

The CALIFORNIA LICENSED CONTRACTOR



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PROVISIONS OF THE LICENSE LAW EVERY CONTRACTOR SHOULD REMEMBER

Many licensees of the State License Board are annually engulfed in difficulties that would have been avoided by adherence to the provisions of the State License Law. Licensees are asked to carefully read all printed matter sent out by the Registrar in connection with renewal applications. In the following paragraphs are shown the nature of troubles that may follow a failure to know and observe the rules.

First of all, of course, in accordance with the Law, send in your renewal application and fee to reach the Registrar of Contractors at Sacramento not later than June thirtieth. Do not delegate this most important duty to someone else without checking to see that the matter is actually attended to.

Nothing is more embarrassing than for us to have to report that a low bidder has not renewed his license, when we know an oversight has occurred. Nor can we undertake to determine whether an oversight or a deliberate violation has occurred upon finding a contractor operating without a license. Our duty is to ask for his arrest and to let the court determine the right action needed. Our men must treat unlicensed operators the same way in all cases. To do otherwise opens the door to privilege and abuses.

Second, notify the Registrar immediately after changing your address. Renewal notices and notices of complaints are sent by mail. Failure to answer such notices of complaints is grounds for suspension, and many licensees were suspended this past year for failure to answer. Do not force us to treat you as we would a dodger merely because of neglect on your own part.

Next among our "do's and don'ts" are changes of personnel and the use of your license for the benefit of others. A license issued to an individual can only be used for his own profit. Other performing construction work under or for him must fall within the classification of

subcontractors or employees. Subcontractors must be licensed (Section 9, Subdivision 8 provides for knowingly doing business with an unlicensed contractor) and employees must be insured in accordance with the Compensation Laws. Do not rely upon another's compensation policy, for standard policies cover only the actual employees of the party securing the policy, and do not cover other employers' men.

The same warning applies to copartnerships. All the members must be actually interested in its operations, but no others may have any interest in its contracts except as subcontractors or employees.

Licensees who associate others with them under their licenses or who allow others to participate in their profits, even only as to a single job, are committing a serious violation of the Contractors' License Law. This does not mean that a bonus can not be paid for exceptional service, or that a commission can not be paid for having secured work, but the recipient of the bonus or commission can not be paid upon the basis of a portion of the profits.

Corporations are similarly restricted except that they may change officers,

in which case notice of the change must be given the Registrar.

Another frequent error occurs when a licensee decides to change the name style under which he or it is doing business. A change of name must be preceded by a request for change of name made to the Registrar and accompanied by the licensee's permanent certificate as well as by the small annual license card.

A contractor's license may be suspended for failure to make and keep records open to the Registrar and/or his authorized representatives. These records must be such that from an inspection of them one may determine exactly what payments were received and made in connection with each job. No complicated system is re-

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RENEWALS DUE EARLIER

Renewal applications and checks must be in registrar's hands by June 30th. Delay may mean a lost job or worse.

The California Licensed Contractor

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PROVISIONS OF THE LICENSE LAW EVERY CONTRACTOR SHOULD REMEMBER

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quired, and, in fact, a contractor having no such records can hardly be expected to succeed if left to go his own haphazard way. The records must show dates and names. Contractors who avoid this responsibility by allowing a joint control agency to handle all details of a job are hiding their heads in the sand. The Registrar interprets the Law as requiring the licensee to make and keep, himself, a record of receipts and disbursements, and these records must be explicit enough to need no interpretation. They must be easily understood.

Failure to secure and pay compensation, and avoidance of social security taxes, when found to occur, will result in action by the Registrar. If these "errors" appear as the result of investigations of complaints (which is often the case) the contractor will be dealt with more severely than would otherwise be the case.

Finally, do not certify to the good reputation of an applicant for a license unless you know what you are stating to be true. Do not show a longer knowledge than you have actually enjoyed. We have taken and will continue to

take action against licensees who misrepresent facts in assisting others to secure licenses.

The above suggestions, while having the full backing of Law, are nevertheless based principally upon sound business practice and the welfare of the Industry. Observance will be a contribution to the welfare of others and will bring you no regrets.

MODIFIED SALES TAX RULING AID TO CONTRACTORS

The State Board of Equalization recently adopted a modified sales tax ruling relating to contractors and subcontractors, known as ruling No. 11, which reads as follows:

"Ruling No. 11—Contractors and Subcontractors

"Definitions

"The term 'contractor' as used herein includes both general contractors and subcontractors and includes contractors engaged in such building trades as carpentry, brick laying, cement work, steel work, plastering, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air conditioning, painting and interior decorating.

"The term 'construction contract' as used herein means a contract for erecting, remodeling, or repairing a building or other structures on land and includes lump sum, cost plus, and time and materials contracts. The term 'construction contract' does not include a contract for the sale and installation of machinery or equipment.

"The term 'materials' as used herein means tangible personal property which when combined with other tangible personal property lose its identity to become an integral and inseparable part of the completed structure. 'Materials' include such things as:

Bricks	Piping, valves, and
Builders' hardware	pipe fittings
Calking material	Plaster
Cement	Putty
Conduit	Reinforcing mesh
Electric wiring and	Roofing
connections	Sand
Flooring	Sheetmetal
Glass	Steel
Gravel	Stone
Insulation	Stucco
Lath	Tile
Lead	Wall board
Lime	Wall coping
Lumber	Wall paper
Macadam	Weather stripping
Millwork	Wire netting and
Mortar	screen
Oil	Wood preserver
Paint	
Paper	

"The term 'fixtures' as used herein means things which are accessory to a building and which do not lose their identity as accessories when placed or installed. 'Fixtures' include such things as:

Lighting fixtures
 Plumbing fixtures
 Furnaces, boilers, and heating units
 Air conditioning units
 Refrigeration units
 Telephone switchboards and instruments
 Elevators, hoists, and conveying units
 Awnings and venetian blinds
 Burglar alarm and fire alarm fixtures
 Vault doors and equipment
 Cabinets, counters, and lockers (pre-fabricated)
 Signs

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Modified Sales Tax Ruling Aid to Contractors

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Materials Used by Contractors:

"Contractors are the consumers of materials used by them in fulfilling construction contracts and the tax applies to the gross receipts from the sale of such materials to the contractors.

"It may happen that a contractor enters into construction contracts and also engages in retail trade. In such cases, if a contractor when purchasing materials can segregate those which will be consumed by him from those which he will resell, he may give to his sellers resale certificates for the latter, provided he holds a valid retailer's permit. If when making purchases of materials, a contractor is unable to segregate those which he will resell from those which he will consume, he may purchase all materials under resale certificates, provided he holds a valid retailer's permit. If a contractor purchases materials for resale and gives a resale certificate therefor and subsequently consumes some of the materials so purchased, he must include in his gross receipts on which tax is to be paid the cost of all such materials so consumed.

Fixtures Furnished and Installed by Contractors:

"Contractors are the retailers of fixtures which they furnish and install and must report and pay tax measured by the retail selling price of such fixtures. If a contractor includes the installation of fixtures in a construction contract along with materials, labor, and other services and, accordingly, does not invoice the selling price of the fixtures separately from the other items of the contract, the selling price of the fixtures shall be deemed to be the fair retail selling price of such fixtures, which shall not be less than the price at which similar fixtures, in similar quantities, would be sold to other contractors.

"Effective July 1, 1939

"This ruling is not retroactive

"The foregoing supersedes all previous rulings on this subject including ruling No. 13 relating to electricians or electrical contractors and ruling No. 45 relating to plumbers or plumbing contractors."

The changes made in this ruling will result in a simpler and more uniform application of the retail sales tax to the construction industries. The distinction between contractors performing plumbing and electrical work and other classes of contractors in the construction industries will be removed. Under the former rulings, electrical and plumbing contractors were considered retailers of all tangible personal property used in their construction work.

The new ruling eliminates the distinction between lump sum and cost plus contracts on the one hand and time and materials contracts on the other. Under former rulings, contractors were considered retailers of tangible personal property used on time and materials jobs and were required to report and pay sales tax measured by the amount of materials charged in contracts of this type. The new ruling will provide that the contractor is the consumer of all materials used in performance of construction contracts whether on a lump sum, cost plus, or time and materials basis. Accordingly, contractors who do not install fixtures and who are not engaged in retail trade, can buy all materials as consumers so that the retail sales tax will be reported and paid by the material dealers.

In the modified form, a distinction is made between "materials" used in construction contracts and "fixtures" installed. Installers of "fixtures" are held to be the retailers of such fixtures and are required to report and pay sales tax measured by the "fair retail selling price" of the fixtures. When the fixtures are installed as a part of a lump sum construction contract, with no separate billing for the fixtures, the "fair retail selling price * * * shall not be less than the selling price at which similar fixtures, in similar quantities, would be sold to other contractors." In the usual case, where fixtures are purchased by the contractor from dealers, "the fair retail selling price" of such fixtures installed in the lump sum contracts will be the cost to the contractor.

It should be noted that whichever contractor or subcontractor installs the fixtures is the one who is responsible for reporting and paying sales tax, if any, to the state. An amendment to the act, discussed below, will permit the contractor to buy all materials and fixtures as a consumer if such materials and fixtures are to be used in lump sum construction contracts.

Among the technical amendments to the Retail Sales Tax Act included in Assembly Bill 2587 introduced at the request of the Board, is an amendment to section 2 (f) which will permit a deduction from taxable gross receipts from retail sales of the purchase price of tangible personal property which the contractor has purchased as a consumer (i.e., "tax-paid" from the supply dealer) and subsequently instead of consuming sells at retail. This provision will be helpful to those contractors whose principal business is construction contracts but who enter into some transactions which will be classified as retail sales. For example, a general contractor may wish to buy all materials and fixtures which he is to use on a lump sum construction contract "tax-paid" from the supply dealers. Since in the usual case, the "fair retail selling price" of the fixtures will be the cost to him, he will have no further obligation for sales tax other than filing a return to show that the fixtures were disposed of at cost on lump sum contracts.

The Board of Equalization is anxious to clear up any uncertain points on the new rulings and suggests that contractors having any questions correspond with the Sales Tax Division at Sacramento.

Editor's Note: We are indebted to T. H. Muggford, Chief, Sales Tax Division of the Board of Equalization, for the above article.

NEW REGISTRAR

At the regular quarterly Board meeting held at San Francisco, April 28 and 29, 1939, the resignation of Arthur Alber, Registrar of Contractors, was accepted, and Allen Miller, an Attorney of Los Angeles, was appointed his successor, effective May 16, 1939. Mr. Alber resigned to devote his entire time to the practice of law at 416 Hollywood Security Building, Hollywood, California.

MANY LICENSES SUSPENDED, REVOKED, OR SURRENDERED

The last report of punitive actions by the Registrar was given in the December, 1938, issue of this publication. Since that time, and up to March 31st, as shown below, a number of cases have been cleared through in which action against the contractor was taken.

Licenses *suspended* totaled 97, with but a very few of these instances as yet receiving reinstatement orders. Twelve licenses were *revoked* during the same period. A licensee whose certificate has been revoked may apply again for a license after one year. At that time he must show that losses caused by his improper acts have been repaid. The Registrar is not bound to issue a new license, and the records show very few instances where a license has ever been issued after a revocation.

After being served with notices to appear as the result of a complaint, a number of licensees have voluntarily surrendered their certificates rather than appear at a hearing.

While many applications have been refused as not meeting the Board's requirements, or because of past decisions against the applicant, in 24 cases satisfactory application forms were filed, but license refused for lack of honesty, after formal hearings.

Less serious complaints, usually disputes, are being handled at the rate of approximately 107 per month.

FRAUD AND DOUBLE CONTRACTS SHOW UP

Recently three licensees "consented" to revocation of their licenses for violations of the License Law.

Two others, applicants for licenses, were refused for similar reasons.

In each case, the contractor had been a party to a transaction where misrepresentation of a condition was made in connection with a building loan application.

Two companies are now pending before the Registrar involving others.

A number of indictments have been handed down by *Federal Grand Juries* in Southern California because of falsified loan applications. Double contract figures, repayment of "advances" from building loans, raised lot purchase prices—contractors jeopardize their liberty as well as their licenses when participating in such schemes. Criminal acts are involved, and accessories as well as principals must expect to suffer if caught.

Across the Registrar's Desk

It is SO hard to get time to read a short paragraph sometimes. We all know that. So I suppose few licensees will read the literature we are as usual sending out this renewal period. Result: inside of thirty days we will be finding cases of difficulty that could have been avoided. All we can say is "We are sorry." And we will be sorry, but that can't save a man a five dollar bill, or a lost contract, or a suspended license.

* * *

Sales tax—a difficult thing for many contractors to properly handle—is thoroughly explained elsewhere in this issue of the California Licensed Contractor. Failure to pay on the part of contractors can not hereafter be considered due to ignorance, unless it is ignorance through utter disregard of responsibilities. Whenever we have occasion to check over records with a contractor we now also ask him to show where he has been paying sales tax, if his "line" calls for such payments.

* * *

Loose specifications can be used two ways—*against* an honest contractor by an unscrupulous or exacting owner, and by a crafty contractor *against* a trusting owner. Who prepared the specifications sometimes indicates who is the culprit. A contractor offering plans and specifications should accept responsibility for a lot of arguments if the documents are not complete and clear. The owner has relied upon the contractor for the professional service. That must be remembered. Any deficiencies not told to the owner might constitute misrepresentation.

LEGISLATURE CONSIDERS AMENDING LICENSE LAW

A number of amendments to and affecting the Contractors' License Law have been proposed to the Legislature by various individuals and organizations. At this time it is impossible to predict what changes may result. The next issue of the California Licensed Contractor will appear shortly after the effective date of any legislation that may pass the lawmakers and secure Governor Olson's approval, and we will attempt to advise you accordingly.