

SMALL CLAIMS

SUING AN *UNLICENSED* IMPROVEMENT CONTRACTOR

- A person who uses an unlicensed contractor may sue the contractor to recover all money paid for the work they performed.
- A contractor may not sue a property owner to recover compensation for work on a contract unless he or she was licensed at all times while performing the work.
- In either case, it does not matter whether the unlicensed contractor did a good job. A recent court case stated (P 7031) strictly prohibits any person from suing to recover compensation for any work he or she did while unlicensed, where such work requires licensure, anytime in performing the work. Furthermore, it is a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license (B & P 7028).
- The law was created to protect the public from dishonest, incompetent and irresponsible contractors performing services without a license.

AN EXAMPLE:

Let's say you hire a contractor to build a patio. The entire contract price is \$10,000. You pay \$5,000 in advance. That initial payment is split: \$2,500 for materials and \$2,500 for labor. The contractor finishes the job and requests the final payment. If the contractor does not have a license he or she is not entitled to be paid any money. You may even sue the contractor for the first payment of \$5,000.

FIRST, DETERMINE WHETHER OR NOT THE WORK REQUIRED A LICENSE

The Contractor State License Law² generally only applies to:

- An individual who is doing physical work that alters or adds to a structure, and becomes a part of the real estate.
- The work must have a contract price of \$500 or more unless the person advertises as a contractor (B & P 7048 (a)).

SECOND, DETERMINE WHETHER OR NOT THE CONTRACTOR HAS A LICENSE

The easiest way to find out whether or not the contractor has a license is to conduct a search by going to the Contractors State License Board's website www.cslb.ca.gov or calling them at 1-800-321-2752.

A contractor's license may be automatically suspended by operation of section (7125.2)* for failure to obtain and maintain worker's compensation insurance.

An *example* would be a contractor who underreported his payroll and, thus did not obtain workers' compensation insurance, furthermore the license would be suspended before, during, and after he performs the work.

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Produced by the Small Claims Court Advisory Program of the Legal Aid Society of Orange County
Phone (714) 571-5277 Website: www.ocsmallclaims.com

*Section 7125.2 states the following: "The failure of a licensee to obtain or maintain workers' compensation insurance coverage, if required under this chapter, shall result in the automatic suspension of the license by operation of law in accordance with the provisions of this section, but this suspension shall no affect, alter, or limit the status of the licensee as an employer for purposes of Section 3716 of the Labor Code."

FILING A SMALL CLAIMS ACTION AGAINST AN UNLICENSED CONTRACTOR

- Individuals may file a claim in Small Claims court for up to \$7500.
- Corporations or other business entities may sue for up to \$5,000.
- You may consider naming both the business and the contractor, on the same claim, if he or she performed bad work.
- It is the contractor's responsibility to prove that they held a valid license at all times while performing work.

Note: It used to be that an unlicensed contractor could still receive payment if they did the work well even though they did not have a license. This is **no longer** available anymore to contractors who were not licensed before signing or working under the contract. Now unlicensed contractors bear the risk of non-payment solely on their own shoulders. The courts will not enforce agreements between property owners and unlicensed contractors involving work performed while the contractor was unlicensed.

The exception:

A contractor whose license has expired has a 90-day grace period to renew the license if he or she can show that the failure to renew occurred because of circumstances beyond their control (B&P 7141.5).

DAMAGES & PENALTIES

Bad Work

In certain situations where you are suing a contractor for work they performed while unlicensed and they did a bad job, you may sue for up to three times the damages (See CCP 1029.8).

Fraud, False Statements & Misrepresentations

If the contractor told you that he had a license when he actually did not have a license, be sure to include the word "fraud" in your claim. When a property owner is induced to contract for work of improvement in reliance on *false* or *fraudulent representations* or *false statements* knowingly made by a contractor, the property owner may sue and recover a penalty of \$500 plus reasonable attorney fees in addition to damages (B&P 7160).

SECURING YOUR JUDGMENT

When you receive your judgment make sure it contains the word "fraud." This will prevent the defendant from discharging the debt owed to you in bankruptcy.

MORE INFORMATION

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- If you have more questions please contact an attorney or your local Small Claims Court Advisor.
- You may also report unlicensed activity to the CSLB:
www.cslb.ca.gov/forms/hotleadref.pdf

1) MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co. (2005) 36 Cal.4th 412.

2) Business and Professions Code sections 7000-7173.

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