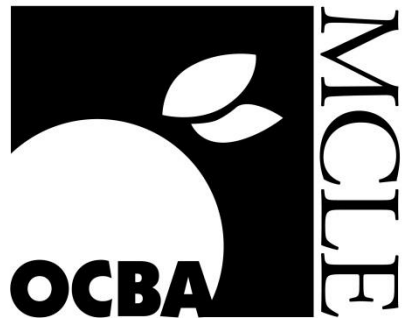

ORANGE COUNTY BAR ASSOCIATION

**CONSTRUCTION LAW
SECTION WEBINAR**

Even When You Think You Have a License...



Wednesday, February 3, 2021



ORANGE COUNTY
BAR ASSOCIATION

Construction Law Section

“Even When You Think You Have a License”

February 3, 2021 (12-1 pm)



KAHANA:FELD



Stephanie Millea, Esq.

Alexa Stephenson, Esq.



Even When You Think You Have A License...

- Why is a California contractor's license important?
- Who needs a contractor's license?
- Are there any exceptions to having a license?
- Who holds a contractor's license?
- What actions suspend a license?

What types of licenses are there?



- (A) [General Engineering Contractor](#)
- (B) [General Building Contractor](#)
 - (C) [Specialty Contractors](#)
 - [ASB - Asbestos Certification](#)
- [HAZ - Hazardous Substance Removal Certification](#)

Class “C” Specialty Contractor Licenses

- [C-2 - Insulation and Acoustical](#)
- [C-4 - Boiler, Hot Water Heating and Steam Fitting](#)
- [C-5 - Framing and Rough Carpentry](#)
- [C-6 - Cabinet, Millwork and Finish Carpentry](#)
- [C-7 - Low Voltage Systems](#)
- [C-8 - Concrete](#)
- [C-9 - Drywall](#)
- [C10 - Electrical](#)
- [C11 - Elevator](#)
- [C12 - Earthwork and Paving](#)
- [C13 - Fencing](#)
- [C15 - Flooring and Floor Covering](#)
- [C16 - Fire Protection](#)
- [C17 - Glazing Contractor](#)
- [C20 - Warm-Air Heating, Ventilating and Air-Conditioning Contractor](#)
- [C21 - Building Moving/Demolition Contractor](#)
- [C23 - Ornamental Metal](#)
- [C27 - Landscaping](#)
- [C28 - Lock and Security Equipment](#)
- [C29 - Masonry Contractor](#)
- [C31 - Construction Zone Traffic Control Contractor](#)
- [C32 - Parking and Highway Improvement Contractor](#)
- [C33 - Painting and Decorating Contractor](#)
- [C34 - Pipeline Contractor](#)
- [C35 - Lathing and Plastering Contractor](#)
- [C36 - Plumbing Contractor](#)
- [C38 - Refrigeration Contractor](#)

Class “C” Specialty Contractor Licenses

- [C39 - Roofing Contractor](#)
- [C42 - Sanitation System Contractor](#)
- [C43 - Sheet Metal Contractor](#)
- [C45 - Sign Contractor](#)
- [C46 - Solar Contractor](#)
- [C47 - General Manufactured Housing Contractor](#)
- [C50 - Reinforcing Steel Contractor](#)
- [C51 - Structural Steel Contractor](#)
- [C53 - Swimming Pool Contractor](#)
- [C54 - Ceramic and Mosaic Tile Contractor](#)
- [C55 - Water Conditioning Contractor](#)
- [C57 - Well Drilling Contractor](#)
- [C60 - Welding Contractor](#)
- [C-61 - Limited Specialty](#)

Why is a contractor's license important?



- A. Misdemeanor
- B. Disgorgement
- C. Fraud
- D. Disciplinary Action by CSLB

Misdemeanor

It is a misdemeanor for a person to engage in the business of a contractor if the person is not licensed or has a license under suspension. ***California Business & Professions Code § 7028.***

There could also be felony charges under certain circumstances.



Disgorgement

An unlicensed contractor cannot enforce payment/contract terms.

California Business & Professions Code § 7031(a).

Likewise, an owner can sue for any and all payments made to the contractor despite quality of work. ***California Business & Professions Code § 7031(b).***



Fraud

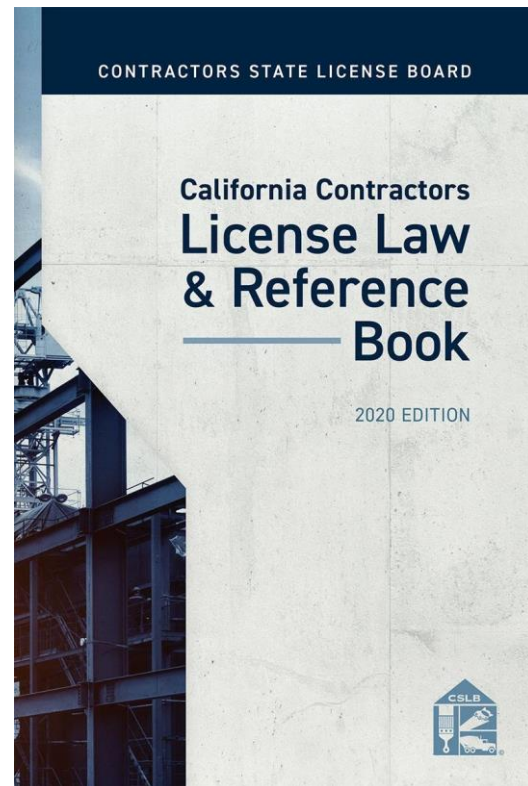
A misrepresentation that a person is a licensed contractor when that is not true subjects the person to a claim against them of fraud, which carries punitive damages in addition to a claim for illegal advertising under ***California Business & Professions Code § 7027.1***.

Any person who is induced to contract for a work of improvement in reliance on a false or fraudulent representation may recover attorney fees. ***California Business & Professions Code § 7160***.



CSLB Action

The CSLB has the power to impose serious fines and legal actions for a person performing construction work as an unlicensed contractor. The CSLB has a state-wide fraud investigative teams for this purpose.





Who needs a license?

Who needs a license?

- All businesses or individuals who alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California Contractors State License Board if the total cost (labor and materials) **if one or more contracts on the project is \$500 or more.**
- Note: a business or individual may not break a project down into smaller amounts of less than \$500 to meet this exemption.
- A license must be **obtained before submitting any bid** for construction work.
- May be additional requirements for certain contractors (e.g. hazardous substance handling)

What if the
contractor holds
a license in
another state?




Exemptions

- An employee
- Public personnel
- Oil and gas operations
- Sale or installation of finished product
- Oil and gas operations
- Security alarms or satellite antenna communication
- Owner-Builders




Who holds a license?

- An individual, partnership, corporation, limited liability company or joint venture.
- To qualify to become a licensed contractor, a person must be at least 18 years old and qualified to manage daily activities of a construction business.



Why does it matter who holds the license?

- * Individual v. Corp.
 - * Reporting proper entity name to CSLB
 - * Transfer of license
 - * RMO/RME → who qualifies, changes and sham qualifier
- 

Case Example

E.J. Franks Construction, Inc. v. Sahota, 226 Cal.App.4th 1123 (2014)

Edward J. Franks II (Eddie Franks) became a licensed general building contractor in 1995 and operated a sole proprietorship under the name E.J. Franks Construction. During the course of constructing a home for defendants (the Sahotas), Franks incorporated his company under the name E.J. Franks Construction, Inc. (EJFCI). Sahotas brought a claim under Business and Professions Code Section 7031 against Franks.

The court found that at no time was the work on the Sahotas's home performed by an unlicensed contractor. Rather, in this case, the work commenced pursuant to contract by E.J. Franks Construction as a sole proprietor.

Case Example

When the parties entered the contract, E.J. Franks Construction was a licensed general building contractor, having been issued a license on April 14, 1995. During the course of the Sahota project, E.J. Franks Construction incorporated and the license issued to and maintained by Franks was reissued to the corporation on April 12, 2005. Therefore, all of the work accomplished at the Sahotas's residence was performed by a licensed contractor. This case did not involve a period wherein the contractor was unlicensed or where a license previously issued lapsed during the construction project. This case involves a licensed contractor and a change in business entity status. Proper licensure was in place at all times.

Case Example

Applying section 7031 to the circumstances here would lead to absurd results. Were we to find section 7031 applied, it would effectively preclude licensed sole proprietor contractors from lawfully incorporating and obtaining a reissue of a general contracting license to the new business entity at any time during the construction period. The purpose of section 7031 is to deter unlicensed contractors from recovering compensation for their work. It is not intended to deter licensed contractors from changing a business entity's status, and obtaining a reissuance of the license to the new entity, during a contract period. Franks did not misrepresent his contractor's license by claiming it belonged to a corporate entity. In fact, the corporate entity did not exist when the contract entered into by E.J. Franks Construction and Bhupinder K. Sahota was executed.

Case Example

VERDICT:

The corporation was not the contracting party. Here, the corporation did not act “as a contractor without a license.” Rather, the corporation—EJFCI— was licensed as of April 12, 2005, and that business entity merely continued the work the sole proprietor began.





KEEPING
YOUR
LICENSE IN
ACTIVE
STATUS

Once a license is active, there are several ways for it to become invalid:

- Expiration
 - Inactive
- Cancellation
- Revocation/Suspension
- Failure to Maintain/Obtain Workers' Compensation Insurance



***California Business &
Professions Code §7125***

The failure of a licensee to obtain or maintain workers comp insurance coverage, if required, shall result in the automatic suspension of the license. *Wright v. Issak*, (2007) 149 Cal. App. 4th 116.

**DO NOT
HIRE**

**Unlicensed
Contractors**

When an unlicensed subcontractor is hired to perform construction work, that contractor is now deemed “an employee” of the general contractor (with the benefits and requirements that come with an employee rather than an independent contractor). Labor Code 2750.5; *Mendoza v. Brodeur*, (2006) 142 Cal. App. 4th 72. It is unlikely that the contractor was holding adequate workers comp insurance to cover this “employee.”

- The hiring of an unlicensed contractor could also subject the hirer to CSLB payment penalties and eventually a suspension of the license for any non-paid penalties.

KAHANA:FELD



KAHANA:FELD

Kahana & Feld LLP

2603 Main Street

Suite 350

Irvine, CA 92614

Phone: [949-812-4781](tel:949-812-4781)

smillea@kahanafeld.com

astephenson@kahanafeld.com