the contract.
- (4) A contractor is not barred from recovering compensation for the work solely because he or she was unlicensed when the contract was executed.

NOTE: (4) does NOT apply to Public Works Projects – contractors must be licensed at time of bid.

**5. What About Fraud in the Inducement?**

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

(b) Brief Summary of Facts: Hydrotech was a New York corporation that specialized in manufacturing and installing a unique system that simulates ocean waves. Oasis Waterpark owned and operated a water-oriented amusement park in Palm Springs. Hydrotech alleged that “[b]ecause it was concerned about licensing problems, Hydrotech wished only to sell and deliver its equipment and to avoid involvement in design or construction of the pool. However, Oasis insisted that Hydrotech's unique expertise in design and construction was essential.” To induce Hydrotech to contract for the work despite not having a contractor's license, Oasis promised to pay in full for Hydrotech's wave equipment and for “associated equipment and services.” Hydrotech was not paid the \$110,000 in retainage. Hydrotech sued and alleged fraud because it claimed that, “[i]n reasonable reliance on these promises, which defendants never intended to honor, Hydrotech furnished equipment and services in full compliance with its contract. Had Hydrotech known defendants' promises were false when made, it would not have performed under the contract, and therefore suffered damage according to proof.”

(c) Holding: Commenting that the “1989 amendments [to Section 7031] make clear that an unlicensed contractor may not recover either ‘in law or equity,’ and that suit is barred ‘regardless of the merits of the cause of action ....’, the court held that “[h]owever artful the pleadings, if the primary fraud alleged is a false promise to pay for unlicensed construction work, and the primary relief sought is compensation for the work, section 7031 bars the action.”

**6. Policy Behind the Law.**

“Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties.”

(*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal. 3d 988, 995).

**7. When Does the “Performance” Under a Construction Contract Begin?**

a. Submittals? Design work? Procurement of materials? Pre-construction meetings? Submitting a schedule? Setting a jobsite trailer?

b. *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035

(1) Brief Summary of Facts: Unlicensed entity argued that Section 7031 would not bar recovery for “design services” it performed for a construction project, which included preparing electrical and plumbing drawings and specifications, coordination with architects and engineers, and procurement of equipment and materials, because (a) it was not work done as a contractor, and (b) the contract could be segregated into discrete tasks.

(2) Holding: The court rejected the argument because “each aspect of plaintiff's work was integral to the restaurant project, and was not minor or incidental,” but “part of an integrated whole.”

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**8. Licensed Individual, Unlicensed Corp.**

*WSS Industrial Construction, Inc. v. Great West Contractors, Inc. v. (2008)*

162 Cal.App.4th 581

a. Brief Summary of Facts:

- (1) Corp. was not licensed when it invoiced Great West \$15,000 for initial preparation of "shop drawings" and submitted a second invoice for \$9,000 for shop drawings and \$2,000 for specialized anchor bolts that WSS delivered to the project.
- (2) Corp's RMO "held various individual contractor licenses of his own at all times before and after the corporation obtained its license."

b. Holdings:

- (1) The drafting of shop drawings and ordering of anchor bolts was work performed under the contract, and not "prefatory tasks" that do not require a license.
- (2) The facts that the RMO held various individual licenses was not relevant to WSS's corporate license history, and "WSS, the corporate entity or 'person' engaged in the business and which acted in the capacity of contractor, does not and cannot argue it was ever licensed as a contractor or held that status at a time that preceded its performance in this case."

**9. Licensed General, Unlicensed Sub.**

*Kim v. TWA Construction, Inc. (2022) 78 Cal. App. 5th 808*

a. Brief Summary of Facts: Kim and Truong were sued by their neighbor for damage to the neighbor's property resulting from the work on a eucalyptus tree. Kim and Truong filed a cross-complaint against TWA for comparative negligence, breach of contract, and other claims. TWA in turn filed a cross-complaint against Kim and Truong alleging breach of contract and other claims. TWA hired an individual named Hoffman to remove the eucalyptus tree, whom TWA's owner had located on the "Craig's List." NO evidence was provided that Hoffman was licensed. The trial court ruled in a motion in limine that Section 7031 applied to the work done by Hoffman as an unlicensed subcontractor. The jury found that Kim paid TWA \$10,000 for the unlicensed tree removal.

b. Reasoning: "To nevertheless enable a contractor to recover compensation for the performance of unlicensed work, simply because the work was accomplished by hiring a subcontractor, would circumvent the purpose of section 7031 and render meaningless the section 7031 bar and expansive definition of contractor to include work performed "by or through others" (§ 7026). It also would undermine other enforcement mechanisms (i.e., § 7118) We decline to adopt a statutory construction that would produce such a result that is inconsistent with the overarching statutory scheme."

[SIDE NOTE: Section 7118 states: "Entering into a contract with a contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action."]

c. Holding: "[S]ection 7031 bars even a licensed general contractor in California from bringing an action for compensation for an act or contract performed by an unlicensed subcontractor where a license is required."

**10. What is the SOL on Disgorgement Under Section 7031(b)?**

*Eisenberg Village of the Los Angeles Jewish Home for the Aging v. Suffolk Constr. Co. (2020) 53 Cal.App.5th 1201*

(a) Issue of First Impression.

(b) Questions Presented:

- (1) What statute of limitation applies to such claims?
- (2) When do those claims accrue?

(c) Brief Summary of Facts: Suffolk's RME moved to Boston during the project and Eisenberg argued he was not able to satisfy his duties as Suffolk's RME and that resulted in an automatic suspension of Suffolk's license.

(d) Holdings:

- (1) Because a disgorgement action can be brought regardless of any fault on the construction by the contractor, it is a penalty and subject to the one-year statute of limitations under CCP 340(a);
- (2) Since section 7031(b) does not require any injury to the plaintiff, the court wondered what kinds of facts would give rise to a reason to suspect a factual basis for the claim, the court did not want to use the "discovery" rule, and, instead, the court decided to use the rule that the claim accrues "when the cause of action is complete with all of its elements", which, for a section 7031(b) claim, the court decided was when "an unlicensed contractor completes or ceases performance of the act or contract at issue."

**11. Worker's Comp Cheaters Must Disgorge.**

a. Section 7125.2. "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, but this suspension shall not affect, alter, or limit the status of the licensee as an employer for purposes of Section 3716 of the Labor Code."

b. Wright v. Issak (2007) 149 Cal.App.4th 1116.

(1) Brief Summary of Facts: Licensed contractor significantly underreported its payroll figures to its workers compensation carrier in relation to a private project.

(2) Holdings:

- Act of underreporting working hours to the worker's compensation carrier was the equivalent of failure to maintain workers compensation insurance coverage, which resulted in the automatic suspension of the license under Section 7125.2.
- The suspension resulted in the contractor not being "duly licensed" at all times during the performance of the contractor, this Section 7031 applied and contractor could not recover under his breach of contract action and had to pay back the property owner all the money he was paid.

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## 12. **When Purchasing or Taking Over a Business - Avoid Having a “Sham” RMO/RME**

- a. Business has 90 days to replace its qualifier – but can usually also get a 90-day extension of requested before the first 90 days expires.
- b. Section 7068.2. “[] The licensee shall have 90 days after the date of disassociation in which to replace the qualifier. Upon failure to replace the qualifier within 90 days after the date of disassociation, the license shall be automatically suspended or the classification removed at the end of the 90 days.”
- c. Section 7068.2 (e).
  - (1) Upon a showing of good cause by the licensee, the registrar may review and accept a petition for one 90-day extension to replace the qualifier immediately following the initial 90-day period described in subdivision (a) only under one or more of the following circumstances:
    - (A) If the licensee is disputing the date of disassociation.
    - (B) If the responsible managing officer, employee, member, or manager has died.
    - (C) If there has been a delay in processing the application to replace the qualifier that is out of the applicant’s control and it is the responsibility of the board or another state or federal agency that is relied upon in the application process.
  - (2) This petition shall be received within 90 days after the date of disassociation or death or delay. The petition shall only be considered if an application to replace the qualifier as prescribed by the registrar is on file with the board. Under the circumstances described in subparagraphs (A) and (B) of paragraph (1), the licensee shall have no more than a total of 180 days after the date of disassociation or death in which to replace the qualifier.

## 13. **Licensing Nuances**

### a. Qualifier for More than One Company.

- (1) Section 7068.1 – limits qualifier to one individual or firm unless:
  - (a) Common equity ownership of at least 20% of each individual or firm;
  - (b) The additional firm is joint venture with the first firm or a subsidiary (20% owned by first firm); or
  - (c) For partnerships, corporations, or LLCs, the majority of the partners, officers, or managers are the same.
- (2) A qualifying individual may act as the qualifier for no more than three firms in any one-year period.

### b. Joint Venture Licenses.

- (1) Section 7029: A joint venture license is a license issued to any combination of individuals, corporations, limited liability companies, partnerships, or other joint ventures, each of which holds a current, active license in good standing. A joint venture license may be issued in any classification in which at least one of the entities is licensed. An active joint venture license shall be automatically suspended by operation of law during any period in which any member of the entity does not hold a current, active license in good standing.
- (2) Section 7029.1.
  - (a) Except as provided in this section, it is unlawful for any two or more licensees, each of whom has been issued a license to act separately in the capacity of a contractor

within this state, to be awarded a contract jointly or otherwise act as a contractor without first having secured a joint venture license in accordance with the provisions of this chapter.

(b) Prior to obtaining a joint venture license, contractors licensed in accordance with this chapter may jointly bid for the performance of work covered by this section. If a combination of licensees submit a bid for the performance of work for which a joint venture license is required, a failure to obtain that license shall not prevent the imposition of any penalty specified by law for the failure of a contractor who submits a bid to enter into a contract pursuant to the bid.

c. Reciprocity with Other States:

- (1) Section 7065.4: Reciprocity is allowed "if the board ascertains, on a case-by-case basis, that the professional qualifications and conditions of good standing for licensure and continued licensure are at least the same or greater in that state as in California."
- (2) According to the CSLB, "California has formal reciprocity agreements with the contractor licensing agencies of Arizona, Louisiana, Nevada and Utah."
- (3) The CSLB may waive the trade portion of the exam, but retains the right to require the exam.
- (4) The applicant will still be required to take the business law portion of CSLB's exam.

**14. The Intersection Between Labor Laws and Licensing Law.**

- a. Labor Code, 2750.5. "In addition to the factors contained in subdivisions (a), (b), and (c), any person performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall hold a valid contractors' license as a condition of having independent contractor status."
- b. Here's the Conflict. If an unlicensed person acts as a contractor, they don't get paid under B&P § 7031, but if they are a statutory employee, they must be paid their wages.
- c. Bus. & Prof. Code, Section 7053: "[] this chapter does not apply to any person who engages in the activities herein regulated as an employee who receives wages as his or her sole compensation, does not customarily engage in an independently established business, and does not have the right to control or discretion as to the manner of performance so as to determine the final results of the work performed."
- d. Fillmore v. Irvine (1983) 146 Cal. App. 3d 649, 652. "[T]he effect of sections 7031 and 7053 is to allow one to bring an action to recover compensation if one is an employee but not if one is an unlicensed independent contractor. But, as we have seen, section 2750.5 precludes a worker without a required license from obtaining independent contractor status and effectively designates the worker as an employee as a matter of law. Thus, if section 2750.5 were applied to determinations under sections 7031 and 7053, every unlicensed person performing work on a job would be characterized as an employee and not an independent contractor. This result would repeal by implication section 7031's ban on recovery by an unlicensed contractor."

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e. Sanders Construction Co., Inc. v. Cerdá (2009) 175 Cal. App. 4th 430. While the unlicensed subcontractor may be barred from receiving compensation under Section 7031, the subcontractor's employees are the statutory employees of the general contractor. The general contractor is obligated to pay the employees' wages.

**15. License Classifications:**

a. Bus. & Prof. Code, Section 7055.  
[https://www.csrb.ca.gov/about\\_us/library/licensing\\_classifications/](https://www.csrb.ca.gov/about_us/library/licensing_classifications/)

b. (A) General Engineering Contractor: "A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, [] water power, water supply, [] harbors, [] dams and hydroelectric projects, [] railroads, highways, [] airports and airways, [] sewers and sewage disposal plants and systems, [] bridges.

c. (B) General Building Contractor: Cannot take a contract unless it involves at least two unrelated building trades other than framing or carpentry, or the contractor holds a specialty (Class C) license for the trade they are performing.

d. (B-2) Residential Remodeling Contractor: "A residential remodeling contractor is a contractor whose principal contracting business is in connection with any project to make improvements to, on, or in an existing residential wood frame structure, and the project requires the use of at least three unrelated building trades or crafts for a single contract." Plus, a lot more limitations.

e. (C) Specialty Contractor. Cover approximately 40 Subcontractor trades.

f. (C-61) Limited Specialty Classification – a.k.a. (D) licenses.  
Examples: D-3 Awnings; D-18 Prison and Jail Equipment

#### 4. Landmark Case – 2005

**MW ERECTORS, INC., Plaintiff and Appellant, v. NIEDERHAUSER ORNAMENTAL AND METAL WORKS COMPANY, INC., et al., Defendants and Respondents.**

**S123238**

**SUPREME COURT OF CALIFORNIA**

**36 Cal. 4th 412**

**July 14, 2005, Filed**

#### **FACTS**

The pertinent facts are essentially undisputed. Owner Disney Corporation (Disney) constructed a hotel, with Turner Construction Company (Turner) as the general contractor. Turner contracted with defendant Niederhauser Ornamental and Metal Works Company, Inc. (Niederhauser) to perform specialized metal work on the project.

Niederhauser, in turn, awarded two subcontracts to plaintiff MW Erectors, Inc. (MW). On or about October 11, 1999, Niederhauser and MW executed a contract for MW's performance of "structural" steel work (structural contract). On or about November 12, 1999, the same parties entered a second contract for MW's performance of "ornamental" steel work (ornamental contract).

MW began work under the structural contract on or before December 3, 1999, but did not obtain a C-51 structural steel contractor's license until December 21, 1999. Work on the ornamental contract began in early January 2000.

MW subsequently sued Niederhauser and Niederhauser's payment bonds, seeking alleged amounts due of \$ 955,553 for work under the structural contract and \$ 366,694 for work under the ornamental contract.

Niederhauser alleged that MW's claim was barred under section 7031(a), because MW had not been properly licensed at all times during the performance of its contracts. Niederhauser asserted that MW had no C-51 license when it began performance of the structural steel contract, and that MW never obtained a C-23 ornamental metals license, which Niederhauser asserted was required for performance of the ornamental contract. Niederhauser also averred that MW could not demonstrate its substantial compliance with the C-51 license requirement because it had never held a California contractor's license before beginning work under the contracts in December 1999.

MW admitted that it needed a C-51 license for its work under both contracts, and that this license was not technically in place when MW began work on the structural contract. MW also admitted it never obtained a C-23 license. However, MW claimed that it was in substantial compliance with the C-51 license requirement at all times during its performance of both contracts, and that no C-23 license was necessary for work under the ornamental contract.

MW argued that MW's right to recover depended on its licensure during its *performance* of the contracts. MW agreed that MW could not recover for work it performed under the agreements during the relatively short time *before* it had secured *either* a C-51 or C-23 license. But, MW should be able to recover compensation for the work it performed under its contracts *after* all necessary licensure was in place.

MW had a valid C-51 license at all times during performance of the ornamental contract. While MW never sought or obtained a C-23 license, MW claims that the C-51 license was sufficient for the ornamental work.

**Owner: Disney**

**Direct Contractor: Turner**

**Subcontractor: Niederhauser**

**Second Tier Subcontractor: MW Erectors**

**2 subcontracts:**

**10/11/1999 Structural Steel Subcontract Signed**

**12/3/1999 Work begins**

**12/21/1999 C-51 License Issued**

**11/12/1999 Ornamental Subcontract Signed**

**Jan. 2000 Work begins**

**C-23 license never issued**

## **C23 - Ornamental Metal Contractor**

### **California Code of Regulations Title 16, Division 8, Article 3. Classifications**

An ornamental metals contractor assembles, casts, cuts, shapes, stamps, forges, welds, fabricates and installs, sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, monel metal, stainless steel, steel, and/or any other metal for the architectural treatment and ornamental decoration of structures. This classification does not include the work of a sheet metal contractor.

*Authority cited: Sections 7008 and 7059, Reference: Sections 7058 and 7059 (Business and Professions Code)*

## **C51 - Structural Steel Contractor**

### **California Code of Regulations Title 16, Division 8, Article 3. Classifications**

A structural steel contractor fabricates and erects structural steel shapes and plates, of any profile, perimeter or cross-section, that are or may be used as structural members for buildings and structures, including the riveting, welding, rigging and metal roofing systems necessary to perform this work.

*Authority cited: Sections 7008 and 7059, Reference: Sections 7058 and 7059 (Business and Professions Code)*