

HELP IS HERE

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Those of you that are familiar with *Business and Professions Code* section 7031 know the harsh realities of contracting without a license. Under the present law, any person who performs work that requires a contractor's license must be a "duly licensed contractor at all times." If a determination is made that a contractor was not licensed at all times, unless a narrow exception applies, the contractor will be precluded from collecting for work performed even during periods of time in which the contractor was licensed. Furthermore, section 7031 also provides that a person may recover all monies they paid to the contractor who was not duly licensed at all times, and this is regardless of the quality of the work.

The harshness of the law as outlined in section 7031 was ruled upon by the California Supreme Court, which is California's highest court, in the case of *M.W. Erectors, Inc. v. Niederhauser Ornamental and Metal Works, Co., Inc.* In 1989, the California Supreme Court ruled that a contractor who had worked on the project for approximately a year-and-a-half but was unlicensed for the first seventeen (17) days of performance was considered to have **not** been duly licensed at all times and the court ultimately ruled that the contractor could collect nothing for all of its performance even though the contractor was considered to be unlicensed for only 17 days. Although the contractor was prepared not to accept any money for the work during those 17 days, the Supreme Court said it could not collect anything.

The harshness of this statute has hurt many good contractors, including licensed contractors who for one reason or another had a lapse in their license. The lapse could have been because of a failure to timely renew their license, failure to make sure that their workers' compensation is timely renewed, and sometimes these are caused by the simple failure to notify the CSLB of a change in address.

In order to attempt to assist the contractor, who for certain excusable reasons had his or her license lapse, the Legislature created a Doctrine of Substantial Compliance. If the contractor could prove that he or she substantially complied with the Licensing Law, the contractor could avoid the lapse in licensure, could collect and would avoid the harsh penalties of section 7031. In order to rely upon the Doctrine of Substantial Compliance, the licensed contractor must: (1) had been duly licensed as a contractor in California prior to the performance of the act or contract; (2) acted reasonably and in good faith to maintain proper licensure; (3) did not know or reasonably should not have known that he or she was not duly licensed when performance of the act or contract commenced; and (4) acted promptly and in good faith to reinstate his or her license upon learning its was invalid. Even though the Legislature saw fit to enact the Doctrine of Substantial Compliance, many contractors still had been unable to satisfy all four prongs of the Doctrine of Substantial Compliance, and the third prong was the most difficult to prove as there often was notice of a pending suspension or expiration that was ignored, which made the contractor ineligible for the exception.

Furthermore, the harsh realities of section 7031 do not take into consideration the quality of the work. The work performed can be the best work around, but if the contractor was not licensed at all times, it cannot collect. The courts have taken a strict position that the inability to collect applies regardless of the merits of the contractor's case. Fairness and equities do not apply. The fact that the owner received the benefit of the work is of no consequence.

However, some limited help appears to be on the horizon. AB 1793 (Holden) is a bill Governor Brown recently signed, which gives judges (and thus contractors) more leeway in 7031 cases. The bill changes the Doctrine to make it simpler to prove. The most important prong to the public protection still applies — the contractor must prove it was licensed before it entered into the contract. However, the new bill removes the third prong from the inquiry. The contractor must prove it: (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract; (2) acted reasonably and in good faith to maintain proper licensure; and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure. Removed by this bill was the old prong number 3, which stated that the contractor did not know or reasonably should not have known that he or she was not duly licensed when performance of the act or contract commenced.

Although the change may help some, it will not assist those who were not licensed before the work started, or never licensed. It may not help those whose licenses were suspended or revoked for some wrongful act by the contractor. Every contractor who performs work that requires a contractor's licensure should do their very best to make sure that they are licensed at all times while doing their work. Avoid all gaps in your license and you will never have to worry about dealing with the concept of substantial compliance. However, to the extent that you do have an instance where your license has a lapse for whatever reason, pay particular attention to the Judicial Doctrine of Substantial Compliance because it may help you collect and avoid having to return money you received.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman:

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