

# The CALIFORNIA LICENSED CONTRACTOR



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## Construction Failures Charged Principally to Two Causes

By GLEN V. SLATER, *Assistant Registrar*

For what value there may be in it for those in the industry who are constantly studying the possibilities of elevating the construction industry, we of the staff of the State License Board have made an exhaustive search of the complaint cases which have come before the Registrar. This has been done in order to establish the underlying or major cause or causes of the difficulties in which we find contractors brought before us on complaints.

Complaints, as filed, were classified to determine how many charged abandonment of contract, how many were entered because of unpaid bills remaining after final payment had been received, how many alleged disregard of plans and specifications, and so on. This method, we soon realized, did not reflect a true picture in that it did not get us to the underlying causes of trouble.

It was ascertained that a man might abandon a contract with no legal excuse and be acting entirely honestly in one instance, while in another he might be moved by base motives.

Yet, again, the contractor might find that he was, through financial difficulties, unable to further carry on the project without an injustice to the subcontractors and workmen he was employing. He might feel forced to drop the job before completion in view of a possible loss to others if he allowed them to continue. On the other hand, he might abandon the job after having drawn more money than was actually coming to him and without using what funds he had drawn for the discharge of existing obligations.

We therefore attempted to go back of the complaints themselves and to determine whether the motive, or that which impelled the contractor to the act causing the complaint, was honest or otherwise, and in this we found that we were able to proceed with more success.

We further directed our attention toward segregating the cases where it appeared the contractor had been honest but found himself in a position where he could not carry out his obligations. We carefully checked these cases to determine whether or not the contractor could have withstood the difficulties if he had been reasonably financed.

Our studies finally brought us to the conclusion that there are two major underlying causes

of difficulties in the construction industry, judging by the complaints, both formal and informal, which are filed with the Registrar.

The first and probably most important of these is a lack of ability on the part of the contractor both in construction and business matters. It is our considered belief that in the many instances where a contractor performed some crooked act he only did so after he found himself in a financial morass. He then took the "easiest way out" in order to temporarily avoid continued worries, or to centralize his trouble on one point or job and clear up others. A course of action such as this is so human that it needs hardly to be explained.

The old saying that a chain is no stronger than its weakest link can be very effectively applied here, for the contractor whose life is made up of a long period of honest years and action, will, when the financial pressure becomes too great, very frequently slip from his previous standards. If given a chance to rehabilitate himself, however, he may go on to the end of his career with no further errors of the same sort.

Therefore, we found that while there were many instances of dishonesty causing a complaint, the number of basically dishonest contractors brought before the Registrar were less by far than the total number of complaints.

We further found that in a large number of the instances where the contractor could actually be charged with having done a crooked act, he undoubtedly would have avoided this act had he the financial ability to do so.

Carrying this forward, we necessarily reached the conclusion that many contractors get themselves into difficulty because they are not adequately financed. In many such instances, the troubles are almost foreordained. Then in order to meet the temporary pressure, some act is done, or step taken which would not be done under ordinary circumstances. The cause of the contractor having originally gotten into difficulty, was, of course, either a lack of ability along construction lines or else a lack of knowledge of how to carry on his general construction work in a business-like manner. When trouble came he had no reserve with which to meet it.

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## The California Licensed Contractor

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### SUSPENSIONS FOLLOW FAILURE TO ANSWER

In the past several months six or eight cases have occurred where defendant contractors received a copy of the complaint filed before the Registrar and also the Registrar's citation to file a written answer to the charges.

The contractors failed to file their answers within the time set by law, however, and therefore their licenses have been suspended.

The Contractors' License Law provides that the Registrar may deem a failure to answer an admission of guilt. It is the policy of the Registrar to take the attitude that a failure to answer is an admission of guilt and this policy will be followed in the future where unusual circumstances are not present.

In the case of these parties whose licenses have been suspended, if they now file an answer and petition the Registrar for a hearing of the charges, it is probable that the hearing will be granted and the case set for trial.

Before the case is finally closed, however, due to the fact that it takes time to notify the complainant of the filing of the answer and to give notices of the hearing, the minimum length of time of suspension of the contractor will, in all cases, run at least six or eight weeks. If the complaint is correct, then the suspension will probably continue.

Contractors who fail to call at the post office as a result of a notice of registered mail left at their residence or business address will be dealt with in the same manner as those who receive

notices and fail to answer. Contractors are expected to be business men and to make arrangements to receive their mail if they are not at home or at their place of business during the day. No hardships will be allowed to injure contractors, but it is absolutely necessary that the Registrar's office be able to reach licensees by mail with no undue delay.

### AN OPEN LETTER TO ARCHITECTS AND ENGINEERS

To Members of the Architectural and Engineering Professions in California:

Gentlemen:

I bear you greetings from the Contractors' State License Board, and a request for your assistance in a matter of considerable importance to both general building contractors throughout the State, and to awarding authorities.

The request is that you advise prospective bidders for reconstruction contracts that the bid or proposal form must contain a statement that the bidder is licensed by the State as a contractor, that the license is in force, and also showing the license number itself.

This request is not made in order to throw more work upon your offices that could be properly handled elsewhere. Nor is it in any way to be construed as an attempt to show to your particular professions, which are so well founded in ethical procedure, the way in which your own business should be carried on.

The request is merely made to avoid incidents such as one which recently happened and which caused confusion and embarrassment to many who were involved. The situation arose when an unlicensed contractor was the successful bidder upon a public works contract. Other incidents of this sort have arisen in the past and in all cases the outcome has been unfortunate for some person involved, more so in some than in others.

In the first place, if a contractor submits a low bid in good faith, the awarding authority naturally will desire to take the benefit of that low figure. The contractor himself will not feel that he should be refused the job merely because he does not have a license which he presumes he can secure within a week or two by filing an application form with the Contractors' Board. Competitors, however, and others interested in the welfare of competitors, usually learn of an instance where a low bidder is unlicensed and raise the question of the legality of the bid. It has been ruled by the Attorney General of the State that a contract can not legally be awarded to a man whose bid was submitted at a time he was unlicensed. Therefore, if a license should be issued to him at once, which is not likely, he still could not legally enter into the contract.

In instances of this sort, the rules of the State Board require that the inspector in charge of the district bring a criminal action against the contractor. Such an action brings profit to no one, and if the contractor should have

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## Across the Registrar's Desk

By ARTHUR ALBER, Registrar

"If a Builder Builds a House for a Man and does not make its Construction Firm, and the House Which he has Built Collapse, and Cause the Death of the Owner of the House, that Builder shall be put to Death!"

This being a "clip" from Better Business Bureau Bulletin of May 23, 1938, it must be true. \* \* \*

I am very happy to receive the many expressions of approval from contractors who have secured our Handbook.

It was compiled and published purely for the benefit of the practicing contractors and the fact that it appears to be serving its purpose is very pleasing.

We frequently hear of cases where contractors have become involved in difficulties through their lack of knowledge of State laws and of rules adopted under State laws relating to construction work. Any effort to avoid instances of this sort is well worth while.

Registration of contractors is higher than in 1937 at this time. This is in keeping with the amount of residential construction as shown by permits from various parts of California. Figures all point to a good year for the construction industry. [Providing, of course, all contractors figure a reasonable profit on their business and don't forget the item of overhead.]

### An Open Letter to Architects and Engineers

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bid in honest error, it is unfortunate that the matter has to be taken to public prosecution authorities who may, in some instances, feel that it is necessary in order to protect themselves from charges of favoritism to prosecute the contractor. He is then cited into court. As far as the inspectors of the State License Board are concerned, they are bound by the decisions of public prosecuting officers since our departmental rules require that all cases be reported to the district attorney or city attorney.

In closing, I trust that the members of the professions will understand, as I have already stated, that this is in no sense an attempt to dictate the manner in which architects and engineers carry on their business. It is merely intended to show a way in which an embarrassing situation can be avoided. This Board knows that the situation which arises in a case of this sort is fully as embarrassing to the architect or engineer in charge of the project as it is to the contractor, and to the others who are charged with enforcement of State laws.

Sincerely,

ARTHUR ALBER,

Registrar and Executive Secretary  
of the Contractors' State License  
Board.

### COMPLAINT CASES PILE UP

With the fall crop of residential construction well under way the number of complaint cases before the Registrar has increased noticeably during the past several months and orders of suspension and revocation naturally have followed the same trend.

Since the October Bulletin went to press, 15 orders of suspension have been signed by the Registrar and the licenses of two holders have been revoked.

Practically all orders of suspension also require the defendant to comply with orders of the Registrar to remedy the injuries caused because of the act complained of. In order to provide an impetus to the defendant contractor to clear up the troubles, in some cases the decision has provided for immediate suspension, to continue until such time as he shall have made restitution or have met such orders of the Registrar as are contained in the decision form and then further, for a stated number of days or months after the trouble has been rectified. In such cases, then, the contractor's length of suspension will be terminated more quickly if he immediately takes care of the difficulty.

Two instances of failure to pay Social Security taxes cropped up when complaints resulted in a disclosure of the defendant's records. The penalties in these cases were increased as a result.

The average total amount involved in cases pending before the Registrar has been averaging close to \$150,000. Probably a fourth of the cases, however, allege no particular injury. Cases charging violations of the Compensation Insurance Law, for instance, involve no financial injury, except where the complainant has been injured while employed by an uninsured contractor. Most of these cases go before the Industrial Accident Commission as far as a damage claim is concerned.

In many other cases, particularly those charging deviation from plans and specifications, the complainant is unable to even estimate the damage in terms of dollars.

Reinstatements fall far short of current suspensions and revocations. In the period of time covered by this report, but two licenses were reinstated.

### COURT ACTIONS CONTINUE SUCCESSFUL

Judging from prosecution reports of the past few weeks, the calendar year will close with the Board's record of convictions of unlicensed contractors running close to or even with the 92 per cent record announced for 1937.

During the months of September, October, and November, 41 unlicensed contractors were hauled into court upon complaint of inspectors, and of these but three were successful in avoiding conviction.

The heaviest sentence assessed was for \$150 fine or one day to be served in the Los Angeles County jail for each three dollars of fine unpaid.

## Construction Failures Charged Principally to Two Causes

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Despite the large number of complaints that have been coming in to the Registrar in the past several years, after our discussion and study along this line the conclusions we reached were most heartening.

Our conclusions were further strengthened by the fact that the records show but few instances where a contractor who has once been in difficulty is again brought before the Registrar.

On the other hand, if a contractor has slipped once and comes back again, it is almost a foregone conclusion that he will be heard from further. It must be understood, of course, that in many instances contractors are only dealt with by our inspectors who are handling informal complaints, where there is not sufficient evidence to justify a formal complaint.

Nevertheless, our records, if one cares to read carefully between the lines, will show that these little "difficulties" point to a lack of proper character on the part of the contractor. These men who are habitually in trouble are, of course, being dropped from the rolls as time goes on for they seldom operate long without getting into a fix of some sort where sufficient grounds for suspension or revocation are shown to the Registrar.

Another bright side of the construction industry appears when one stops to consider the number of licensed operators and the relative lack of control under which they operate. In the first place, almost any contractor is acting as a fiscal agent, in that he is able to obligate others for bills without necessarily giving them anything in return.

With from 30,000 to 35,000 licensed contractors active in the State, depending upon the time of the year, and with no bond required except on a few particular isolated jobs, and with these contractors being required to have no financial ability it is not strange that a large per cent, even as high as 20 per cent to 30 per cent or more, are not constantly involved in serious difficulties.

As a matter of fact, while some contractors have been involved in more than one case in a year, they are very few and far between. In twelve months time we handle an average of 480 formal complaints, and for each formal complaint about 1½ informal complaints. This represents a total of less than 3½ per cent of the licensees now operating which is not an alarming figure.

It should further be borne in mind that a certain number of the complaints before the Registrar involve instances where a contractor has gotten into difficulties which might overtake almost anyone due to matters entirely out-

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## CONTRACTORS' HANDBOOK BEING DISTRIBUTED

At the time this Bulletin goes to press the handbook and reference book published for licensees and sold for the sum of 50 cents will have been off the press approximately two weeks and about half of the issue sold.

The handbook consists of approximately 150 pages of laws, sections of laws, digests and rules covering practically all the State construction laws and orders relating to contractors' operations. The exceptions consist of the laws governing construction of public works.

The handbook reprints in full the Contractors' License Law and also has a short synopsis of the law. It has a digest of the lien laws, which was especially prepared for this handbook and checked by the Attorney General of the State. It carries a brief digest of the Workmen's Compensation Insurance Act, and also all of the provisions of the Labor Code which relate to the construction industry. The Construction Safety Orders of the Industrial Accident Commission are printed and following that, the complete Housing Act, with an index to the act and illustrations.

The handbook is sold at the price of 50 cents, and copies are available at the three offices of the Registrar or from any of the inspectors. Mail orders should be addressed to the Supervisor of Documents, Capitol, Sacramento, and should be accompanied by a cashier's check in the amount of 50 cents. The issue will undoubtedly be oversubscribed since the Supervisor of Documents has requested his allotment be doubled in view of the great demand received in the first few days.

## BOARD CONSIDERS LEGISLATION

Meeting in San Francisco for two days on October 21st and 22d at the call of Chairman Roy O. Butcher of San Jose, the Board discussed routine business and carefully went over suggested changes to the Contractors' License Law.

In the absence of a general unanimity of opinion within the construction industry as to necessary amendments to the Contractors' Act, the Board took no action other than to pass a resolution to the effect that it would support any reasonable amendments to the Contractors' License Law proposed by the construction industry and shown to have the united support of the industry.

side of his control and not easily foreseen. The construction industry is a long record of ups and downs for many of our best contractors. There are few forms of enterprise in which a man could be more easily hurled from the top to the bottom by matters outside of his own control.