



California Licensed Contractor

DAVID R. PHILLIPS, Registrar

Summer 1989

GEORGE DEUKMEJIAN, Governor

Call before you Dig ... it's the law

The CSLB has received calls from contractors regarding their liability for costs associated with the repair of underground service facilities. While regional notification centers were already operating as a public service to utility companies and excavators, a 1986 law, AB 3020 (Elder), extended the responsibility and effectiveness of both regional notification centers and contractors who do excavation work.

The law now requires, except in an emergency, any person planning to conduct any excavations to contact the appropriate regional notification center at least two working days before beginning the excavations, if the excavations will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations.

Any member of a regional notification center (including all owners of subsurface installations) who receives notification of any proposed excavation is required to locate and field mark the approximate location of any affected subsurface installations in conformance with a specified color code, to the extent it is practical to do so, and to otherwise advise the person planning to excavate that location, or to advise that person that the member does not operate any subsurface installation that would be affected by the proposed excavation.

...No longer can we depend on our memories, nor can we depend on the underground agencies being the 'good guys' and repairing facilities you may damage, free.

Any contractor performing excavation work, or any member of the regional notification center who knowingly and willingly violates the provisions of the law, is subject to a civil penalty of up to \$5,000 plus the cost of repair and restoration of interrupted service.

One of the regional notification services available to those planning excavations of any kind is Underground Service Alert (USA), located in the San Francisco Bay Area. According to USA's president, John Heyer, "With more and more utilities being placed underground, there is no virgin soil, so it becomes impossible to 'know' what is in the excavation site unless you call (a regional notification center). No longer can we depend on our memories, nor can we depend on the underground agencies being the 'good guys' and repairing facilities you may damage, free. Repairs are so costly and service is so important that underground facility

continued on page 4, Call before digging

CSLB Elects Officers

The CSLB is entering its sixtieth year of service to consumers and contractors with new leadership. At its July meeting in San Diego, the 13-member board elected Chairman, Joe Valverde of Whittier and Vice Chair, Marla Marshall of San Diego.

As he took the gavel from outgoing chair, Stephen H. Lazarian of San Diego, Valverde said that he looks forward to "continuing the automation, streamlining and enhanced service of the Board to our more than 240,000 licensees. Under former chairs and board members, we have initiated and evolved a new era in licensing, regulation, enforcement, and consumer protection. Now, with the board's installation of the latest in automation technology, we expect to be able to respond to consumer, licensee, and building department information needs with fewer busy signals and more rapid answers. With our newly authorized unlicensed activities unit in southern California, we will now be able to act aggressively to curb unlicensed contracting activity. This next year should be a watershed period for much improved consumer complaint handling procedures and for providing better services to the law-abiding licensed contractors."

Valverde is president and general manager of



photo by Steve Kolb

Valverde Construction, Inc., a Santa Fe Springs general engineering contractor specializing in underground utility systems for public agencies and private developers.

Married and the father of five children, Valverde was the Engineering Contractors Association "Member of the Year" in 1979 and 1986. He served two terms as the Engineering Contractors Association's president in 1980 and 1981. He also serves as legislative committee chair, a seat he has occupied for the past eight years. In 1983, Valverde was appointed to the Infrastructure Task Force by Governor Deukmejian. Governor Deukmejian appointed Valverde to serve a

four-year term on the CSLB in 1986. Last year, Valverde served as vice-chair of the Board and chair of the budget and administration committee.

The newly elected vice-chair, public member Marla Marshall, served last year as chair of the Board's legislative committee, overseeing the board's development and coordination of legislative initiatives affecting the Board's programs. The mother of two, Marshall works as chief of staff for a San Diego city council member.

Valverde and Marshall will serve in their respective volunteer offices until July 1990. ■

Lazarian and Moore Reappointed

Governor George Deukmejian reappointed John H. Moore of San Ramon and Stephen H. Lazarian of Rancho Santa Fe as members of the CSLB.

Lazarian has served on the Board since 1985, recently completing a term as board chair. He has maintained his own San Diego law firm since 1974.

Lazarian is a member of the San Diego County Bar Association and the San Diego Trial Lawyers Association. He received his bachelors degree in economics from Westmont College in 1970 and his juris doctorate from California Western School of Law in 1973.

Moore has served on the Board since 1985 and was chair of the board during 1986-87. He is president of Electro-Test Incorporated, a position he has held since

1971. From 1969-71, Moore was president of John H. Moore Electrical Construction of San Francisco.

He is a member of the Institute of Electrical and Electronic Engineers, the International Association of Electrical Inspectors and the National Electrical Testing Association.

Moore received his bachelors degree in electrical engineering from the University of California, Berkeley in 1970.

The terms of these positions expire June 1, 1993.

Members of the Board are compensated \$100 per day, plus necessary expenses. The positions require Senate confirmation. ■

California Licensed Contractor

Official Publication of the
Contractors State License Board

Summer 1989

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN

Governor

MICHAEL A. KELLEY

Director, Department of Consumer Affairs

DAVID R. PHILLIPS

Registrar of Contractors

Members of the Contractors State License Board

Joseph Valverde, Chairperson	A-Contractor
Marla Marshall, Vice Chairperson	Public Member
Jack Fenton	Public Member
James L. Frayne	Public Member
Frank Geremia, Jr.	C-53 Contractor
Stephen H. Lazarian, Jr.,	Public Member
John Lazzara	Labor Member
Don MacGillivray	B-Contractor
Elton "Skip" Michael	Public Member
John H. Moore	C-10 Contractor
Roger Lighthart	B-Contractor
Jean Westgard	Public Member
Benny Y. Yee	Public Member

1989-90 Committee Assignments

Budget & Administration Committee

Marla Marshall, Chairperson

Enforcement Committee

Stephen H. Lazarian Jr., Chairperson

Legislative Committee

Jim Frayne, Chairperson

Licensing Committee

Frank Geremia, Jr., Chairperson

Public Information Committee

Jack Fenton, Chairperson

Strategic Planning Committee

Joseph Valverde, Chairperson

Steve Kolb, Editor

Letters to the editor, articles, information of interest to contractors and suggestions for future articles are welcome. Deadlines for submittal are January 1, March 1, June 1, and September 1. Inclusion of submitted material in the CLC is at the discretion of the editor and dependent on time and space considerations.

Headquarters of the CSLB is located at:

3132 Bradshaw Road
P.O. Box 26000
Sacramento, California 95826

DISCIPLINARY ACTION January to March 1989

Note: Disciplinary actions do not include licenses suspended for failure to maintain required bonds. The following explanation may be helpful to identify causes of disciplinary action indicated by sections referenced in the table of Disciplinary Actions.

<i>Business and Professions Codes</i>			
490	Relationship of conviction of a crime to licensed activity	7111	7111.1
7018.5	Failure to provide notice to owner regarding lien provisions	7112	
7026.7	Advertising as a contractor without a license	7113	
7028	Acting in the capacity of a contractor without a license	7113.5	
7029	Contracting as a joint venture without the required license	7114	
7029.6	Failing, as a plumbing contractor, to display his name, address and contractor's license on each side of the commercial vehicle used in his business	7115	
7030	Failing to include in a contract the notice that contractors are licensed by the Contractors State License Board	7116	
7030.5	Failing to fulfill the requirement that the contractor's license number be placed on all contracts, subcontracts, calls for bid, and other forms of advertising	7117	
7071.11	Judgment or admitted claim against bond	7117.5	
7083	Failing to report a change of address, namestyle, or personnel within 90 days	7118	
7097	Suspension of additional licenses	7119	
7098	Revocation of additional licenses	7120	
7099.6	Non-compliance with a final citation	7121	
7107	Abandonment of a project without legal excuse	7122	
7108	Diverted funds or property received for a specific job to other purposes	7122.5	
7109	Willfully disregarded plans and specifications, or has failed to complete the job in a good and workmanlike manner	7123	
7109.5	Violation of Safety Laws resulting in death or serious injury	7124	
7110	Willful disregard and violation of building laws	7154	
7110.1	Violation of Section 206.5 of the Labor Code	7155	
		7157	
		7159	
		7161(b)	

LICENSES REVOKED

NAMESTYLE	ADDRESS	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Aadco Builders	5450 University Av., San Diego, CA 92105	300147	3/18/89	7107, 7108, 7108.5, 7110, 7113, 7115 (7083, 7159), 7120, 7121, 7121.5
Advanced Home Comfort Inc.	261 S. La Brea Av., #203, Inglewood, CA 90301	396746	1/11/89	7107, 7109, 7110, 7113, 7115 (7159), 7154, 7121, 7121.5
Alvarado, Joe Gen. Cont.	21063 Royal Av, #3, Hayward, CA 94541	448606	3/17/89	7099.6, 7121
Arenel	P.O. Box 2781, Martinez, CA 94553	373780	3/11/89	7122.5, 7098
Bell, Norman Enterprises, Inc.	7811 Alabama Av, Unit 21, Canoga Park, CA 91304	480320	3/18/89	7107, 7112, 7113, 7115 (7159), 7116, 7121
Booker, Ronald David	P.O. Box 506, Burbank, CA 91503	381467	3/16/89	7109, 7110, 7113, 7115 (7030, 7159), 7117.5, 7121
Boss Construction & Maintenance	2154 Perkins Wy, Sacramento, CA 95818	440110	2/17/89	7107, 7113, 7115 (7159)
Brumfield & Son Construction & Builders	3715 Victoria Av, Los Angeles, CA 90016	419715	1/11/89	7098

Disciplinary Action, continued from page 2

NAME/STYLE	ADDRESS	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
C-OX Construction	554 East Main, El Cajon, CA 92020	288235	1/6/89	7108.5, 7111.1, 7120
Colonial Development and Construction Company	10630 Downey Av, #101, Downey, CA 90241	387693	1/11/89	7107, 7108, 7109, 7110, 7111, 7113, 7115 (7028, 7018.5, 7030, 7159), 7116, 7121.5
Cor-Saw Construction	1275 4th St, #80, Santa Rosa, CA 95404	466411	3/16/89	7107, 7109, 7111, 7113, 7115 (7028), 7116, 7120, 7121
Door Store, The	15292 Bolsa Chica Bl, Huntington Beach, CA 92649	336684	3/16/89	7107; 7109, 7113, 7114, 7115 (7030, 7159), 7121
Douglas, Robert Co.	101 Gregory Ln, #44, Pleasant Hill, CA 94523	383369	3/30/89	7098
E and M Quality Construction (Endres and Michaels Investments, Inc., dba)	14747 Artesia, #4-C, La Mirada, CA 90638	415842	3/11/89	7107, 7108, 7113, 7116, 7121.5
Faar Construction Co, Incorporated	1730 W. Jefferson Bl, Los Angeles, CA 90018	259890	3/11/89	7098
Family Add-A-Room	1730 W. Jefferson Bl, Los Angeles, CA 90018	208096	3/11/89	7098
Fire Systems Technology, Inc.	11264 1/2 Rush St, S. El Monte, CA 91733	411228	3/16/89	7107, 7113, 7115 (7028, 7083), 7121.5
G & H Construction Co.	1515 40th Av, Oakland, CA 94601	455210	3/12/89	7107, 7109, 7113, 7115 (7030, 7159), 7121
Jaeger, Robert Douglas	510 La Mancha Ct, Danville, CA 94526	305336	3/30/89	7107, 7109, 7113, 7115
Jurgensen's Construction	P.O. Box 32807, San Jose, CA 95152	380162	3/16/89	7099.6, 7121
K and U Construction, Inc.	1065 Ruddock Av, Covina, CA 91724	469576	1/15/89	7098, 7121.5
Keystone Construction (Richard W. Endres, dba)	13246 Maple Dale, Norwalk, CA 90650	286302	3/11/89	7122.5
Konocti Marine Construction, Inc.	Box 545, Kelseyville, CA 95451	296214	2/9/89	7109, 7113
Lifetime Homes of California, Inc.	4020 Birch St, Ste 107, Newport Beach, CA 92660	387661	3/9/89	7109, 7116, 7121, 7121.5
Lipori, Charles C.	857 Pine Av, Novato, CA 94947	479343	3/9/89	7109, 7113, 7115 (7159)
Looking Glass Construction Co.	1129 First St, Apt 34, Monterey, CA 93940	458820	2/19/89	7107, 7113, 7115 (7159), 7117(a)
Miller, James Avington, Jr.	3943 Kenway Av, Los Angeles, CA 90008	385913	3/11/89	7099.6, 7121, 7121.5
Mister Mobile Home	14842 Masterson Wy, Magalia, CA 95954	382072	3/11/89	7107, 7109, 7113, 7115 (7083), 7121, 7121.5
Moore, Ray L. Construction Company	2179 E. Villa St., Pasadena, CA 91107	276255	3/16/89	7107, 7109, 7113, 7115 (7159), 7121
Oscar and Sons Insulation	4993 E. Belmont, Fresno, CA 93727	413573	3/16/89	7109, 7113, 7121
Oster-McNeel Construction	305 San Domingo Dr, Palm Springs, CA 92264	410025	3/5/89	7109, 7113, 7115 (7159)
Oster, Roger	2286 Junipero #1, Palm Springs, CA 92262	369815	3/5/89	7098
Pool/Sync (A.T. Hunn Co., Inc., dba)	11 Embarcadero West #133, Oakland, CA 94607	515951	3/16/89	7112, 7121
Prikupets, Vladimir	438 23rd Av, #2, San Francisco, CA 94121	389996	3/16/89	7107, 7109, 7113, 7115 (7159), 7116, 7117(a), 7117.5, 7161(a), 7121
Pulliam, Howard D.	1730 W. Jefferson Bl, Los Angeles, CA 90018	151272	3/11/89	7098
Real Gas & Electric Co., Inc	P.O. Box F, 278 Barham Av, Santa Rosa, CA 95402	405979	3/11/89	7098
Riteway Const (PAI Construction, dba)	347 Frederic Av, Hayward 94544	429578	3/16/89	7122.5
Riteway Construction, Inc.	P.O. Box 56542, Hayward, CA 94545	464996	3/16/89	7107, 7109, 7110, 7113, 7115(7159, 7071.13), 7121, 7121.5
Schofield Sign Co.	1904 Pomar Wy, Walnut Creek, CA 94598	494159	1/22/89	490, 7112
Schmidt Construction Company	P.O. Box 5833, Concord, CA 94524	480777	3/11/89	7107, 7113, 7121
Schufford-Butts Incorporation	10410 S. Normandie Av, Los Angeles, CA 90044	413697	3/15/89	7107, 7109, 7110, 7113, 7115 (7159), 7117(a), 7121
Solar-HVAC (Sunshine Emporium Ltd, Inc., dba)	9188 Chesapeake Dr., San Diego, CA 92123	392712	3/18/89	7111, 7116, 7117(a), 7117.6, 7161(b)

California's Registration of Environmental Assessors

by Kirk C. Oliver, Senior Attorney, California Environmental Affairs Agency

California has taken the lead in identifying and registering professionals in the environmental field. This new program has been instituted by the California Environmental Affairs Agency, and provides for the voluntary registration of environmental assessors.

The agency is actively soliciting applications for the assessor registration. Anyone who is interested in learning more about this program should immediately contact: Kirk C. Oliver, Senior Attorney, Environmental Affairs Agency, P.O. Box 2815, Sacramento, CA 95812, (916) 324-6881.

Vital information on successful applicants will be compiled in a state registry. The agency is required by law to publicize the registry and promote the use of private, registered environmental assessors (R.E.A.s).

Origins of the Program

In November 1985, the United States Environmental Protection Agency published a draft Environmental Auditing Policy Statement (50 Federal Register 25004). The statement became final on July 9, 1986. It praised environmental auditing as "a variety of compliance assessment techniques which go beyond those legally required and are used to identify actual and potential environmental problems. Effective environmental auditing can lead to higher levels of overall compliance and reduced risk to human health and the environment. EPA endorses the practice of environmental auditing and supports its accelerated use by regulated entities to help meet the goals of federal, state and local government ... States are encouraged to adopt these or similar and equally effective policies in order to advance the use of environmental auditing on a consistent, nationwide basis."

As the federal government lauded environmental auditing, the California Legislature devised a way to register and aid these professionals. Authored by Senator William Craven, Senate Bill 1875, Chapter 1507, Statutes of 1986, was drafted and passed.

The Requirements for Registration

The act widely defines "environmental assessor" as "an individual who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. Environmental assessors are not employees of a state, local, or federal agency. Environmental assessors may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, epidemiologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, and environmental program managers." (Emphasis added.)

The act also defines environmental assessment very broadly. Under these definitions, applicants who are expert in one, but not necessarily all, of the disciplines involved in a comprehensive environmental assessment

**Call before digging,
continued from page 1**

owners must pass the damage cost along to those excavators that damage their underground facilities."

The law defines "subsurface installations" as pipelines, wire, electric, gas, and water, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines, operated or maintained in or across a public street or public right-of-way. "Excavation" is any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing and driving, or any other way.

USA's Heyer noted that "before our service was available, it was necessary for excavators to make from five to 20 calls to reach underground operators. Now, one toll-free telephone call will reach all participating members who may have subsurface facilities in the area planned for excavation. USA members will provide information about or stake and mark the horizontal path of its facilities in accordance with the color codes established in Government Code 4216. To ensure positive identification, the law asks the excavator to mark the boundary of the area to be excavated in white paint."

Regional notification centers available in California and Nevada can be reached by calling:

Southern California to the Kern County line, (800) 422-4133

Northern California from Kern County north, (800) 642-2444

Nevada (800) 227-2600.

**Environmental Advisors,
continued from page 3**

may be registered, provided they possess certain other qualifications

Those qualifications appear in the following set of regulations the Environmental Affairs Agency adopted after considering extensive public comment.

"The applicant for registration as an environmental assessor shall: (a) Demonstrate a minimum of five (5) years full time experience in the applicant's general field of expertise, acquired within the last eight (8) years.

(b) Demonstrate a minimum of two (2) years substantial experience in performing environmental assessments acquired within the last four (4) years.

(c) Possess a bachelor's or higher degree from an accredited college or university in a physical or biological science, engineering or law. State certification, licensing or registration or certification by a nationally recognized professional association in physical or biological science, engineering or law shall be considered equivalent to such training. Five (5) years substantial experience performing environmental assessments acquired within the last eight (8) years shall also be considered equivalent to such training.

(d) Provide ... three or more references who ... can attest to the accuracy of the evidence provided by the applicant, to the applicant's professional compe-

Disciplinary Action, continued from page 3

LICENSES REVOKED

NAMESTYLE	ADDRESS	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Spain, Franklin Guinn III	6700 Via Canada, Rancho Palos Verdes, CA	90274 384419	3/18/89	7107, 7110, 7113, 7115 (7028, 7030, 7071.15, 7159), 7116, 7117(a), 7121
Spurrier, Richard E.	3782 Country Estates Dr, Cottonwood, CA	96022 416823	3/16/89	7099.6, 7121
TEMCO	1800 E. Garry St, Ste. 220, Santa Ana, CA	92705 397945	3/16/89	7107, 7113, 7115 (7018.5, 7030, 7159), 7116, 7117.6, 7120, 7121, 7121.5
Thomas, Wayne Construction Inc.	1290 Oakmead Parkway #301, Sunnyvale, CA	94086 490037	2/15/89	7123, 7121
Van Beenen, Robert F.	P.O. Box 413, Rancho Cucamonga, CA	91730 386948	3/16/89	7107, 7109, 7110, 7113, 7115 (7030, 7068.1, 7159), 7117(a), 7121, 7121.5
Western Energy	P.O. Box F, Santa Rosa, CA	95402 461118	3/11/89	7098, 7122.5
Western Energy Incorporated	1724 Corby Av, Ste B, Santa Rosa, CA	95407 467879	3/11/89	7111, 7114, 7154, 7161, 7121, 7121.5
Wilson & Sons Enterprises	1512 6th St, Woodland, CA	95695 400398	3/8/89	7099.6, 7109, 7110, 7113, 7115 (7159), 7117(a)
Youngs Landscaping Company	10722 Kedge Av, Garden Grove, CA	92643 440657	2/7/89	7107, 7113, 7115 (7159), 7117.6, 7121

LICENSES SUSPENDED

NAMESTYLE	ADDRESS	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
El Dorado Landscaping	395 Montcalm St, Chula Vista, CA	92011 422340	2/8/89 1 week	7097
Golden Oak Insulation	P.O. Box 381, Visalia, CA	93279 296209	3/9/89 30 days	7109, 7113, 7115 (7159), 7121
Singleton Insulation Co. (G & C Insulation Contractors Inc. dba)	P.O. Box 1457, Ontario, CA	91762 352939	1/11/89 30 days	7109, 7113, 7121, 7121.5
Tinder's Landscaping	10360 Gautier Rd, Auburn, CA	95603 377995	1/11/89	7109, 7115 (7159) 15 days
Borrego Enterprises	395 Montcalm St, Chula Vista, CA	92011 266708	2/8/89 1 week	7110
California Technical Institute	10959 Explorer Rd, La Mesa, CA	92041 403137	1/11/89	7121.5 indef.
Cameron Construction	803 4th Av, Chula Vista, CA	92011 267647	1/11/89 180 days	7109, 7115 (7159), 7121, 7121.5
COVCO Enterprises	510 S. Mountain Av, Unit B, Ontario, CA	91762 392153	1/11/89 30 days	7097, 7098, 7122.5

tence and character, or both.

(e) Apply using a form provided by the Secretary entitled 'Environmental Assessor Application Form.'

(f) Forward a \$50 (fifty dollar) non-refundable application fee by check or money order made payable to the Office of the Secretary of Environmental Affairs along with the application."

In addition to the application fee, there are also annual listing and five year renewal fees.

The education requirement was not deemed mandatory, but rather one for which experience or certifica-

tion might substitute. Taken as a whole, the qualifications guarantee that Registered Environmental Assessors (R.E.A.s) possess the technical background the statute contemplates.

The R.E.A. is a permanent, renewable registration, but the Secretary of Environmental Affairs is empowered to revoke or suspend the registration of any environmental assessor and delete that assessor's name from the registry for cause.

All who work in this field are encouraged to apply promptly.

Independent Contractors and the Use of Employees

by Sam K. Abdulaziz, Attorney

Introduction

The issue of independent contractor and employee is of particular interest to contractors. With wages, fringe benefits, liability and workers compensation insurance costs rising sky high, many contractors, as well as their employees, feel that they might be better off financially if they were to turn their employees into independent contractors.

It is estimated that taxes and other fringe benefits paid to employees amount to more than 25% of payroll. It is not surprising, then, that contractors are attempting to reduce their overhead by treating their employees as subcontractors. Some contractors pay their employees on a piece-meal, or a job basis and give them Internal Revenue Service 1099 forms. In this manner, although the contractor may pay a higher "hourly wage," the end result is a total lower cost because the employees will have to pay their own fringe benefits, employment taxes, etc.

There has been a great deal of discussion on how to determine the difference between an independent contractor and an employee. Cases with seemingly identical facts have reached opposite results. In some instances, it is almost impossible to predict what a court will do. However, I believe that the theory behind the cases can be explained even though the cases themselves may not be that easy to explain.

It doesn't matter what you call your employee. The fact that you call a person an independent contractor rather than an employee is not important. What is important is whether or not this person is acting as an employee or an independent contractor.

I believe that the difference between an independent contractor and an employee varies depending upon the purpose for which you are trying to define them. However, the differences are very significant. If you make a mistake in the manner in which you treat the employee as an independent contractor or as an employee, the cost to you could be great and there are significant risks.

The Test

It is universally accepted among employee relations experts that the "independent contractor test" deals with the right to govern the manner and means by which an objective is obtained. The independent contractor test does not consider whether the principal/employer actually determines the manner and means of performance; it is only important that the principal/employer has the right to determine these. Further, the independent contractor test considers the manner and means by which a result is obtained, rather than the result itself.

In spite of this relatively clear differentiation between independent contractor and employee based on result versus means, there are still additional differing interpretations of independent contractor and employee. The decisions in each case seem to be based on the purpose for the law and the court's interest in justice as they define the purpose.

With that in mind, the pivotal question is, "What is the legislature attempting to do when they pass legislation that governs independent contractors and employees?"

For example, workers' compensation laws are intended to protect the employee. Mechanics' liens would probably be interpreted to protect an owner (even though many cases give lip service to the contrary). License laws are intended to protect the general public.

Tax Implications

With respect to the tax liability of one who is an independent contractor or an employee, the federal government has guidelines known as the "safe harbor test." If a person fits within those guidelines, then that person is an employee. If that person does not, then that person may be an independent contractor.

The following factors are used to determine whether one is an employee or an independent contractor:

1. The worker schedules and controls the number of hours he or she works.
2. No principal place of business is provided for the worker by the employer unless the worker pays a fair rental price.
3. The worker must invest assets in connection with the performance of the job; i.e., investing money in materials or using his or her truck to perform the service; OR, the worker must take the risk that he or she will lose money, i.e., when he or she is paid for a job rather than by the hour.
4. There must be a written contract between the worker and employer entered into before work starts, which states that the worker will not be treated as an employee with regard to employment taxes, income taxes withholding and employee benefit provisions; AND, the worker must be given written notice of his responsibility to pay federal self-employment and income taxes. NOTE: For contracts entered into before January 1, 1983, if the contract says either that the worker is not an employee or that he is an independent contractor, AND, the worker was given written notice of his tax responsibilities before February 1, 1983, then this fourth requirement is met.
5. The employer must fill out all information required on tax returns concerning the work performed by the worker.

If your worker does not meet each of the five requirements of the safe harbor test, then the worker may still be considered an independent contractor if the employer does not have the right to control the worker's performance. In determining whether the employer has the right of control, the following 20 factors are considered by the federal courts and the IRS:

1. Is the worker required to follow instructions dealing with when, where, and how the work is to be done?
2. Was the worker trained in how to perform his or her job?
3. Does the worker perform services which are part of the employer's business?
4. Must the worker personally perform the services?
5. Does the employer hire, pay or supervise assistance to help the worker perform his or her services?
6. Is the relationship between the employer and worker by the job or a continuing relationship?

7. Who sets the hours of work?
8. Is the worker required to work full time for the employer?
9. Does the worker work on another's business premises?
10. Who directs the order and sequence of the work?
11. Are reports, either written or oral, on work status required?
12. How is the worker paid — hourly, weekly, by the job, on a commission basis?
13. Is the worker reimbursed for business or travel expenses?
14. Does the worker furnish his or her own tools?
15. Does the worker own facilities which he or she uses to perform their services?
16. Can the worker providing services either make a profit or have a loss?
17. Can the worker work for more than one employer or firm at the same time?
18. Can the worker make his or her services available to the general public?
19. Can the worker be dismissed for other reasons than nonperformance or nonperformance to contract specifications?
20. Can the worker terminate his or her work at any time without being liable for nonperformance of his or her job?

With respect to federal employment requirements, first use the safe harbor test. If your worker doesn't qualify as an independent contractor under that test, then look at the 20 factors considered in determining whether the employer has the right of control. The federal courts and the IRS use these factors to evaluate whether or not your worker is an employee or an independent contractor. None of the factors alone, for tax purposes, are important, but together they are used to determine if the employer has the right to control the result as well as the means used to complete the job. The more control the employer has, the more likely that the worker will be considered an employee.

California Tests

The various factors which are considered for California employment and tax purposes to determine whether the principal has the right of control under California law are:

1. The extent of control that the principal may exercise over the details of the work (control over the manner in which it is accomplished rather than the end result).
2. Whether or not the person employed is engaged in a distinct occupation or business. (Is it a specialty?)
3. The kind of occupation with reference to whether that occupation is normally done by an independent contractor or by an employee under the direction of the employer.
4. The skill required in the particular occupation.
5. Whether the employer or the workman supplies the tools, the place of work, etc. The greater the investment that the worker has, the less likely it is that he will be held to be an employee.

Automatic License Suspension/ Revocation Program Begins

by Cruz Reyna, Staff Assistant to the Registrar

Before 1981, the Contractors State License Board had few administrative options available to deal with licensed contractors who violated the law. The most common method used was the accusation process. In this process a contractor who violated the law was formally charged with those violations. If an administrative law judge found the contractor in violation of the law by the administrative law judge, the only disciplinary option available to the judge was to suspend or revoke the license. The accusation process offered little flexibility, and sometimes the discipline rendered was not entirely appropriate to the circumstance involved in the case. Additionally, the accusation process was lengthy, costly, and did not accomplish the desired results for the complainant, the contractor, or the CSLB. The need for a new process was evident.

In 1981, the CSLB implemented the citation process. In this process, CSLB staff investigate the complaint and cite the contractor if a violation of law is established. The cited contractor is normally ordered to correct the problem, and/or assessed a civil penalty. In either case, the citation may be appealed or complied with by the contractor. If the contractor appeals a citation, a hearing is held and a judge rules on whether or not the citation is appropriate. If the contractor does not appeal or comply with the citation, the contractor may then be found to be in violation of another law by virtue of his failure to comply.

During the first 5 years of the citation program, CSLB staff estimated that about 30% of all cited licensees were not complying with our citations. We filed accusations for failing to comply with the citation against the contractors, but soon discovered that this process did not solve the problem. We therefore proposed a law that would enable us to "automatically" suspend and later revoke a license belonging to a contractor who fails to comply with a citation. We have sent several hundred notices of suspension to cited licensees, and have noticed a remarkable increase in the citation compliance rate.

How it Works

After a contractor fails to comply with a citation, we send a "notice of suspension" to the contractor, informing him or her of the effective date of the suspension. If the contractor appeals the notice of suspension, the CSLB decides whether the appeal contains sufficient facts for the registrar to reconsider suspending the license. If the appeal is not granted, the license will be automatically placed under suspension and anyone requesting information regarding the license will be informed of the suspension. The license will remain under suspension for up to one year. During this one-year suspension, the licensee may comply with the provisions of the citation and have his or her license reinstated, provided all other licensing requirements are

met. No disciplinary bond will be imposed on the license if the licensee complies with the citation during the period of suspension.

If the licensee does not comply with the citation during the one-year suspension period, his or her license will be revoked, and all entities associated with the license will be ordered to remove the disciplined party or parties from their licenses. Should any of the revoked licensees later apply to have a license reinstated, a disciplinary bond in the appropriate amount will be imposed.

It is important that all cited licensees be aware of the consequences of failing to comply with a citation. Following are some tips to avoid needless and expensive licensing problems.

1. Make sure that you maintain a current business address with the registrar.
2. If you receive a citation, make sure that you take care of the matter promptly. If you are not sure what the citation means, contact the CSLB.
3. If you receive a citation and comply with the terms of the citation, make sure you notify the CSLB that you have complied with the citation.
4. If you receive a citation, time is important to you. Do not let it go unattended. You could lose your appeal rights, cause your license to be suspended, or cause your license to be revoked. ■

Building Departments — What Aggressive Cities Can Do

by Bob Christensen, Staff Assistant to the Registrar

For some time I have been interested in the subject of consumer complaint handling in local jurisdictions. No, not complaints filed with the CSLB, but complaints filed with the city building department. The City of Chino has a unique program that may serve as a valuable model for other jurisdictions to consider.

While attending a recent California Building Officials (CALBO) Annual Business Meeting in Costa Mesa, I spent some time talking with Bob Werner, Chief Building Inspector for the City of Chino and a member of the CSLB/CALBO Liaison Committee. We discussed his department's complaint-handling program in detail. The City of Chino Ordinance allows the building department to handle consumer problems in a unique way.

When a developer or contractor takes out a building permit, he must post a "Developers Security Deposit" for each dwelling in an amount set by the building department.

The developer must give a written notice to any potential home purchaser that lists features and amenities, describes the quality of construction, contains a warranty that the building is constructed in a good and workmanlike manner, describes any discrepancies in the model and the as-built unit, and discusses the buyers' right to inspect and approve the functionality of each major component in the features and amenities list.

Prior to the closing of escrow for the sale of each unit, the developer must conduct a walk-through in-

spection. All disputes or corrections needed are addressed in a joint agreement. This agreement is filed with the building department.

Following occupancy, each buyer has 90 days to register complaints about substantial defects or deviations from the previous agreements with the developer. If no corrections are made or the buyers agreement(s) is not satisfied, the building department may refuse to issue occupancy permits until the developer has complied with the building department orders. If the developer fails or refuses to make the required corrections, the building official will notify the developer in writing, putting the developer on notice that the building official may use the developer's security deposit to make required corrections. Before making these corrections, the building department also informs the developer that failure to comply will also prevent the developer from being issued any new building permits as well as occupancy permits.

If the buyer of the dwelling unit obtains legal action to compel compliance with this ordinance and prevails, the buyer is also entitled to reasonable attorney fees.

If more jurisdictions offered this kind of assistance, more developers would make quality control and consumer satisfaction part of their development plans.

For further information, contact Mr. Robert Werner, Chief Building Inspector, City of Chino, P.O. Box 667, Chino, CA 91710. ■

Board Committee Assignments for 1989-90

CSLB chair Joe Valverde announced committee assignments for 1989-90.

Budget and Administration

Marla Marshall, Chairperson

John Moore

Benny Y. Yee

Jim Frayne

Enforcement **Stephen H. Lazarian, Jr., Chairperson**

Don MacGillivray

Jack Fenton

John Lazzara

Frank Geremia

Legislative

Jim Frayne, Chairperson

Marla Marshall

Benny Y. Yee

Skip Michael

Licensing

Frank Geremia, Jr., Chairperson

Don MacGillivray

John Lazzara

Stephen Lazarian

Jack Fenton

Public Information

Jack Fenton

John Moore

John Lazzara

Skip Michael

Don MacGillivray

Committee meeting dates will be scheduled by each committee chairperson. Dates for these meetings will be published in the next issue of the CLC. ■

Employee vs. Contractor, continued from page 5

6. The length of time that the person is employed. (Can the employer discharge the worker at will?)

7. The method of payment. (Is it based on a completed job or on an hourly basis?)

8. Whether the work being performed is part of the regular business of the employer.

9. Whether the employer and the worker believe that they are creating a relationship of employer/employee or employer/independent contractor; and,

10. Whether the employer is in business or the worker is in business.

Contractors License Law

California has determined that certain professions require a specialized degree of knowledge and/or experience. The entry into such professions (such as attorneys, doctors, pharmacists, contractors, and architects) is controlled by the state. The state does not allow one to call him or herself an attorney or to practice law unless the state has given that person the right to do so. This is also true with respect to contractors. The contractors law is intended to protect the public.

Does the owner/operator of heavy equipment need a contractors license? Some have argued that if that person is working "by the hour," then that person is not required to be licensed. This is not necessarily correct.

Certainly the investment in equipment is one item on the checklist to determine whether one is classified as an employee or an independent contractor. Whether one is working by the hour or on a fixed fee is another consideration.

However, we believe that for contractors licensing purposes, where the protection of the public from dishonest or incompetent operators is the purpose, the determinative factor is the degree of control over the manner and means by which one obtains a result. If the operator works with very little direction, then that person is an independent operator and requires a license. However, if the person is under the direct control of another, then that person is operating as an employee and need not be licensed.

In order to become a contractor one must be "duly licensed" by the state of California. The state issues the

license to a person. Thereafter, that person may qualify as a business entity. The business entity cannot qualify itself, or do business unless it is qualified by a natural person. This administrative mechanism assures that the state has a qualified person, the licensed contractor, dealing with the public.

California has determined that certain businesses require an individual who has special knowledge and experience to operate them. That person must be responsible for the operation of the business. Therefore, it is relatively simple to define the need for a license with respect to an independent contractor and/or an employee. If that person can in fact determine the manner and means by which a result is obtained, then that person must be licensed and regulated by the state because his or her employer/principal does not so regulate him or her. If that person does not determine the manner and means by which a particular result is obtained, then that person need not be licensed and will be defined as an employee for those purposes since his or her employer/principal is responsible for his or her regulation.

It is important to remember that a licensed contractor could be disciplined (with a citation, suspension or revocation) if he or she works with an unlicensed contractor. That is, if the person that you are employing is a subcontractor rather than your employee, then that person must have a contractors license.

Employer/Employee Relations

In the area of employer/employee relations, California attempts to protect the worker with specific statutes that presume that a person is an employee unless that person is properly licensed. One can then readily see the difference between the reasoning behind the contractor/subcontractor relationship and the employer/employee relationship. The contractor's subcontractor relationship is intended to protect the general public from unqualified, unregulated workers representing the licensed contractor. On the other hand, the employer/employee relationship is intended to protect the worker. Therefore, the employee doing construction work is conclusively presumed to be an employee unless that person has a license.

This concern is particularly true in workers' compensation cases. When an unlicensed contractor is hurt

on the job, he or she will probably be deemed an employee so as to provide him or her with workers' compensation coverage. Yet, that same person may be deemed an independent contractor for other purposes.

Liability for Accidents

The law covering employers/employees was upheld and extended by a recent California Court decision. In that case, a driver "employed by a subcontractor," who did not hold a contractor's license, was deemed to be the employee of the general contractor when he had an accident. This was based on the theory that if the subcontractor was an employee of the general contractor because the subcontractor did not have a contractor's license, then the subcontractor's employee was an employee of the general contractor.

Mechanic's Liens

Although the courts have stated that Mechanic's Liens are intended to protect the improver of property, in actuality, if an unlicensed contractor attempts to foreclose on a Mechanic's Lien, the courts will hold that that the contractor was illegally unlicensed. That person is not entitled to foreclose on the lien. There are examples in which the unlicensed person could have been held to be an employee rather than an independent contractor (employees are exempt from the license requirement and can therefore foreclose on liens), but were held to be independent contractors to preclude them from foreclosing on Mechanic's Liens.

Summary

If you are going to use independent contractors, then you must be certain that they are properly licensed and that they control the manner and means of their job performance.

The issue of independent contractor vs. employee is also very important in the construction industry and is filled with many inconsistencies. However, the issue becomes less ambiguous when one attempts to determine why various laws and regulations were passed. If the law was intended to protect the worker, then more likely than not, that person will be held to be an employee rather than an independent contractor. On the other hand, if the law was intended to protect someone other than the worker, then, more likely than not, that person will be held to be an independent contractor. ■

How to Win More Bids in Residential Remodeling

by Nancy Roberts, Sacramento Trades Guild

After ten years in the sales and construction fields, I have seen contractors lose countless residential remodel jobs because of simple mistakes in dealing with the homeowner.

The right attitude toward customer service can give you an important edge over your competition. Consumers are cautious — they may be shopping for a good deal, but they also want a contractor they can work with; one they feel they can trust. When dealing with homeowners, too many contractors treat the bidding process as an annoying necessity that wastes time and produces few jobs.

So how can you stand out from the crowd and produce more sales from your bids? Here are a few tips for meeting with homeowners that can improve the results of your bids.

1. Be courteous, prompt, smile, use direct eye contact, introduce yourself, shake hands. Remember that first impressions count, so it is important to main-

tain a clean-cut, professional appearance.

2. Have a business card or brochure ready to give the homeowner, and include any professional or trade association logos on your literature. This indicates a commitment to your trade and industry. Be sure to explain to the homeowner why your membership in these associations is a benefit to them.

3. Offer references from previous customers with descriptions of the work you have performed. Encourage the consumer to call and inquire about your previous job performance. Present a portfolio of before and after photos from previous jobs.

4. Explain the types of insurance and bonding policies you carry and how they benefit the consumer. Show your pocket license and discuss how the consumer can call the Contractors State License Board to verify your good standing.

5. Send a follow-up note to the homeowner within a few days of your visit. A hand-written note is

great for expressing your appreciation for being allowed to bid for the job. Mention that you will check back with within a specified time period to see if they have any questions about your estimate. This small step accomplishes two things: it keeps your name in front of the consumer, reminding him or her of your sincere interest in the job; and it may allow you to counter a competitive bid that has been given in the meantime. Following up on your bids is crucial. Too many contractors give bids but are reluctant to follow up with the consumer for fear of seeming "pushy." Not following up may leave the consumer wondering if you are too busy to take on the project or if you have any interest in the job at all. It can also give a competitor the chance to enter the picture.

Finally, be professional and honest with the homeowner. If the job doesn't interest you, let the homeowner know that you will not be able to do the work so they can continue looking for someone else. ■

CSLB Staff Recognized for Outstanding Service

At its July 1989 meeting in San Diego, the Board made the first presentation of the perpetual trophy for outstanding performance to the San Francisco District Office. Supervising Deputy George Staniotis accepted the award on behalf of the San Francisco office staff and the Santa Rosa branch office.

The award provides a means for the Registrar and the Board to recognize contributions of field office staff to the success of the CSLB program in licensing, regulation, and consumer service. Based on performance information of the Board's field offices throughout California, the award reflects evaluation of both qualitative and quantitative criteria including deputy closures, consumer service representative closures, deputy legal actions, region reviews, and operations reviews.

A panel of evaluators, including executive staff and regional deputies, ranked the top districts and submitted its recommendations to the Registrar. The Registrar selected the top performing district office for recognition.

A perpetual trophy was engraved with the SFDO name and the 1988-89 award date. The trophy will be updated and awarded to the next top performing office in July 1990. However, the SFDO staff will retain a framed plaque marking the award.

After receiving the award, Staniotis told the Board that "outstanding clerical staff, consumer service representatives, and deputies should be thanked for their hard work and loyal support."



photo by Steve Kolb



Official Publication

Contractors State License Board
 P.O. BOX 26000
 Sacramento, California 95826



Bulk Rate U.S. Postage

PAID
 Permit No. 685

Sacramento, California