



CONSUMER NEWS SAN DIEGO CITY ATTORNEY'S OFFICE

UNLICENSED CONTRACTORS MUST DISGORGE

June 2015

STATEWIDE INVESTIGATIONS CRACK DOWN ON UNLICENSED CONTRACTING

The Contractors State License Board (CSLB) issues licenses to contractors. Contractors have to pass a background check to get their license, pass an exam, and obtain a bond to protect the public. CSLB investigates complaints from members of the public about contractors. The telephone number to complain to the CSLB about a contractor is (800) 321-CSLB (2752). The City Attorney prosecutes cases referred by the CSLB.¹

Recently the CSLB caught unlicensed contractors during several statewide sting operations. In Riverside County, Fresno, and LA County more than 100 unlicensed contractors were apprehended by SWIFT, the Statewide Investigative Fraud Team. Each was issued a notice to appear to answer charges for misdemeanor unlicensed contracting.²

In June of this year, SWIFT apprehended unlicensed individuals who were also felons. One individual admitted he had taken drugs before arriving on the job.



If you have information about an unlicensed contractor you can report this directly to SWIFT South by email to: swiftsouth@cslb.ca.gov. You can also access other tools for reporting unlicensed activity at the CSLB website.³

***BEWARE PHONY
CONTRACTORS
THAT SCAM
HOMEOWNERS***

The CSLB warns homeowners to be wary of "consultants" or unlicensed individuals who will try to talk homeowners into becoming an owner-builder as a

way to save money. Usually the unlicensed contractor is the one who illegally profits from this arrangement.⁴

In fact, the City of San Diego Development Office also warns that "a frequent practice of unlicensed persons is to have the property owner obtain an "Owner- Builder" building permit that erroneously implies that the property owner is providing his or her own labor and material personally."⁵

A contract for construction work greater than \$500, including labor and materials, that is made with an unlicensed contractor is considered an illegal contract and cannot be enforced by the unlicensed contractor.⁶ In fact, the unlicensed contractor would be required to disgorge, that is, give back, all monies received as a penalty for being unlicensed and to protect the public from the crime of unlicensed contracting.

The law is firm: California Business and Professions Code section 7031 bars an unlicensed contractor from “bringing or maintaining any action” and bars “recovery in law and equity in any action, in *any court* of this state for the collection of compensation for the performance of any act or contract where a license is required” without being “a duly licensed contractor at all times...” Therefore, it is clear that the preclusion on recovery is very broad.

It applies with equal effect to arbitration awards which have actually been set aside based on section 7031. An unlicensed general contractor was unable to uphold a \$4 million arbitration award for unlicensed contracting work when the Court of Appeal strongly rebuked the lower court for failing to enforce the law: “Court’s may not resort to equitable considerations in defiance of section 7031.”⁷

The California Supreme Court has also broadly construed the Contractor’s license law and upheld the disgorgement provision of 7031 against unlicensed contractors even when “the person for whom the work was performed knew the contractor was unlicensed.”⁸

Further, the Court of Appeal has clarified that the homeowner’s recovery against an unlicensed contractor authorized by section 7031 (b) may not be reduced by an unlicensed contractor’s claim of offset for materials and services provided in connection with the unlicensed work.⁹

➔ Find out if the person you intend to hire to do work on your home is licensed at the CSLB website:
www.cslb.ca.gov

Also, check how many employees the contractor has reported to the CSLB. If the contractor reports no employees but sends employees to your home, he/she may not have workers’ compensation insurance for the employees, subjecting you to possible liability if employees are hurt.

“We can’t stress enough the importance of checking the contractor’s license on CSLB’s website before you allow anyone near your home or family.”
— Cindi Christenson, CSLB Registrar

If you plan to hire a contractor, research the contractor before you hire him/her.

- ✓ Ask to see his/her license.
- ✓ Insist on performance and payment bonds.
- ✓ Ask for references and go see other jobs the contractor has done.
- ✓ Check out the CSLB website.
- ✓ Check out the contractor on the Better Business Bureau website
www.sandiego.bbb.org
- ✓ Run a Google search on the business.
- ✓ Don’t pay for work until it is done to your satisfaction.
- ✓ Make sure the contractor has workers’ compensation insurance and liability insurance for employees.

¹ Also see the May 2010 Newsletter on Contractors.

² CSLB Press Releases:
http://www.cslb.ca.gov/Media_Room/Press_Releases/2015/july_1.aspx
http://www.cslb.ca.gov/Media_Room/Press_Releases/2015/June_1-2.aspx
http://www.cslb.ca.gov/Media_Room/Press_Releases/2015/july_24.aspx

³http://www.cslb.ca.gov/Consumers/Report_Unlicensed_Activity/How_Can_I_Report_Unlicensed_Contractors.aspx

⁴ Read more about this at:
http://www.cslb.ca.gov/Consumers/Know_Risks_Of_Owner_-_Builder/

⁵<http://www.sandiego.gov/development-services/pdf/industry/forms/ds3042.pdf>

⁶ Cal. Bus. & Prof. Code §§7151.2, 7159, 7048, 7026, 7026.1, 7028

⁷ *Ahdout v. Hekmatjah*, 213 Cal.App. 4th 21 (2013).

⁸ *Hydrotech Systems, LTD v. Oasis Waterpark*, 52 Cal. 3d 988, 997 (1991).

⁹ *White v. Cridlebaugh*, 178 Cal.App. 4th 506, 509 (2009).

**San Diego
City Attorney’s Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

This newsletter was compiled by Alison Schlick

The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of consumer protection laws, call the City Attorney’s Hotline at **(619) 533-5600**.