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## Licensing Issues

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The rights and privileges of maintaining a valid contractors license are essential to a contractor. It is important to keep your current license valid rather than suffer the consequences of not being properly licensed. A C-39 roofing license means more than "hey, I passed a written test and I paid the state for a plastic id card". A valid C-39 license is a gateway into a fraternity of qualified professionals, but more importantly, it means access to laws that benefit licensed contractors. (There are a multitude of reasons why someone either does not have a contractor's license or becomes unlicensed. For example, not having a responsible managing officer/employee, lapses in workers compensation coverage, unpaid judgments, violations of the contractors license laws, or the license bond is cancelled, suspended or expires.)

Without a valid and appropriate contractors license, you are not permitted to use the courts to recover outstanding accounts receivables. Simply put, if your customer chooses not to pay you, you have no legal rights to go after payment. There are contractors and owners who know this and who intentionally take advantage of this.

The Business and Professions Code specifically prohibits unlicensed contractors from bringing or maintaining legal actions in state court to recover compensation. The public policy behind the legislation is to encourage assurance that all persons offering contracting services have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business.

The California Supreme Court, has stated that even if the owner knew that the contractor was not properly licensed, the unlicensed contractor may not recover what is owed. The Supreme Court viewed the public policy so strongly that nothing could persuade the court to allow an unlicensed contractor to recover its damages.

Experience tells us that it is vital to know who you are contracting with and to whom you will be relying on for payment. The Business and Professions Code also entitles a person who uses the services of an unlicensed contractor to file suit to recover all compensation paid to the unlicensed contractor for performance of any act or contract. It is advised that you verify that the contractor above you in the "chain" is properly licensed the entire time the work is being performed.

It is recommended that you do a routine checking of the state license board's Web site ([www.cslb.ca.gov](http://www.cslb.ca.gov)). Keep in mind that contractors that are either unlicensed, or lose their "good standing" status will not tell you until it is too late. Some are not aware that their license may be suspended. This is one major reason why third party rights are so important. Without being able

to pursue mechanic's lien, stop notice or payment bond rights, you will be forced to pursue an unlicensed contractor who is not entitled to seek payment.

What happens should your license lose "good standing" with the CSLB? All is not lost. There is a recent case law that outlines an exception for recovery. An unlicensed contractor may recover compensation for work provided when it can be shown that the unlicensed contractor acted responsibly, diligently, and without fault to correct the non-compliance. A recent case decided in California involved a prime contractor who, during the middle of a private works project, lost its license due to a lapse in workers compensation coverage. The contractor was not aware that its workers compensation insurance ended. After not being paid, the contractor sought to perfect a mechanic's lien against the property owner. The property owner objected and argued that it was not obligated to pay an unlicensed contractor. The court held that the contractor could pursue its third party rights because the contractor was in substantial compliance with renewing its contractor's license. The court made an exception because when the contractor received actual notice that its license was suspended, the contractor immediately obtained new workers compensation coverage and promptly renewed its license.

Business is conducted every day in many different ways and it is important to take steps to put yourself in the best position possible. As you can see, the rights and privileges of maintaining a valid contractors license is essential.



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#### **About Barker Law Group Construction Collections Practice**

The construction collections practice is composed of assertive advocates who assist in the collection of clients' outstanding accounts receivable, representing clients in actions for private or public works at the state and federal level throughout California. We have collected millions of dollars for our clients by utilizing all legal remedies including the pursuit and enforcement of mechanic's liens, stop notices, payment bonds and license bonds.

#### **About Barker Law Group, A Professional Law Corporation**

Barker Law Group, A Professional Law Corporation, is a full-service law firm serving businesses throughout California since 1994. With an "AV" rating by Martindale-Hubbell, the firm is committed to the success and satisfaction of all clients. The firm's primary practice areas include Business Transactions; Construction Law including collections and contract litigation; Construction Defect; Employment and Labor Law; Litigation including Insurance Defense; Mediation and Arbitration; and Trusts and Estates. For more information, contact Lauren McNelly, Director of Client Relations at (619) 682-4862 or [lwm@barkerlawgroup.com](mailto:lwm@barkerlawgroup.com) or visit the firm's Web site at [www.barkerlawgroup.com](http://www.barkerlawgroup.com).