
Amended Owner-Builder Exemption to California Contractors' Licensing Laws

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The California Legislature recently amended the owner-builder exemption to the state contractors' licensing laws, effective January 1, 2010. Although the amendment to Business & Professions Code Section 7044 was intended to clarify existing law, the language remains ambiguous and subject to differing interpretation. Because there are very few judicial decisions interpreting the statute, this article examines the amended statute and prior case law in an attempt to shed light on the exemption.

In its current form, Section 7044 affirms three principal exemptions. Subdivision (a)(1) exempts an owner who builds or improves a structure on his or her property provided that none of the improvements are intended for sale and the owner personally performs the work or the work is performed by his or her employees. Stated simply, an owner/builder who performs the work himself or through his employees is exempt as long as the property is not intended for sale.

Alternatively, subdivision (a)(2) exempts an owner/builder who directly contracts with a general building contractor, or with licensees who are duly licensed to contract for the work of the respective trades involved (and if involving single-family residential structures, no more than four are intended or offered for sale in a calendar year). Thus, the exemption applies if a general contractor is hired or the work is subcontracted to licensed trades. However, if the work is subcontracted on residential homes, the exemption does not apply if more than four structures are offered for sale in a year.

In the case of homeowners improving their principal residence, subdivision (a)(3) exempts improvements to the residence or appurtenance provided the work is performed prior to sale, the homeowner resides in the residence 12 months prior to completion of the work, and the homeowner has not availed himself to the exemption on more than two structures during any three-year period.

Given the foregoing, the simple interpretation of the statute exempts homeowners who hire a general contractor, subcontract the work to licensed trades, or perform the work themselves. However, the interpretation becomes more difficult when considering developers, converters, tenants and commercial owner/builders.

In *Ranchwood v. Jim Beat*, developers of residential tracts, who were not licensed general contractors, subcontracted construction of numerous homes to various trades. Subsequently, homeowners sued for construction defects and developers cross-complained against subcontractors based on contract and indemnity theories. Subcontractors filed motions for summary judgment against developers, arguing the developers were not licensed contractors. Among other things, developers argued they were exempt owner/builders. However, the court was not persuaded the developers qualified as owner-builders by performing their own work or hiring licensed subcontractors. Citing a 1989 amendment in which the legislature sought to clarify the exemption with respect to tract development builders, the court found the developers were not exempted by the statute.

As to tenants and commercial owner/builders, the meaning of the statute becomes less clear because the statute was amended several times since its inception in 1939. In an opinion by then Attorney General Stanley Mosk, the 1961 amended statute was found not to apply to hotels and commercial tenants, but did exempt commercial buildings constructed for occupancy by the owner. In reaching this conclusion, Attorney General Mosk reasoned that "[t]he apparent purpose of the exemption provided by section 7044 was to strike a balance between the need for governmental regulation and freedom to deal with one's own property without unwarranted governmental interference. Under such circumstances, it is reasonable to assume that the Legislature sought to deny application of the exemption to owners constructing large motels, apartments, hotels and like buildings, while at the same time preserving the exemption to owners constructing buildings containing not more than three dwelling units, one of which would be resided in by such owner."

Because the statute was amended, resort to legislative history may be required to determine intent at the time of construction where significant stakes are involved. In the meantime, owner/builders falling outside the plain meaning of the homeowner exemption may be at risk of the severe penalties California imposes on unlicensed contractors.