

Checking The Status of Your Contractor License During Contract Work is a Necessity: The Expanded “Substantial Compliance” Under B&P 7031 is Here

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It is paramount that a contractor diligently maintains its license prior to and during the performance of any contract work. Failure to do so could result in barring a contractor from receiving payment and/or disgorgement of profits received under the construction contract.

California Business and Professions Code section 7031 is part of the Contractors State License Law (Business & Prof. section 700 et seq.), and is both feared and loathed by all contractors performing work in the state of California. This draconian statute is known as the “Shield” and was enacted over 70 years ago for the singular purpose to bar all actions by contractors seeking compensation for unlicensed contract work – even precluding a contractor from enforcing his or her mechanic’s lien rights. However, a contractor could potentially avoid the harshness of B&P 7031 by establishing that he or she had substantially complied with the appropriate licensing requirements.

SUBSTANTIAL COMPLIANCE WITH LICENSE REQUIREMENTS PRIOR TO 2017 AMENDMENT

The substantial compliance exception is found in section B&P 7031(e), which authorizes the court to determine that there has been substantial compliance with licensure requirements, if the contractor has shown at an evidentiary hearing that he or she engaged in the unlicensed work had:

- (1) 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 the license;
- (3) Did not know or reasonably should not have known that he or she was not licensed when he or she performed the work; and
- (4) Acted promptly and in good faith to reinstate the license once it learned the license had lapsed.

Although not impossible, satisfying all four requirements of the exception was challenging for the contractor, specifically, requirement # (3) – the lack of knowledge that he or she was unlicensed during performance of work.



SUBSTANTIAL COMPLIANCE POST 2017

Fortunately, Governor Brown heard the collective cry for relief and signed Assembly Bill 1793 ("AB 1793") into law. The new bill revises the criteria for the court to determine if a contractor is in substantial compliance with the licensing requirements by deleting requirement # (3) in its entirety and modestly amending requirement # (4) to require the contractor to act promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure.

As a result, the substantial compliance exception under B&P 7031(e) reads as follows:

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, notwithstanding subdivision (b) of Section 143, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (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.

This new legislation has tempered the burden of proof born by the contractor in establishing substantial compliance, although be it minor in its modification, the fact of the matter remains the same – be diligent in maintaining your license during all phases of contract work.

Ivo Daniele is a seasoned associate in the Walnut Creek office focusing his practice on commercial transactions and business and construction litigation. For questions regarding California Business and Professions Code section 7031, please feel free to contact Ivo Daniele at 925.988.3222 or ivo.daniele@ndlf.com.

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