



by Howard B. Brown

L I C E N S E D T O B I L L

Unlicensed contractors may still be entitled to compensation if they can prove substantial compliance with the licensing law

The California Business and Professions Code requires contractors performing construction work to be licensed. While seemingly straightforward, the Contractors' State License Law, codified at Business and Professions Code Sections 7000 et seq., contains few bright-line rules. Indeed, the answers to licensing questions are rarely simple to discern. The legislature and the courts have made many changes to the licensing law over the years, with the legislature reacting to court decisions that have been inconsistent and the courts being guided largely by desired results. An attorney addressing a licensure problem must be aware of these changes and the poli-

cies they embody. While many of the interpretive cases were decided under statutes that have been modified and amended, the decisions must still be considered to understand the current law.

Initially, counsel confronted with a licensure issue must determine whether a license is required. If the claimant is a contractor or subcontractor¹ and does not possess a valid license, an attorney must ascertain whether the contractor may be exempt from or has substantially complied with the licensure law. If no exemption exists, counsel must assess the consequences of the contractor's failure to have a license.

The thrust of the licensure law is the denial of any compensation to a contractor who does not possess a license at all times during

the course of the construction process. In an action for the collection of compensation a plaintiff contractor must allege and prove that it was a duly licensed contractor during every stage of the performance of the work and the contract.² Business and Professions Code Section 7031(b), which was added to the licensing law in 2001 by an amendment, imposes an additional mandate by requiring an unlicensed contractor to disgorge all monies received already on the project. The

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disgorgement includes all payments made for labor, services, equipment, and materials (LSEM) paid during any portion of the project while the contractor was unlicensed.

It is a misdemeanor for any person to “engage in the business of or act in the capacity of a contractor within this state without possessing a license.”³ All contractors must include their license number on all contracts and advertising.⁴ Other provisions of the contractors’ licensing law impose criminal penalties upon the use or misuse of a license⁵ and regulate contractor advertising and participation in public bidding.⁶

The purpose of Section 7031 of the licensing law is succinctly set forth in a leading case, *Hydrotech Systems Ltd. v. Oasis Waterpark*: “to protect the public from incompetence and dishonesty in those who provide building and construction services....” The *Hydrotech* court further noted that:

Because of the strength and clarity of this policy, it is well settled that section 7031 applies despite injustice to the unlicensed contractor. “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*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state.”⁷

The absence of a license will also bar any claim by the contractor for breach of contract, including a mechanic’s lien.⁸ Assignees of unlicensed contractors are not entitled to enforce claims of those contractors.⁹ However, employees and subcontractors of unlicensed contractors may enforce their mechanic’s lien rights, as long as the subcontractors possess the required license.¹⁰

Generally, however, claims that are independent of any action to seek compensation for the LSEM furnished to a project will not be denied because of a lack of licensure. For example, an unlicensed subcontractor that was sued for furnishing defective materials to a project was not barred from maintaining an action for breach of warranty against the person providing the materials used by the subcontractor in performing its subcontract.¹¹ Moreover, an unlicensed contractor was denied recovery of the value of the LSEM furnished by the contractor to a project but was permitted to assert a racial discrimination claim because that claim did not arise from the LSEM.¹²

Substantial Compliance

Section 7031 governs the rights of contractors to recover compensation for their work. The issues raised by this section are probably the

most vexing of all the issues confronting contractors and their attorneys and have led to considerable litigation. The history of Section 7031 demonstrates that it has undergone numerous legislative changes and judicial interpretations on whether an unlicensed contractor will be allowed to assert that it has substantially complied with the statute and derive compensation for its work.

The basic problem arises when an unlicensed contractor seeks compensation for work it performed. The legislature and courts have wavered between strict interpretations of the licensing law that disallow any compensation to the contractor and more liberal interpretations that permit substantial compliance with the law and thus allow compensation. Two circumstances creating the most difficulties are 1) when the contractor’s license terminates for any reason during the performance of the contract, and 2) when the contractor does not possess the required license at the time of the execution of the contract but acquires the license during the performance of the contract.

Historically, most courts have denied recovery in situations involving the expiration of a license during the course of a construction project. In *Pacific Custom Pools, Inc. v. Turner Construction Company*,¹³ the contractor was properly licensed at the commencement of the project, but its license was suspended and expired during the performance of the work, and the contractor was denied compensation. In another case, a contractor who suffered a heart attack during the course of construction and did not renew his license was denied recovery.¹⁴ In addition, a court denied recovery to a contractor who was unlicensed for five weeks during a 10-month project.¹⁵

Some courts, however, took more liberal views of the statute and permitted contractors to prevail on their claims based on substantial compliance with the licensure statutes. In *Latipac Inc. v. Superior Court*,¹⁶ the contractor was licensed at the time of the formation of the contract, but its license lapsed during the performance of the contract. Nevertheless, despite the lapse, the court permitted the contractor to recover on its claims. In *Citizens State Bank of Long Beach v. Gentry*¹⁷ and *Knapp Development and Design v. Pal-Mal Properties, Ltd.*,¹⁸ the courts held that unlicensed entities could receive compensation under the doctrine of substantial compliance.

In 1989, in a move to stem the apparent trend toward allowing recovery for substantial compliance, the legislature amended Section 7031 specifically to eliminate the doctrine of substantial compliance from the licensing law.¹⁹

Nevertheless, apparently recognizing that

the courts should not adhere to a strict interpretation of the statute and in an effort to establish some uniformity in the law and its interpretations, the legislature amended Section 7031 in 1994 to permit limited application of the substantial compliance doctrine. The amendment, codified at Section 7031(e), allows recovery if the court determines that the contractor has substantially complied with the licensure requirements as measured by three factors: The contractor 1) had been duly licensed as a contractor prior to the performance of the work or contract, 2) acted reasonably and in good faith to maintain proper licensure, and 3) did not know or reasonably should not have known of the lack of a license. An example of a case interpreting Section 7031(e) and permitting substantial compliance is *ICF Kaiser Engineers, Inc. v. Superior Court*,²⁰ in which the Contractors State Licensing Board (CSLB) notified Kaiser that its license had been suspended for its failure to comply with the requirements involving responsible managing officers and employees. The appellate court excused Kaiser from compliance with the licensure law because it was a large company and could not be expected to keep abreast of developments that resulted in its license being suspended. The court, finding that no one at Kaiser had “a clue” that Kaiser had inadvertently allowed its license to be suspended, concluded that Kaiser was not required to “know” it was not licensed and did not hold Kaiser to a standard that it “reasonably should have known.”

In another case allowing recovery, *Slatkin v. White*,²¹ the contractor’s license was suspended after the contractor had begun work on the contract. The court read the substantial compliance requirement of Section 7031(e) to permit compensation during unlicensed periods of a contract. So long as the contractor had a license when it signed the contract, did all it could do to reinstate its license, and acted reasonably and in good faith to maintain its license, the court held it could recover compensation. *Slatkin* may be distinguished from *Turner*, in which the contractor’s license also was suspended during the course of the construction. In *Turner*, however, the contractor had not met the second requirement of Section 7031(e) because it did not act reasonably in maintaining its license after learning of its licensure defect.

More recently, in *NW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Company*,²² the court held that a contractor was only required to have been duly licensed prior to the *performance* of the “act or contract.” *NW Erectors* stands for the proposition that a contractor may recover for any work performed while licensed, even though the contractor was not licensed at the time of

While the attorney general has opined that a construction manager for public projects must be licensed as a contractor or an architect or registered as an engineer, California's licensing laws do not include construction managers as persons or entities who must be licensed.

contracting.²³

When pleading substantial compliance, counsel representing unlicensed contractors should stress the elements of fairness and justice underlying their cause. It appears that the courts tend to construe the statutes according to an assessment of the respective equities of the parties.

Determining Who Is a Contractor

Although the license law applies to contractors, identifying who is a contractor is sometimes counterintuitive. The term "contractor" is synonymous with the term "builder" and includes persons or business entities, whether on their own or through others, that build, construct, improve, subtract, or change any building, highway, railroad, excavation, structure, development, and the like.²⁴ A business entity qualifies as a contractor through a Responsible Managing Officer (RMO) or a Responsible Managing Employee (RME). As used in the statutes, the term "contractor" includes any subcontractor or specialty contractor. The term "contractor" is intended to be all-inclusive.

General contractors, however, are not allowed to perform only work normally performed by specialty contractors. The licensing law was amended in 1997 so that a general contractor engaged in construction work must "use...at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof."²⁵

General contractors may possess a Class "A" license (a general engineering contractor) or a Class "B" license (general building contractor) or both.²⁶ A specialty license is granted to a contractor whose operations involve a specialized building trade.²⁷

Each member of a joint venture must possess a contractor's license. If one member of the joint venture terminates its relationship with the joint venture or its license is suspended during the joint venture operations, the joint venture will not be properly

licensed.²⁸ Partnerships may qualify through a copartner or a responsible managing employee.²⁹

Several important cases have concluded that, under certain circumstances, developers are contractors and are required to be licensed. In a 1994 case, *Vallejo Development Company v. Beck Development Company*, the court held that an unlicensed developer was not entitled to recover the costs of the development's infrastructure improvements. The developer was required by the city of Vallejo to install these improvements as part of the development, and the city also mandated that the developer be solely responsible for all off site and on site improvements as well as the infrastructure improvements. The developer sought to recover payment from several concerns for whom it installed some of the infrastructure improvements, arguing that it merely furnished labor and materials through licensed, third-party general contractors and was not a contractor within the meaning of Section 7026 and Section 7031 of the licensing law. In its decision, the court rejected the developer's argument and denied compensation for the developer. The court held that the developer was acting as a contractor, stating that an entity that provides construction services and an entity that does so through others both qualify as contractors.³⁰

On the other hand, in another case, in which a developer/general contractor was sued by a homeowner's association for alleged defective construction, the court held that the developer, although unlicensed, could prevail on its claim for compensation. The developer was not barred and could recover against its subcontractors, whose work was responsible for the liability that was being imposed upon the developer for the alleged defective construction.³¹

Sureties have had problems when they undertake to complete a project for their principal that defaulted in its performance on

the project. A surety that itself undertook completion of a project and was not licensed as a contractor was denied the right to recover from the owner for the LSEM furnished by the surety in completing the project.³²

Many courts have demonstrated a reluctance to enforce a strict result based on a technical licensing issue. Therefore, the facts of each case must be carefully analyzed to determine if a claimant (or a respondent) has any basis to assert substantial compliance with the licensing law.

Exemptions

There are several exemptions to the licensure law. Persons who receive wages as their sole compensation, who do not customarily engage in an independently established business, and who do not have the right to control the manner of performance, are exempt from the provisions of the licensing law.³³ Work operations that do not involve more than \$500 are considered to be casual, and a contractor's license is not required.³⁴ An owner of property who constructs upon it a single family residential structure or no more than four such structures intended or offered for sale in a calendar year is exempt from the license law.³⁵

A contractor's license is required for work being performed pursuant to contracts for public works.³⁶ However, contractors performing work on federally funded projects are exempt from the state licensing law, and a contractor's license is not needed for California contractors who work on federal land.³⁷ This exception does not apply, however, to California projects for public agencies that are federally funded. Under Sections 10164 and 20103.5 of the Public Contract Code, an unlicensed contractor may submit a bid to a California public entity on a project in which federal funding is involved, but it must possess a license at the time of the execution of the contract.³⁸ However, with certain prescribed exceptions, including proj-

ects governed by Public Contract Code Sections 10164 and 20103.5, Business and Professions Code Section 7028.15 makes it a misdemeanor to engage in the business or act in the capacity of a contractor and submit a bid to a public agency without possessing a valid license.

Certain business operators are specially excluded from the definition of a contractor, such as materialmen and material suppliers that do not install or contract to install their products on a project.³⁹ Equipment suppliers that also provide laborers but do not supervise the operation of the equipment are not contractors and thus are not required to be licensed.⁴⁰

A major issue arises when material suppliers provide workers to supervise the installation of a premanufactured product, such as cabinets. While supervisors are not required to be licensed, in many instances supervisors are permitted or instructed by the licensed contractor to manage the project in such a manner that they cannot be distinguished from the contractor itself. In these instances, the court may conclude that the supplier must be licensed as a contractor.⁴¹ However, in *Walker v. Thornsberry*, a manufacturer, not licensed as a contractor, sold a metal prefabricated restroom to a general contractor and agreed to furnish, assemble, and install the unit on a concrete foundation prepared by the general contractor. The court held that the manufacturer was not required to possess a contractor's license.⁴²

Although what constitutes a "construction manager" is defined by statute,⁴³ and many construction managers undertake general construction duties on projects, there is no requirement that they be licensed. The state attorney general has stated that a construction manager is not required to possess a contractor's or architect's license when acting in the capacity of an owner of a project or a project employee that receives wages as his or her sole compensation.⁴⁴

Nevertheless, public projects are treated differently—and a construction manager for a public project must possess one of three designations. According to the attorney general, "A state or local agency may not contract with a private firm for construction project management services if all or part of such services are to be performed other than under the direction and control of a licensed architect, registered engineer, or licensed contractor."⁴⁵ The opinion relies upon the statutory definition of "construction project management"⁴⁶ as "those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of section 4529.5 for management and supervision of work performed on state construction projects."⁴⁷

While the attorney general has opined that a construction manager for public projects must be licensed as a contractor or an architect or registered as an engineer, California's licensing laws do not include construction managers as persons or entities who must be licensed. This apparent discrepancy in the law should be clarified by the legislature.

Responsible Managing Officers and Employees

Difficult problems in the licensure arena arise as a result of the requirement that a business entity must qualify for a contractor's license through a Responsible Managing Officer or a Responsible Managing Employee. The qualifier must be licensed and qualified in the same license classification that is sought by the business entity. An individual may qualify for himself or herself or by an RME.⁴⁸ A partnership may qualify by the general partner or an RME.⁴⁹ A corporation may qualify either through an RMO or an RME.⁵⁰ Termination of the qualifying RMO or RME by a business entity will terminate its license as a contractor. This was the problem in *Kaiser*.

An RME is an "individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that responsible managing employee is the qualifying person in behalf of the applicant."⁵¹ Except as provided by Section 7068.1, no person qualifying on behalf of an individual, a partnership, or a corporation may hold any other active contractor's license.⁵²

Persons qualifying on behalf of an individual, a partnership, or a corporation are responsible for direct supervision and control of the construction operations and for full compliance with the provisions of the licensing law.⁵³ Such persons may not act as the qualifier for an additional individual or firm unless: 1) "There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity," or 2) the additional firm is "a subsidiary of or a joint venture with" the first firm or individual relying on the qualifier, or 3) the majority of the partners or officers are the same in both the first firm and the additional one.⁵⁴

By comparison, a joint venture license is issued to "any combination of individuals, corporations, partnerships, or other joint venturers, each of which holds a current active license in good standing." This license will be suspended automatically by operation of law during any period in which any member of the joint venture does not hold a current, active license in good standing.⁵⁵

The RME must be a bona fide employee.

The regulations define a "bona fide employee" as an employee who is permanently employed by the applicant and is actively engaged in the operation of the applicant's contracting business for at least 32 hours or 80 percent of the total hours per week that the contracting business is in operation, whichever is less.⁵⁶

The requirement of direct supervision and control is important and frequently litigated. Section 823(b) of Title 16 of the California Code of Regulations defines "direct supervision and control" by RMOs and RMEs as "any one, or any combination of the following activities: (1) supervising construction, (2) managing construction activities by making technical and administrative decisions, (3) checking jobs for proper workmanship, or (4) direct supervision on construction job sites."⁵⁷

During litigation, if a party's licensure is disputed, the party must provide proof of its license by producing a verified certificate of licensure from the CSLB establishing that the party was duly licensed in the proper classification of contractors at all times during the performance of any work or contract covered by the action. Moreover, the party controverting the licensure is not required to produce a verified certificate proving its claims. When licensure or proper licensure is contested, the burden of proof to establish licensure or proper licensure is on the licensee.⁵⁸ Indeed, a party resisting a claim is not obligated to raise the lack of license as an affirmative defense since the licensing law requires that the claimant must allege and prove that it is licensed.⁵⁹ Still, notwithstanding statutory language, one court has held that the fact that the CSLB had issued a license was not, by itself, sufficient to prove licensure.⁶⁰

Two significant cases in this area provide guidance: *G.E. Hetrick & Associates, Inc. v. Summit Construction and Maintenance and Buzgheia v. Lasco Sierra Grove*.⁶¹ *Hetrick* involved substantial compliance with the licensing law and whether Gary Hetrick, the president of the Hetrick corporation, was the RMO of the corporation. While a certificate from the CSLB identified Gary Hetrick as such, the defendant, on a motion for summary judgment, sought to establish that Hetrick was absent from the premises during the construction. The court considered Section 7068 and Section 823(b) of Title 16 of the California Code of Regulations and decided that the plaintiff should be given the opportunity to establish that Hetrick was performing one of the four tasks required of an RMO. The importance of the case is that a certificate is not determinative without evidence demonstrating compliance with Section 823(b).

In *Buzgheia*, a contractor brought an

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1. An unlicensed contractor, although barred from enforcing a mechanic's lien, may recover in quantum meruit against the person or entity for which the unlicensed contractor performed construction work.
True.
False.
2. A contractor seeking compensation for work that it performed is not required to allege that it was licensed to perform that work. The party resisting the contractor's claim has the burden of proving the contractor was unlicensed.
True.
False.
3. A leading case noted that the purpose of Business and Professions Code Section 7031, which requires contractors to be licensed, is to "protect the public from incompetence and dishonesty," and the licensing requirement should be enforced "despite injustice to the unlicensed contractor."
True.
False.
4. A licensed subcontractor employed on a project by an unlicensed general contractor is nevertheless still entitled to enforce its mechanic's lien rights.
True.
False.
5. A contractor is always required to possess a contractor's license at the time of the execution of the contract.
True.
False.
6. An unlicensed contractor may establish substantial compliance with the licensure laws by showing that the contractor 1) had been duly licensed as a contractor prior to the performance of the work or contract, 2) acted reasonably and in good faith to maintain proper licensure, and 3) did not know or reasonably should not have known of the lack of a license.
True.
False.
7. A general contractor cannot possess both a Class "A" license and a Class "B" license.
True.
False.
8. A general contractor may engage in a construction project that involves only one building trade or craft, such as plumbing.
True.
False.
9. All members of a joint venture or general partnership must possess a contractor's license.
True.
False.
10. Under certain circumstances, developers are contractors and must be licensed. If they are not licensed, they may be denied recovery on their claims for compensation. However, an unlicensed developer sued for defective construction may recover against third parties that caused the defects.
True.
False.
11. An individual performing construction work that does not involve more than \$500 is not required to possess a license.
True.
False.
12. A property owner is not required to possess a contractor's license if the owner is building any number of homes on the owner's property within one calendar year.
True.
False.
13. A contractor need not be licensed under California law to perform work pursuant to contracts for public works, whether those public works are funded via a California public entity or by the federal government.
True.
False.
14. Persons furnishing equipment to a project without supervising the operation of the equipment are not required to possess a contractor's license.
True.
False.
15. A material supplier that does not install its products must still possess a contractor's license.
True.
False.
16. When a contractor defaults and its surety takes over to complete the project, the surety is not required to possess a contractor's license.
True.
False.
17. A Responsible Managing Employee (RME) or a Responsible Managing Officer (RMO) is required to be present on the project site at least 80 percent of the total hours per week that the contracting business is in operation.
True.
False.
18. A contractor acting as a qualifier for a person or a company may act as the qualifier for another company if the company is a subsidiary of or a joint venture with the original person or company.
True.
False.
19. A certificate from the Contractors State Licensing Board stating that the contractor is licensed is sufficient to prove licensure.
True.
False.
20. A licensed contractor doing business under his or her own name or under a fictitious name may sell the contracting business to an unlicensed person, and the buyer may continue the business using the seller's license.
True.
False.

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action against a developer for fraud. Again, the issue was whether the plaintiff contractor was properly licensed. Buzgheia claimed it was licensed as a result of its employment of Charles Laird as the RME. The defendant argued that Laird did not work on the project at issue. The court stated that Buzgheia had the burden of proving licensure and that the trial court wrongfully placed the burden upon the defendant to prove lack of licensure.⁶² The language in Section 7031, the court said, regarding the production of a certificate from the CSLB, only places the issue before the court or jury.

The *Buzgheia* decision is important because, as a matter of practice, many persons and entities do not comply with Section 823(b) of Title 16 of the California Code of Regulations. It is not uncommon for major construction concerns to qualify as contractors through RMOs or RMEs who are not on the job site or do not meet any of the three alternative requirements. Nevertheless, if a defendant establishes a lack of compliance by the contractor because the RMO or RME failed to fulfill the necessary requirements, the claimant will be unable to prove it is properly licensed, and recovery for any compensation for its services will be denied.

For attorneys whose clients are defending against claims from unlicensed contractors, motions for summary judgment can be a powerful tool. In fact, many of the significant appellate decisions in this area of the law arose as a result of successful summary judgment motions.

Attorneys and contractors should be aware of the pitfalls and dangers in failing to obtain the appropriate license for their work. While some courts have excused noncompliance for reasons rooted in large measure by sympathy for one party over another, these decisions are in the minority.

Each time a court ruling strays from the doctrine of strict compliance, the legislature counteracts. On the other hand, an attorney faced with a client's failure to comply strictly with the licensure laws should consider some of the decisions that allow for substantial compliance as well as the legislature's more recent endorsement of the doctrine in certain specified circumstances.

The lack of consistency in the licensing decisions directly flows from the efforts of the courts to achieve results that they consider fair and equitable based on how they construe statutory language and prior case law. Unfortunately, these interpretations often stretch the language of the existing statutes and decisions beyond their intended meanings or purposes. The problems and confusion created over the years in determining the substance and reach of the licensing law are a result of vacillations by the legislature in its

enactments and by the courts in interpreting legislative intent. ■

¹ The licensing law applies to contractors and subcontractors. The term "contractors" may be used to refer to both.

² The existence of a license may be verified at the Web site of the Contractors State License Board (CSLB), at <http://www.cslb.ca.gov>, or by calling (800) 321-2752. In addition, counsel should be aware that they may obtain a status report and history of any licensee by contacting the CSLB.

³ BUS. & PROF. CODE §7028.

⁴ BUS. & PROF. CODE §7030.

⁵ LAB. CODE §1021 (misdemeanor for an unlicensed contractor to employ any worker to perform services for which a license is required); LAB. CODE §1021.5 (misdemeanor for a licensee to willingly and knowingly enter into a contract with an unlicensed independent).

⁶ BUS. & PROF. CODE §7027.1 (license required to advertise as a contractor); BUS. & PROF. CODE §7028.15 (license required to bid on public contracts); BUS. & PROF. CODE §7030.5 (delineating what constitutes advertising).

⁷ *Hydrotech Sys. Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988, 995 (1991) (citations omitted) (emphasis in original).

⁸ *Culbertson v. Cizek*, 225 Cal. App. 2d 451 (1964). See also *Lewis & Queen v. N. M. Ball Sons*, 48 Cal. 2d 141 (1957) (holding that an unlicensed subcontractor cannot recover from the general contractor, even though the general contractor was paid for the work of the subcontractor).

⁹ *Shields v. Shoaff*, 116 Cal. App. 2d 306 (1953).

¹⁰ BUS. & PROF. CODE §7053; *Johnson v. Silver*, 161 Cal. App. 2d Supp. 853 (1958); *Petaluma Bldg. Materials, Inc. v. Foremost Props., Inc.*, 180 Cal. App. 2d 83 (1960) (materialman allowed recovery on a mechanic's lien although contractor by whom it was employed was unlicensed).

¹¹ *Davis Co. v. Superior Court*, 1 Cal. App. 3d 156 (1969).

¹² *Holland v. Morse Diesel Int'l, Inc.*, 86 Cal. App. 4th 443 (2001); *Rushing v. Powell*, 61 Cal. App. 3d 597 (1976).

¹³ *Pacific Custom Pools, Inc. v. Turner Constr. Co.*, 79 Cal. App. 4th 1254 (2000); see also *Construction Fin. v. Perlite Plastering Co.*, 53 Cal. App. 4th 170 (1997).

¹⁴ *Weeks v. Merritt Bldg. & Const. Co.*, 39 Cal. App. 3d 520 (1974).

¹⁵ *Bierman v. Hagstrom Constr. Co.*, 176 Cal. App. 2d 771 (1959); *Shields v. Shoaff*, 116 Cal. App. 2d 306 (1953).

¹⁶ *Latipac Inc. v. Superior Court*, 64 Cal. 2d 278 (1966) (strict compliance not required).

¹⁷ *Citizens State Bank of Long Beach v. Gentry*, 20 Cal. App. 2d 415 (1937).

¹⁸ *Knapp Dev. & Design v. Pal-Mal Props., Ltd.*, 173 Cal. App. 3d 423 (1985).

¹⁹ In further efforts to eliminate or clarify the doctrine of substantial compliance, the legislature amended Business and Professions Code §7031 in 1991, 1992, and 1993.

²⁰ *ICF Kaiser Eng'rs, Inc. v. Superior Court*, 75 Cal. App. 4th 226 (1999).

²¹ *Slatkin v. White*, 102 Cal. App. 4th 963 (2002).

²² *NW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 115 Cal. App. 4th 512 (2004).

²³ This may lead to some strange results. Consider a scenario in which a contractor is unlicensed when contracting with the owner, and the unlicensed contractor performs half the work required and is paid for that work. The unlicensed contractor then proceeds to obtain a license and complete the project. Under Business and Professions Code §7031(b), the owner

may recover from the contractor what it paid the contractor while the contractor was unlicensed, but the owner would be obligated to pay for the work performed after the contractor obtained a license. A still unanswered question is whether the respective amounts that are due for the owner and the contractor should be offset against each other.

²⁴ BUS. & PROF. CODE §7026.

²⁵ BUS. & PROF. CODE §7057(a).

²⁶ BUS. & PROF. CODE §§7056, 7057.

²⁷ BUS. & PROF. CODE §7058. For descriptions of the various types of specialty licenses, see CAL. CODE REGS. tit. 16, §§832 *et seq.* See also *NW Erectors*, 115 Cal. App. 4th 512. In *NW Erectors*, the contractor was allowed to produce evidence that although the contract required it to perform "ornamental metal work," for which it was not licensed, it actually was performing "structural steel work," for which it was licensed.

²⁸ BUS. & PROF. CODE §§7029, 7029.1.

²⁹ BUS. & PROP. CODE §7065. *But see* CAL. CODE REGS. tit. 16, §865 (the death or the disassociation of a partner of a licensed partnership terminates the license).

³⁰ *Vallejo Dev. Co. v. Beck Dev. Co.*, 24 Cal. App. 4th 929 (1994).

³¹ *Ranchwood Cmty. Ltd. P'ship v. Jim Beat Constr. Co.*, 49 Cal. App. 4th 1397 (1996).

³² *General Ins. Co. of Am. v. St. Paul Fire & Marine Ins. Co.*, 38 Cal. App. 3d 760 (1974); *Weeks v. Merritt Bldg. & Constr. Co.*, 39 Cal. App. 3d 520 (1974).

³³ BUS. & PROF. CODE §7053.

³⁴ BUS. & PROF. CODE §7048.

³⁵ Business and Professions Code §7044 merits detailed study when determining whether a particular owner is exempt from the licensure law.

³⁶ *K & K Servs., Inc. v. City of Irwindale*, 47 Cal. App. 4th 818 (1996).

³⁷ *Gartrell Constr. v. Aubry*, 940 Fed. 2d 437 (9th Cir. 1991) (California enjoined from enforcing its licensing law because the state law is inapplicable to federal projects); *Leslie Miller Inc. v. State of Arkansas*, 352 U.S. 187 (1956).

³⁸ PUB. CONT. CODE §10164, 20103.5.

³⁹ BUS. & PROF. CODE §§7045, 7052. See also *Scientific Cages, Inc. v. Banks*, 81 Cal. App. 3d 885 (1978) (materials were supplied but not installed).

⁴⁰ *Contractors Labor Pool, Inc. v. Westway Contractors, Inc.*, 53 Cal. App. 4th 152 (1997); *Contractors Dump Truck Serv., Inc. v. Gregg Constr. Co.*, 237 Cal. App. 2d 1 (1965); *My Trucking, Inc. v. Creston Brandon Corp.*, 84 Cal. App. 4th 85 (2000).

⁴¹ *King v. Hinderstein*, 122 Cal. App. 3d 430, 441 (1981); *Johnson v. Mattox*, 257 Cal. App. 2d 714, 718 (1968) (installing sprinkler systems, building various signs and setting them in concrete, excavating and constructing dugouts); *Vaughn v. DeKreek*, 2 Cal. App. 3d 671 (1969) (landscaping by retail nurseryman); *American Sheet Metal v. Em-Kay Eng'g*, 478 F. Supp. 809, 810 (E.D. Cal. 1979) (supplying and installing steam-generating equipment that became permanent plant fixtures).

⁴² *Walker v. Thornsberry*, 97 Cal. App. 3d 842 (1979).

⁴³ GOV'T CODE §4525(e).

⁴⁴ 57 Ops. Cal. Atty. Gen. 421 (1974).

⁴⁵ 78 Ops. Cal. Atty. Gen. 48 (1995).

⁴⁶ GOV'T CODE §4525(e).

⁴⁷ The state attorney general has opined that the statute should not only apply to state construction projects but to local government projects as well, and that the omission was inadvertent by the legislature. Could the same argument for inclusion be extended to non-governmental, private projects? The broad language used in the attorney general's opinion would seem to so indicate. 78 Ops. Cal. Atty. Gen. 48 (1995).

⁴⁸ BUS. & PROF. CODE §7068(b)(1).

⁴⁹ BUS. & PROF. CODE §7068(b)(2).

⁵⁰ BUS. & PROF. CODE §7068(b)(3). The CSLB does not

issue licenses to LLCs.

⁵¹ BUS. & PROF. CODE §7068(d).

⁵² BUS. & PROF. CODE §7068(f).

⁵³ BUS. & PROF. CODE §7068.1.

⁵⁴ *Id.*

⁵⁵ BUS. & PROF. CODE §7029.

⁵⁶ CAL. CODE REGS. tit. 16, §823.

⁵⁷ CAL. CODE REGS. tit. 16, §823(b). It is common practice for licensees to "loan" their license to others to use and receive a commission for the use of the license, notwithstanding that this act is a misdemeanor. LAB. CODE §119. Regulations and statutes were enacted in an effort to restrict this practice, even though it still occurs fairly regularly. Moreover, it is a misdemeanor to permit another to use one's license. BUS. & PROF. CODE §§125, 7114.

⁵⁸ BUS. & PROF. CODE §7031(d). It is good practice, however, for counsel for a party resisting a claim to obtain a certificate from the CSLB establishing the

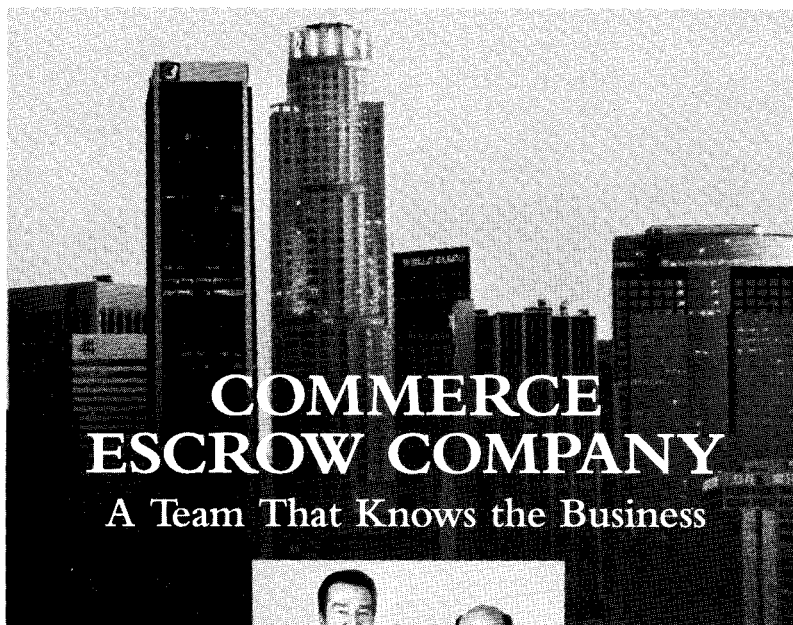
lack or suspension of the license. Counsel should also consider subpoenaing the records of the CSLB. If the license was suspended and later reinstated, this information would appear in the board's records and not necessarily in the certificate.

⁵⁹ *Precision Fabricators, Inc. v. Levant*, 182 Cal. App. 2d 637 (1960). Although the court was construing an earlier version of §7031, the current version of §7031 would lead to the same result.

⁶⁰ *G. E. Hetrick & Assocs., Inc. v. Summit Constr. & Maint.*, 11 Cal. App. 4th 318 (1992).

⁶¹ *Hetrick, id.*; *Buzgheia v. Lasco Sierra Grove*, 60 Cal. App. 4th 374 (1997). See also *NW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 115 Cal. App. 4th 512 (2004).

⁶² The court noted that the failure of the CSLB to take any action against Buzgheia for failure to comply with the licensure laws was not significant. *Buzgheia*, 60 Cal. App. 4th at 393.



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