

BRIEF SUMMARY OF SELECTED NEW LICENSING STATUTES FOR 2014

By Marion T. Hack, Esq.

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1. Plumbers authorized to do fire protection work in single family homes

Assembly Bill 433 (chaptered) –Amends Sections 7026.12 and 7057 of, and to add and repeal Section 7026.13 of, the Business and Professions Code; add Section 13110 to the Health and Safety Code

Existing 2013 Law

The installation of a fire protection system may be performed only by a contractor holding a fire protection contractor classification, or by an owner-builder of an owner-occupied, single-family dwelling, as specified.

Change

Until January 1, 2017, a contractor holding a fire protection contractor classification or a plumbing contractor classification, as defined in the regulations of the board, is authorized to install a residential fire protection system for a one- or 2-family dwelling.

2. CSLB can institute disciplinary action against unlicensed contractors involving fraudulent use of licenses.

Senate Bill 261 (chaptered) – Adds Section 7114.2 to the Business and Professions Code

Existing 2013 Law

The registrar is authorized to issue a citation, instead of initiating disciplinary proceedings, to a licensee when the registrar has probable cause to believe that the licensee has committed acts in violation of the Contractors' State License Law. The citation may include an order for payment by a licensee of a specified sum to an injured party. It is grounds for disciplinary action for a licensed contractor to aid an unlicensed person in evading the Contractors' State License Law, to allow an unlicensed person to use his or her license, or to act in the capacity of a contractor under an inactive or suspended license. Any person who willfully and intentionally uses, with intent to defraud, a contractor's license number that does not correspond to the number on a currently valid contractor's license held by that person, is guilty of a crime.

The registrar of contractors is authorized to issue a citation to an unlicensed individual who is in violation of that provision, including an order of abatement and a civil penalty. It is a crime to engage in specified activities with respect to professional licenses, as defined to include a contractor's license, including lending a license to any other person or knowingly permitting the use of the license by another person.

Change

Any licensed or unlicensed person who commits any of those specified activities with respect to a contractor's license is subject to the administrative remedies authorized by the Contractors' State License Law.

3. CSLB can discipline qualifier for not being actively engaged in licensees construction activities

Senate Bill 262 (chaptered) – Amends Section 7068.1 of the Business and Professions Code

Existing 2013 Law

An applicant for a license is authorized to qualify the applicant's knowledge and experience with a responsible managing officer, employee, member, or manager who has certain qualifications. The person qualifying on behalf of an individual or firm is responsible for exercising direct supervision and control of his or her employer's or principal's construction operations as necessary to secure full compliance with the Contractors' State License Law and the regulations of the Contractors' State License Board relating to construction operations.

Change

The qualifying person is responsible for exercising that direct supervision and control to secure compliance with that law and those regulations. A violation of these provisions is grounds for disciplinary action, and a misdemeanor punishable by imprisonment in a county jail not to exceed 6 months, by a fine of not less than \$3,000, but not to exceed \$5,000, or by both that imprisonment and fine. By creating a new crime, the law imposes a state-mandated local program.

BRIEF SUMMARY OF SELECTED NEW LICENSING CASES FOR 2014

4. Ahdout v. Hekmatjah (2013) 213 Cal.App.4th 21

Public policy permits recovery of all compensation to unlicensed contractors, and if not enforced by an arbitrator, constitutes grounds for judicial review.

Ahdout and Hekmatjah formed 9315 Alcott, LLC, for the purpose of building a condominium project, and entered into an operating agreement setting forth the profit allocation for each member. The operating agreement named Braum Investment & Development Inc. (“BIDI”), a company wholly owned by Hekmatjah, as the general contractor on the project. In lieu for paying BIDI a fee for its contracting services, Ahdout and Hekmatjah revised the operating agreement to allocate a greater percentage of profits to Hekmatjah. Following a number of construction delays and unforeseen costs, Ahdout initiated arbitration against Hekmatjah, claiming that BIDI was not a licensed contractor.

Pursuant to §7031 of the California Business and Professions Code, Ahdout sought either (1) alteration of the company’s profit-sharing formula; or (2) disgorgement of the total construction costs. The arbitrators denied Ahdout’s claims, finding that the contracting work actually performed was not done by BIDI, but rather by contractors that entered into direct agreements with the company, all of whom were licensed.

Ahdout brought a petition in superior court to vacate the arbitration award on the ground that the arbitrators exceeded their authority. He also submitted evidence demonstrating that BIDI had, in fact, played the role of contractor in the construction project despite being unlicensed. The trial court denied the motion to vacate and confirmed the arbitration the award, concluding that it did not have the authority to review the arbitrator’s decision for errors of fact or law unless the agreement was a construction contract (rather than an operating agreement). REVERSED.

An arbitrator’s decision generally is not reviewable for errors of fact or law. However, Code Civ. Proc. §1286.2 provides an exception where “[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.” §7031 provides that a party may “recover all compensation paid to [an] unlicensed contractor for performance of any act or contract.” The court concluded that §7031 constitutes an “explicit legislative expression of public policy” regarding unlicensed contractors, that if not enforced by an arbitrator, constitutes grounds for judicial review. The arbitrators’ finding that BIDI did not function as a general contractor is not binding on the trial court, and the court should have conducted a de novo review of the evidence to determine whether disgorgement of compensation for BIDI’s construction work was required by §7031.