
Harsh Penalties Arise From Contractor's License Lapse

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What happens when a contractor's license lapses or is suspended by operation of law? In California, there are harsh criminal and civil penalties against unlicensed contractors. For example, an unlicensed contractor may not recover any compensation for its work and a party may recover all compensation paid to the unlicensed contractor. This article briefly describes the civil penalties which may be imposed against a contractor who is unlicensed or where the license is suspended by operation of law.

The Business and Professions Code has long contained a defense against an unlicensed contractor seeking compensation for its work. The shield-aspect of the statute applies regardless of whether the party hiring the contractor knew the contractor was unlicensed. The defense has been applied not only to disputes between owner and contractor, but to all tiers in the construction process, including general contractors, subcontractors, and sub-subcontractors.

In 2001, the Legislature amended the Business and Professions Code to allow a person who uses an unlicensed contractor to recover all compensation paid to the contractor. Since that time, the California Courts of Appeal have broadly interpreted the sword-aspect of the statute to encompass situations where a licensed contractor had its license technically suspended while the work was in progress.

For example, in *Wright v. Issak*, a contractor who had not paid all of its workers compensation insurance sued a homeowner for unpaid work. Relying on a statute that automatically suspended the contractor's license for failing to obtain required insurance, the court held that the contractor could not recover any amounts from the owner, and the owner could recover all amounts paid to the contractor.

In two recent cases, *Oceguera v. Cohen* and *White v. Cridlebaugh*, homeowners successfully recovered compensation paid to contractors who had not complied with technical requirements for their responsible managing officer or employee. The courts found the technical violations resulted in the contractors being unlicensed during the performance of the work.

Finally, in *Goldstein v. Barak*, a homeowner successfully obtained a writ of attachment against a contractor and an order preventing disposition of the contractor's residence. In that case, the contractor did not obtain his license until several months after the work commenced. Because a writ of attachment is a summary enforcement of judgment procedure, the Barak case is perhaps the most forceful example of the application of the statute in summarily collecting amounts paid to an unlicensed contractor.

What lessons are learned from the foregoing? First, all contractors (at any tier) should pay scrupulous attention to the technical requirements of the licensing laws. Fortunately, there is a substantial compliance defense available in certain circumstances.

Second, claimants involved in a dispute with a contractor should investigate whether a license was in effect during all times the work was performed; whether the license authorizes the particular construction specialty performed; whether there is a valid responsible managing officer or employee; whether workers compensation insurance was properly reported and paid; and the status of any corporation. If the answer to these questions shows a technical lapse, it may form the basis not only to avoid payments due the contractor, but also to recover all amounts already paid to the contractor.