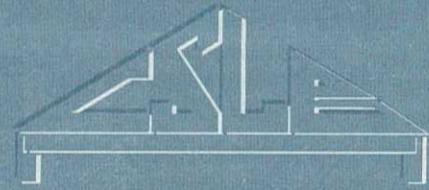


# Licensed Contractor



DAVID R. PHILLIPS, Registrar

Spring 1992

PETE WILSON, Governor

## Registrar's Corner

by David R. Phillips,  
Registrar of Contractors



The Board conducted a very interesting meeting in San Diego in January. It had

public hearings on whether to adopt a new classification and amend another one. This meeting was well attended by the interested parties. It was lively, yet fruitful; an article in this CLC covers this more fully.

I want to bring your attention to the article on the Three License Rule. This new law may not affect very many licensees, but it is very important to those it does affect.

The article on the federal case will be of interest. In 1982 the California Legislature repealed Section 7047, the exemption for federal work. The case cited in this article points out that the federal government still assumes responsibility for any work performed on federal property.

The next CSLB regular quarterly meeting will be held in Berkeley on April 24, 1992. I hope to see many of you attending this meeting.

## CSLB Board Meeting Schedule

April 24, 1992 ..... Berkeley

July 17, 1992 ..... Los Angeles Area

## Three License Rule: Qualifiers – Protect Yourself and Your License - Important New Law

Prepared by Earl Chapman, Special Assistant to the Registrar in collaboration with Ron Russo, Supervising Deputy Attorney General

Legislation passed in 1991 (AB 425, Chapter 145 of the Statutes of 1991) limits the number of firms for which a qualifying person may furnish his or her qualification for licensure. This legislation, which amended Business and Professions Code Section 7068.1, became effective on January 1, 1992. The law prior to this legislation, which continues to be in effect, provides that a person can not act as the qualifying person for an *additional* individual or firm unless specified conditions are met. The conditions which allow a person to qualify

additional licenses are subdivisions (a), (b) and (c) of Section 7068.1. They are:

(a) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity;

(b) The additional firm is a subsidiary of, or a joint venture with, the first;

(c) In respect to partnerships and corporations, the majority of the partners or officers are the same.

*continued on page 4, Qualifiers Limited*

## Board Acts on Industry Classification Petitions Affecting Locksmith and Security Equipment and Fire Alarm System Installers

On January 17, 1992, at a regular quarterly meeting of the Contractors' State License Board in San Diego, public hearings were held on two petitions by industry representatives. The first hearing was on a petition by the Locksmith Industry for the creation of a new classification for lock and security equipment. The second hearing was on a petition by the Fire Alarm Industry to remove fire alarm installation from the Class C-7 Low Voltage Contractor Classification.

After hearing testimony from the proponents of the petition for the lock and security equipment classification and testimony from some who objected to the rule as written, the Board adopted the proposed rule after it was amended to satisfy the objections of those who opposed the rule as written. Those in opposition testified that the rule was not clear concerning whether lock people could or could not install fire alarm equipment. The statement: "Fire

*continued on page 5, Petition*

## License Business Names

### Corporation Divisions - Subsidiaries Fictitious Names - Franchises

Contractors frequently asked if they can contract under a name other than the one that appears on the license certificate or as later changed by proper notification to Board headquarters. To answer this, we need to consult the law covering this question, Section 7117. This section states in pertinent part: "Acting in the capacity of a contractor under any license—except—in the name of the licensee as set forth upon the license—or as later changed—constitutes a cause for disciplinary action."

This means that a licensee can only contract in the name or business name as recorded by the Registrar of Contractors in the official files. This is the name that appears on the application, on the license certificate or as later changed, if a change has in fact been made.

The name on the license can either be the licensee's personal name or any business name that has been chosen and properly advertised. A general engineering contractor or a general building contractor can use the term general contractor in any advertisement or in the contractor's contracting business.

A contractor who, for any reason at all, wishes to contract in a name other than that which appears in the records of the Registrar must either change his or her name with the Registrar or obtain an additional license under the new name.

*continued on page 5, Business Name*



**California Licensed Contractor**  
*Official Publication of the  
 Contractors State License Board  
 Spring 1992*

STATE OF CALIFORNIA  
 Pete Wilson  
 Governor

JAMES CONRAN  
 Director, Department of Consumer Affairs

DAVID R. PHILLIPS  
 Registrar of Contractors

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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 quarterly CLC is at the discretion of the editor and dependent on time and space considerations.

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**DISCIPLINARY ACTION  
 October to December 1991**

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.

**Business and Professions Codes**

490	Relationship of conviction of a crime to licensed activity	7111	Failure to keep records and to make them available to a representative of the Registrar
7018.5	Failure to provide notice to owner regarding lien provisions	7111.1	Refusal to or failure to cooperate with deputy in investigation
7026.7	Advertising as a contractor without a license	7112	Misrepresentation of a material fact on an application
7028	Acting in the capacity of a contractor without a license	7113	Failure to complete a project for the price stated in the contract
7029	Contracting as a joint venture without the required license	7113.5	Avoiding or settling for less than lawful obligations as a contractor through the various bankruptcy proceedings
7029.5, 7029.6, 7029.7	Failing, as a plumbing, electrical sign or well drilling contractor, to display his/her name, address and contractor's license on each side of the commercial vehicle used in his/her business	7114	Aiding and abetting an unlicensed person
7030	Failing to include in a contract the notice that contractors are licensed by the Contractors State License Board	7115	Failure to comply with the Contractors' Law
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	7116	Committing a willful or fraudulent act as a contractor
7071.11	Judgment or admitted claim against bond	7117	Acting as a contractor out of namestyle
7083	Failing to report a change of address, namestyle, or personnel within 90 days	7117.5	Contracting with inactive license
7090.1	Failure to comply with civil penalty or "order to correct" in Registrar's citation	7118	Contracting with unlicensed person
7097	Suspension of additional licenses	7119	Failure to prosecute a job with diligence
7098	Revocation of additional licenses	7120	Failure to pay for materials or services
7099.6	Non-compliance with a final citation	7121	Prohibition against associating with suspended or revoked licensee
7107	Abandonment of a project without legal excuse	7122	Participation of license in violating Contractors Law
7108	Diverted funds or property received for a specific job to other purposes	7122.5	Responsibility of Qualifying Person for acts committed by his/her principal
7109	Willfully disregarded plans and specifications, or has failed to complete the job in a good and workmanlike manner	7123	Conviction of a Felony in connection with construction activities
7109.5	Violation of Safety Laws resulting in death or serious injury	7124	A plea of nolo contendere is considered a conviction
7110	Willful disregard and violation of building laws	7154	Employment of unregistered home improvement salesman
7110.1	Violation of Section 206.5 of the Labor Code	7155	Participation in violation by a home improvement salesman
		7157	Model Home kickback prohibition
		7159	Failure to comply with contract requirements
		7161(b)	False advertising

**LICENSES REVOKED**

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
ABC Seamless of Northern CA	Stockton	497964	11/27/91	7090.1
ALBA General Construction	Whittier	546261	1/06/91	7085.6
ALLTEC Builders Inc.	West Covina	505001	8/27/91	7107, 7113, 7115 (7018, 7030, 7159), 7116, 7120, 7121.5
Almaden Roofing	San Jose	483291	11/26/91	7090.1
American Concrete Construction Company	Walnut Creek	261201	10/22/91	7109, 7113, 7121, 7121.5
Anthony & Sons	Citrus Heights	503000	10/25/91	7090.1
Apex Painting	Fresno	506381	4/27/91	7085.6
Armas, Mario	Ontario	507125	12/11/91	7107, 7110(1689.7), 7113, 7115, (7030, 7159), 7117.6
Ashwood Design & Construction	San Mateo	440488	6/13/91	7108, 7113, 7115 (7159), 7116, 7121, 7121.5
A West Construction	Sebastopol	416663	6/15/91	7107, 7109, 7111.1, 7113, 7115(7030.5, 7159), 7116, 7117, 7121
Balian Construction	Pasadena	491101	12/24/91	7097, 7098
Beckhorn, Lanny L	West Covina	452942	2/21/91	7109, 7110, 7113, 7117, 7121.5
Benco Construction Company	Los Angeles	233882	8/22/91	7097, 7098, 7107, 7110 (1689.7cc), 7113, 7115(7028, 7159), 7120, 7121, 7121.5
Bernaldo Florencio Jr DBA Lor-Land Construction	Santa Monica	511664	6/24/91	7107, 7109, 7110(1689.7), 7113, 7115(7030, 7159), 7121
Bickler Group, The	Rancho San Margarit	329983	4/15/91	7107, 7113, 7116
Bishop, Bryan	Riverside	408475	2/21/91	7107, 7109, 7111, 7115 (7083), 7116, 7121
Block Walter Construction	Buena Park	311126	12/26/91	7090.1
Bown, Bradley	Valley Center	458103	11/8/91	7090.1
Bridge Bay Engineering	Hayward	443185	10/25/91	7090.1
Brown, Vernon D. Contractor	Glendora	267783	12/2/91	7109, 7113, 7116, 7121
Building Consultants	El Cajon	302670	10/8/91	7090.1
Builtco Construction	San Francisco	483802	10/25/91	7090.1
Cain, Cleopas	Rialto	477897	6/30/91	7107, 7109, 7110 (1689.7) 7113, 7117, 7118, 7115 (7030, 7159)
Cal-Tech Roofing	Modesto	505147	11/4/91	7090.1
Cal-Tech Roofing	Modesto	505147	11/27/91	7090.1

*continued on page 3, Disciplinary Action*



## Owner-Contractor Contract Must be in Writing

Section 7164 of the Contractors' State License Law concerning contracts for single-family dwellings between an owner of property and a California licensed contractor was added on January 1, 1992. This new law provides that for the construction of a single-family

dwelling in which the owner is to retain ownership for at least one year, the contract is to be in writing and signed by both parties. Further, it requires that the contract shall contain the following:

- 1) The name, address, and license number of the contractor.

- 2) The approximate dates when the work will begin and be substantially completed.

- 3) A legal description of the location where the work will be done.

- 4) The language of the notice required pursuant to Section 7018.5.

The law, of course, allows the parties to include all other matters agreed to, but is specific that the writing must be legible and must clearly describe any other document that is to be incorporated in the contract.

Before any work is to be commenced the contractor is required to furnish a signed written agreement to the owner.

An important provision is that the contract shall contain in close proximity to the signatures a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance or payment bond and that the expense of the bond may be borne by the owner.

The key point of this legislation is that the written contract is only required if the owner is to retain title of the property for at least a year. The law is not clear if the year is to start on the date of the contract or the date the structure is completed. Logic would tend to support the completion date as the date to use. In any event, the contractor will have to rely on the word of the owner as to whether or not the owner intends to retain title or if the owner plans on selling before the year is up. Since the retention of the property for a year is something that the owner may not always know for sure, it probably would be to the best interest of the contractor to comply with the provisions of the section on all contracts for single-family residences undertaken with an owner.



## Unlicensed Contractor Citations

From October 1 to December 31, 1991, CSLB deputies issued 634 citations to unlicensed contractors.

### Disciplinary Action, continued from page 2

#### LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Ceramic Tile Shippe	Redding	381275	8/11/91	7109,7116,7121
Childers, Verle Dean Construction	Thousand Palms	430030	11/8/91	7090.1
Citywide Construction Inc.	Glendora	499802	11/13/91	7090.1
Commercial Interior Designers	Costa Mesa	468709	11/21/91	7090.1
Concrete Impressions Inc.	Escondido	481823	10/8/91	7090.1
Corke's Bryan Custom Painting	Pomona	509423	11/21/91	7090.1
Crane Heating & Air Conditioning Inc.	Simi Valley	397009	10/30/91	7090.1
Crowe, Donald A.	Hesperia	554604	1/8/92	7085.6
Custom Home Products of America	San Diego	508184	11/8/91	7090.1
D S Builders Inc.	Los Angeles	510895	11/13/91	7090.1
DEA'S Construction Company Limited	San Francisco	458690	5/24/91	7085.6
Decunto Drywall	Santa Monica	542542	12/26/91	7090.1
Dial One Rancho Ornamental Iron	Rancho Cucamonga	500728	12/26/91	7090.1
Diego & Son Construction Co.	La Mesa	327897	12/2/91	7090.1
Diversified Builders	Chatsworth	414207	12/26/91	7090.1
Dolphin Electric Co.	Stockton	347117	11/27/91	7090.1
Dragon Industries Inc.	Fullerton	573130	8/22/91	7097, 7098, 7112, 490, 7121
Duket, Glenn Roy	Rancho Cordova	351333	12/26/91	7109, 7110 (1689.7), 7113, 7115 (7159)
Eads, Bruce	San Diego	534706	8/31/91	7097, 7098, 7107, 7108, 7113, 7115 (7018.5, 7071.11, 7159), 7121.5
Elam Construction	Escondido	451291	11/21/91	7090.1
Five Star Masonry	Citrus Heights	518901	6/13/91	7107, 7109, 7113, 7121, 7121.5
Floor Facetree, Inc.	San Diego	391274	10/4/91	7097, 7098, 7122.5
Frontier Tile	Roseville	514301	11/27/91	7090.1
G W Tenant Development Service	Inglewood	511109	10/8/91	7090.1
Gardea Concrete Construction	Rialto	464927	10/22/91	7090.1
Garland Pools Inc.	Los Alamitos	522461	10/21/91	7107, 7108.5, 7111, 7113, 7115 (7018.5), 7030, 7167,7119,7120,7121.5
Golden Coast Builders	Tustin	527829	1/7/91	7085.6
Guadalupe Electric	Guadalupe	330644	10/21/91	7090.1
Haase Const.	Rancho	565806	11/8/91	7090.1
Hansen, Mark General Contractor	Lomita	467144	12/26/91	7090.1
Hicks, Randy Lee Building & Remodeling	Carlsbad	453890	11/8/91	7090.1
Hoagland Enterprises Ltd Coastline Drilling & Pump Co. Pittsburg	Pittsburg	515563	11/27/91	7090.1
Holden Enterprises	La Mesa	441510	11/21/91	7090.1
Hub Sign & Neon Center	El Monte	295421	11/13/91	7090.1
Huish, John Thomas	Fullerton	403068	10/8/91	7090.1
Incline Development Co.	Capitola	300674	1/07/92	7113,7120,7121
Interactive Visions West Inc.	Sun Lakes, AZ.	329550	2/21/91	7109, 7113, 7121, 7121.5
J & D Roofing Inc.	Sacramento	504045	5/31/91	7110 (206a, 206b, 240, 7111,7112,7115 (7083,7030, 7159)
J & D Roofing Inc.	Sacramento	504045	5/31/91	7110 (206a, 206b, 240) 7116, 7120, 7154, 7161
Kelly, Chuck General Contractor	Eureka	308132	11/18/91	7110, (UBC), 7113, 7121
Kings' Roofing Co.	Carmichael	407017	5/31/91	7108,7109,7110 (1689.7)
Kinney Air Conditioning Company	Carlsbad	419758	11/8/91	7090.1
Kohler & Associates Inc.	Anaheim	418097	11/21/91	7090.1
Langham Concrete Construction	Westminster	538129	11/21/91	7090.1
Langi Construction	Alta Loma	361689	12/26/91	7090.1
Lillie, Gary D	San Jose	375475	4/17/91	7098,7122.5
Lindo, Percy Electrical & Mechanical	Los Angeles	445743	12/26/91	7090.1
Let George Do It!	Menifee Valley	515938	11/21/91	7090.1
Lyons, Steve C.	Pomona	569650	12/26/91	7090.1
Magnum Builders and Developers	Riverside	507147	11/21/91	7090.1
Maxwell Bros. Floor	Torrance	424817	10/4/91	7097, 7098, 7122.5
Maxwell Bros. Floor	Torrance	432649	10/4/91	7109, 7113, 7121, 7121.5, 7122.5
Maxwell Brothers Floor Company	Torrance	240863	10/4/91	7097, 7098, 7122.5

continued on page 4, Disciplinary Action

## Qualifiers Limited

continued from page 1

The limiting legislation says that regardless of what conditions (a), (b) and (c) provide, the qualifying person cannot qualify more than three firms in any one-year period under these situations. Firm as used in this law means a copartnership, a limited partnership, a corporation, or any other combination or organization.

Neither individual proprietorships nor joint venturers are included in this prohibition; there are special provisions covering individuals and joint venturers.

Joint venturers are provided for under an entirely different set of circumstances. Joint venturers consists of already licensed entities and are not qualified, *per se*, by a qualifying person.

An individual can only be qualified in one of two ways, either by himself or herself, or through the appearance of a responsible managing employee (RME). The qualifications of an individual by a qualifying person are already strictly controlled. The law (Section 7068, d) says that a responsible managing employee is a *bona fide* employee of the licensee and is one who is actively engaged in the classification of work for which he or she is employed by the licensee. A board rule (823) defines a *bona fide* employee as one who is permanently employed by the licensee and who is actively engaged in the operation

of the licensee's contracting business for at least 32 hours or 80 percent of the total hours per week the business is in operation, whichever is less.

Just how many 32 hour weeks is a person capable of performing? Not very many, that is certain. This leaves only copartnerships and corporations which are addressed by this new law.

When enacting the Contractors' State License Law (CSLL), the legislature lumped all references to individuals, firms, copartnerships, corporations, associations, or other organizations under the term "person" (Business and Professions Code Section 7025). A person is an entity. Therefore, each of the firms referenced in the CSLL can be considered an entity.

The limitation on the number of firms that a qualifying person can qualify in the CSLL then really refers to the number of entities for which he or she can act as the qualifying person. If a qualifying person qualifies a license for a person (entity) and then qualifies a license for another person (entity), that qualifying person is qualifying licenses for two people.

If the qualifying person qualifies two licenses for the same person, that qualifying person is qualifying licenses for just one person (one firm or entity). There could be a number of reasons a person would want or need two or more licenses. To contract under different names or to contract for work under different licenses to keep different types

of businesses separated are two reasons that come to mind. See *License Business Names* (beginning on page 1) in this issue for further information regarding the need for seeking additional licenses.

The law already specifies why a person (firm or entity) would be required to have more than one license. This law (Section 7117) says that to act in the capacity of a contractor under any license issued except in the name of the licensee as set forth on the license, constitutes a cause for disciplinary action. A strict interpretation of this requirement means that a licensee could operate a construction business in one name only and would be prohibited from operating under any other name. A licensee solves this problem by obtaining an additional license in the other desired name. For various reasons a licensee may want to operate businesses in many names. Licenses issued under each of the names is the only lawful way to proceed. The new law does not prohibit this procedure since we are dealing with just one firm and not a number of firms. Since a person, as defined by law, is an individual, firm, copartnership, corporation, association or other organization it would be unrealistic to allow an individual who is qualified by an RME to obtain more than three licenses and to limit other firms (entities) to only three licenses just because the firms happen to be copartnerships or corporations.

The intent of AB 425 was to limit the number of firms or entities a qualify-

ing person could qualify and not the number of licenses. It was not the intent of AB 425 to hobble a licensee who is qualified by a qualifying person but it was the intent to get some control over professional qualifying people who qualify or attempt to qualify any number of firms in wholesale lots under the guise of complying with the provisions of common ownership, etc. in Section 7068.1.

As stated before, this limiting legislation went into effect on January 1, 1992. Consequently, this agency will not issue a license to a firm whose qualifying person is already the qualifying person for three other firms or entities. The qualifying person would have to remove himself or herself from one or more of the existing licenses. Further, in 1992 this qualifying person could only qualify licenses for two other firms. This is predicated on the presumption that there are no more than three existing licenses for different firms at any one given time. In other words a qualifier may qualify three licenses or file applications for three licenses in any one year period but cannot have more than three licenses at any one time. It must be kept in mind that the provisions of subsections (a), (b) and (c) of Section 7068.1, which were enumerated above, still apply when applying for additional licenses.

This new law allows one full year or until January 1, 1993 for full compliance to its provisions. This means that it is left up to the qualifier who is qualifying more than three different firms to disassociate from any license which is in excess of three. If this isn't done by January 1, 1993, the qualifying person will be automatically disassociated from all licenses he or she is qualifying and all of those licenses will be automatically suspended 90 days thereafter.

The legislation does not specify that the qualifying person will be disassociated from the most recent licenses issued and the resultant suspension of the most recent licenses issued in excess of three.

It would, therefore, behoove

## Disciplinary Action, continued from page 3

### LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
McDonald Plastering	El Monte	502373	9/23/91	7090.1
Minadeo, Dennis D.	Apple Valley	298136	10/21/91	7090.1
Misner, Thomas A.	Cardiff	328610	11/21/91	7090.1
Mr. Kitchen's Const.	Dominguez Hills	312058	8/22/91	7097, 7098, 7107, 7109, 7113, 7115 (7159)
Murray Maintenance Landscaping	Rednibdm, WA	512884	11/22/91	7090.1
Nau, Filipe O.	Ontario	406652	10/8/91	7090.1
Nehemiah's Construction	La Habra	569941	3/24/91	7097,7098
Nicholas, Ted R.	Upland	228938	8/31/91	7097, 7098, 7107, 7109, 7113, 7115 (7159), 7119, 7121, 7121.5
ODAX	San Francisco	498371	6/15/91	7109.5,7110(UBC),7177.6,7121
Osborne, Arthur K.	Lakewood	365466	8/22/91	7097, 7098, 7107, 7113, 7115 (7028, 7030, 7159), 7117, 7121.5
Osborne & Moore	Lakewood	546872	8/22/91	7097,7098,7121.5
P.M.I.	Los Angeles	431516	8/25/91	7097,7098,7107,7113,7120
P.M.I. Installations	Los Angeles	453712	8/25/91	7097,7098

continued on page 6, Disciplinary Action

continued on page 7, Qualifiers Limited



## Business Name continued from page 1

There are various reasons a contractor would wish to contract under a number of different names. A contractor may have purchased one or more established businesses and wishes to retain the name of the business as well as the good reputation already established by the purchased business. The contractor may have more than one classification and desires to carry on the business of each classification under a name that pertains to each classification. For example, a contractor may have a general building classification, contracting as "ABC Construction." He or she may also have a plumbing classification and wants to contract as "ABC Plumbing." That contractor would be required, under the law, to obtain an additional license for the plumbing business.

An individual, licensed through his or her own qualifications or the qualifications of a responsible managing employee (RME) must obtain a separate license for each and every name in which that individual wants to be licensed. The same applies for a partnership, whether qualified by a qualifying partner (QP) or an RME. A corporation, whether qualified by a responsible managing officer (RMO) or an RME, must come under the same requirements. A corporation has other options for carrying on separate businesses. The corporation may create divisions within the corporation or create subsidiaries which are individually registered by the Secretary of State as separate entities. Regardless of the situation, according to the Contractors State License Law, a licensee can only contract in the name in which it is licensed and must therefore obtain an additional license for each name to be contracted under.

Some years ago there was an appellate court case that gave a more liberal interpretation of the law, at least as far as corporations were concerned. This case is:

Judson Pacific - Murphy Corp., *et al* v Frank B. Durkee, Director of Public Works and United States Steel Corp., 144 ACA No. 4 - 421 (Sept. 1956). In this case,

## **An individual, licensed through his or her own qualifications or the qualifications of a responsible managing employee (RME) must obtain a separate license for each and every name in which that individual wants to be licensed.**

American Bridge Division, United States Steel Corporation submitted a bid to perform the steel work on the Carquinez Bridge. American Bridge Division was an operating division of United States Steel Corporation (U. S. Steel) and was not separately licensed. U.S. Steel held a valid license No. 128593. The officers and directors of American Bridge Division coincided with those of U.S. Steel.

U.S. Steel submitted the low bid. Judson Pacific, *et al*, (Judson), a joint venture, submitted the second low bid. Judson protested the awarding of the low bid on the grounds that American Bridge Division, United States Steel Corporation had no contractor's license. Frank Durkee (Durkee) requested an opinion of the Registrar of Contractors who referred the question to the Attorney General. The Attorney General ruled that the bid by U.S. Steel was valid and that a contract could properly be awarded to the bidder as named. Durkee awarded the contract to U.S. Steel and Judson filed a petition of mandate for injunctive relief. The court noted that formerly American Bridge Company, a subsidiary of U.S. Steel, held a license. In 1951, when U.S. Steel applied for a license, information was noted on the application that all subsidiary operating companies of U.S. Steel would cease doing business as individual and separate companies and would merge their activities with U.S. Steel.

It was further noted that the former subsidiaries would continue their present identities as operating divisions of U. S. Steel with no substantial change in operating personnel.

The court stated that no one was misled by U.S. Steel submitting a bid in the name American Bridge Division, United States Steel Corporation and so it was not a vital defect. Although Section 7117 of the CSLL requires the licensed contractor to act ". . . in the name of the

licensee as set forth upon the license . . . " and subjects the licensee to disciplinary action for a violation thereof, this technical violation of the law does not, *per se*, invalidate the contract.

This latter statement of the court should be kept in mind when administering the law as it relates to names or business names. The court was interested in whether or not the public interest was best served by allowing the low bidder, in this instance, to proceed with the contract even though there could be a technical violation of the law. Apparently because of the opinion of the Attorney General, the Contractors Board did not proceed any further. It has been an ongoing policy of the Board to allow a contractor to operate under a dba (doing business as) or a division as long as the name of the licensee appears in the business name on the contract or on any advertisement. This, of course, must be kept within the bond of reason. John Doe cannot expect to operate under several dbas while licensed only as John Doe. One of the points addressed by the court was the matter of identification. It would become confusing and identification would be difficult if not impossible if done otherwise.

After considering the provisions of Section 7117 and the implications of the Judson v Durkee case we have to conclude that a licensee is required to conduct a contracting business in the name as on record in the official files of the Registrar of Contractors. The name can include a dba or just the business name of the licensee. A corporation can use the name of a division, but must also include the name of the corporation as it appears in the records of the Secretary of State. If the corporation has more than one division, the corporation must obtain a license for the additional division. Additionally, if a corporation acquires a

## Petition continued from page 1

alarm systems are specifically not included in this section" was added to the rule definition.

Refer to the Winter 1991 *California Licensed Contractor* for the language in the proposed Board Rule 832.28, Class C-28 Lock and Security Equipment Contractor.

Testimony was presented both for and against the petition to remove the installation of fire alarm equipment from the C-7 Low Voltage Contractor Classification. The Board adopted the amendment as presented.

The language of this amended rule can also be found in the Winter 1991 issue of this publication.

These rules are not now effective and may not be for several months. By law, they must be reviewed by the Director of the Department of Consumer Affairs and by the Office of Administrative Law. After a review resulting in approval, the rules are filed with the Secretary of State and then become effective 30 days after the date of filing.

subsidiary (a subsidiary usually is filed with the Secretary of State as a separate entity) with the intention of conducting business solely in the name of that subsidiary, then the subsidiary needs to be separately licensed, even though the officers of the subsidiary may be the same as those of the corporation.

Franchises are different than subsidiaries, divisions of corporations or entities conducting businesses under fictitious names. A franchise is a separate individually-operated business under the name of the franchisor. Because the franchise is a separate business, the franchisee is required to be licensed as a separate entity.

It all boils down to the fact that any licensee who conducts businesses under various names must obtain a license for each name under which a contracting business is conducted.

## Federal Court Decision on Federal Projects

A recent federal court decision has ruled that states cannot impose contractor licensing requirements on contractors contracting for work on federal projects.

The case, Gartrell Construction, etc. v Lloyd Aubry, Chief, Division of Labor Standards Enforcement, etc., Case No. 90-15190; D.C. No. CV-89-3771-EFL; 91 Daily Journal DAR 9006, was filed by the United States Court of Appeals on July 25, 1991.

The facts of the case are: Gartrell, a general contractor, performed work for the United States Department of the Navy at the Marine Corps Air Station located at El Toro, California. Gartrell did not obtain a California contractor's license insofar as he believed that as a contractor performing work exclusively for the federal government he was exempt from California's licensing requirements.

The California Division of Labor Standards Enforcement attempted to enforce the provision of Labor Code Section 1021 on Gartrell. This section provides that any person who does not hold a valid contractor's license, and who employs persons to perform services for which a contractor's license is required, shall be subject to civil penalties of \$100 per employee per day of employment. The Division assessed civil penalties in the amount of \$57,600 against Gartrell and a judgement in that amount was entered in the Superior Court.

Gartrell sought injunctive relief in the federal district court from the Division's assessment. The district court ruled against the Division and the Division appealed to the United States Court of Appeals.

The federal Court of Appeals affirmed the judgment of the district court. In its decision, the Court of Appeals cited a 1956 Supreme Court decision, Leslie Miller v Arkansas. In the Miller case, the contractor was prosecuted and

## Disciplinary Action, continued from page 4

### LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Paige, G. Construction	Santa Clara	623494	11/26/91	480,7121
Palme, J.A.	Canyon Country	430777	11/22/91	7090.1
Palmer's Engineering & General Contractor	Lakeside	355856	8/31/91	7097,7098
Parthenon Builders*Parthenon Group Inc.	San Diego	578734	6/5/91	7107, 7108, 7109, 7111, 7112, 7113, 7115, 7116
Pentex Construction Company	Redondo Beach	449434	11/8/91	7090.1
Pioneer Construction Co.	El Monte	198903	8/27/91	7098, 7122.5
Plummer, Thomas C.	Chula Vista	585172	6/5/91	7097, 7098
Precision Patios	Moreno Valley	521173	10/10/91	7090.1
Pride Builders	San Diego	476695	12/26/91	7107, 7119, 7110, 7113, 7115 (7159)
Property Renovations Inc.	Sunnyvale	517975	11/26/91	7107, 7113, 7115, (7159), 7121, 7121.5, 7122.5
Pursley, Landy	Escondido	507675	11/8/91	7090.1
Quaini, James T.	Napa	461033	10/25/91	7090.1
RKS Interiors Inc.	Torrance	448921	12/26/91	7090.1
R S General Contracting	Anaheim	501254	12/26/91	7090.1
Ray, Dennis G.	Campbell	484317	4/23/91	7107, 7109(a) (b), 7113, 7121.5
Re-Skin-It Co.	Long Beach	452651	8/22/91	7097,7098
Richard, John Const.	Oakley	381367	11/27/91	7090.1
Roofing Company The	Anaheim	527137	11/21/91	7090.1
Roofing Group The	Pinole	439121	11/27/91	7090.1
Royal Blue Pools	Lakeside	522761	8/31/91	7107, 7113, 7115 (7083, 7167), 7116, 7121.5
Sandberg, Robert D.	San Diego	338205	11/8/91	7090.1
San Jose Best Builders Inc.	San Jose	317904	4/17/91	7107, 7108, 7109, 7110 (UBC), 7111, 7113, 7114, 7115 (7159), 7116, 7118, 7121, 7121.5
Santa Barbara Plastering Company Inc.	Goleta	480215	11/26/91	7097, 7098
Santa Maria Valley Plastering Inc.	Santa Maria	380321	3/24/91	7109, 7113, 7117, 7071.11, 7121
Sheehan, Charles E.	San Francisco	197746	7/28/91	7098
Signature Skylights	Torrance	533253	10/8/91	7090.1
Smith, Carroll Travis	Orange	406406	11/21/91	7090.1
Southwestern Electric Inc.	Stanton	497506	11/21/91	7090.1
Stark, David	Sutter Creek	387249	4/13/91	7115 (7030), 7117
Starr Masonry	Citrus Heights	597613	6/13/91	7097, 7098
State Energy Corporation dba Star Construction	San Diego	487438	6/17/91	7107, 7108, 7111, 7113, 7115 (7071.13, 7159), 7116, 7117.6, 7119, 7154, 7121.5
Stonie's Roofing	Cathedral City	325384	11/21/91	7090.1
T L Construction	Inglewood	430237	10/5/91	7090.1
Telez Asphalt Paving Company	Burbank	336698	11/22/91	7090.1
Tenicon Inc.	San Diego	449872	11/21/91	7090.1
Thornton, James	Oakland	363661	11/10/91	7107, 7109, 7110 (1689.7), 7113, 7115 (7030, 7159), 7116, 7117.6, (7121, 7121.5)
Thorpe, Terry	Citrus Heights	504315	10/20/91	7090.1
Three Brothers Construction	La Habra	541899	3/24/91	7097,7098
Towner Carpets	Palm Springs	263750	11/25/91	7090.1
Tri-Smith Builders	San Francisco	519397	7/28/91	7112,7114
Truttman Construction	Yreka	295104	12/5/91	7090.1
Two Brothers Painting	Napa	323777	10/25/91	7090.1
Villasenor Construction	La Mirada	503195	3/24/91	7107, 7109, 7113, 7117.6, 7121
Walker Electric Company	Los Alamitos	450828	11/21/91	7090.1
West Coast Pool Construction Inc.	El Cajon	503039	8/22/91	707, 7098, 7107, 7110, 7113, 7115, 7083, 7121
Western Construction Co.	West Hollywood	487510	4/6/91	7107, 7109, 7110, 7113, 7115 (7078.5, 7030, 7159), 7121
Western Divisional Sheet Metal	San Diego	408572	11/21/91	7090.1
Western Electric Sign Co. Inc.	Chula Vista	418168	11/21/91	7090.1
Wetteland Construction	La Canada	286164	6/30/91	7107, 7109, 7113, 7115 (7030, 7159), 7125.5
Wiglesworth, Victor Thayer	San Diego	210447	12/26/91	7098
Wohrman, Tom Roofing	Anaheim Hills	480740	11/8/91	7090.1
Yeager, L. K. Plumbing Co.	Palm Springs	514959	12/26/91	7090.1

finied by the state for working as a contractor without having an Arkansas contractor's license. The fine was upheld by the state court.

Upon appeal, the U.S. Supreme Court reversed the state judgment and found

that the Arkansas statute requiring licensing of the contractor interfered with the federal government's power to select contractors and to schedule construction.

The U.S. Court of Appeals stated that the Miller case parallels the Gartrell

case and that the Leslie Miller rule has the full force that it had when it was announced in 1956. The federal court held that Gartrell, as a contractor with the federal government, is exempt from California's licensing requirements.

## Notice to Subdividers Re: Cost Indexing for Public Improvements

Section 66452.6 (a) of the Government Code was amended by AB 1963, Chapter 1268, Statutes of 1989, to read as follows:

An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred twenty-five thousand dollars (\$125,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36

months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps which may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map. The amount of one hundred twenty-five thousand dollars (\$125,000) shall be increased by the Registrar of Contractors according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The

adjustment by the Registrar of Contractors shall be effective on the first day of the month occurring more than 30 calendar days after the Registrar of Contractors makes that adjustment. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

"Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

Pursuant to Chapter 1268, for 1991, the Registrar adjusted the amount of \$125,000 to \$159,875 based on the statewide cost index for class B construction. For 1992, the registrar has adjusted this figure to \$189,452.

Developers with questions concerning this subject should contact their local planning department for assistance.

## C-27 Design Limitations

Recently it has come to the attention of the Registrar that some C-27 landscape contractors have exceeded the authority to do design work pursuant to Section 7027.5 of the Business and Professions Code which states:

7027.5. A landscape contractor working within the classification for which the license is issued may design systems or facilities for work to be performed and supervised by that contractor.

The Board of Landscape Architects has reported that some C-27 contractors are doing design work to be performed by others, and they are selling their designs to a client to be bid on by other contractors or to be performed by the clients themselves.

A person who practices landscape architecture within the meaning of Section 5615 of the B&P Code, Chapter 3.5, Article 1, must be registered with the Board of Landscape Architects. To engage in such non-exempt practices without proper registration is a violation of the law and violators are subject to citation, fine, and criminal charges.

For further information, please contact the Board of Landscape Architects, Enforcement Unit, at 400 R Street, Suite 4020, Sacramento, CA 95814, (916) 445-4954.

## Sales Tax Seminars Offered to Construction Contractors

*Ron Taussig, Assistant Chief of Field Operations, State Board of Equalization*

As a construction contractor you have an opportunity to learn more about how California sales and use taxes apply to your business by attending a free seminar offered by the Board of Equalization in your area.

Subjects to be covered include:

How sales and use tax applies to various transactions made by construction contractors.

Potential pitfalls and how to avoid them.

The records you need to support tax payments and deductions.

How and where to get help.

Because seating is limited, reservations are recommended. For reservations and further information, please call the number provided below for the class you wish to attend. The locations, dates, times and phone numbers follow:

### Construction Contractors' Seminars

	Date	Time	Telephone
San Bernardino	Apr 22, 1992	1:00 pm - 4:00 pm	714/383-4120
San Diego	Apr 23, 1992	1 0:00 am - 12:00 pm	619/525-4182
Costa Mesa	Apr 25, 1992	10:00 am - 12:00 pm	714/558-4774
San Francisco	Apr 28, 1992	9:00 am - 12:00 pm	415/396-9807
Oakland	Apr 29, 1992	9:00 am - 12:00 pm	510/464-0347
San Jose	Apr 30, 1992	9:00 am - 12:00 pm	408/277-1175
Fresno	May 7, 1992	9:30 am - 11:30 am	209/445-5105
Bakersfield	May 5, 1992	10:00 am - 12:00 pm	805/395-2883

### Qualifiers Limited continued from page 4

any person or firm who is affected by this legislation to proceed immediately to take steps to comply with the terms of this legislation before it is too late.

Any questions concerning this new law should be in writing, directed to Bob Christensen, Licensing Deputy, P.O. Box 26000, Sacramento, CA 95826.

## Development and Construction Protection for Native American Cultural Resources

Do you know what state has the largest American Indian population after Oklahoma? The answer may surprise you—it's California. Up until the latest (1990) census, California had the largest Native American population in the United States. There are 109 federally-recognized tribes in California with 40 more applying for recognition. Their reservations and rancherias are in over half of California's counties and presently comprise more than 541,000 acres. In San Diego County alone, there are 18 reservations.

Why should that concern you? The law instructs you to stop work immediately if you discover signs of an Indian burial/archaeological site, and contact the county coroner. Given the statistics noted above, the odds of that happening are greater than you probably thought.

Since January 1, 1988, it has been a felony to obtain or possess Native American remains or associated grave goods. Any person who removes, without authority of law, any Native American artifacts or human remains from a Native American grave or cairn with intent to sell or dissect, or with malice or wantonness, is guilty of a felony which is punishable by imprisonment in state prison.

You may feel that you are beginning

to immerse yourself in a quagmire as you read this article. With proper planning and knowledge, you can avoid the problems that can stop all work at your job site and protect California Native American cultural sites/artifacts. The Native American Heritage Commission was established to assist you regarding the protection of Native American burial, village, and ceremonial sites. "Up until 1978, California Indian cultural sites were not protected and many sites were destroyed," explains Larry Myers, director of the Native American Heritage Commission.

### What steps should you take to ensure compliance with the law?

- Touch base with your local planning agency to find out if there are any sensitive cultural areas in proximity to your job site. If you are in a sensitive cultural area, hire an archaeologist with experience identifying Native American sites, or a track record of conducting an adequate survey. The Native American Heritage Commission also has pamphlets available to explain the law in greater detail. Contact them at:  
915 Capitol Mall, Room 364  
Sacramento, California 95814  
(916) 653-4082

- If you discover signs of an Indian burial/archaeological site, stop work immediately and contact the county coroner pursuant to Section 7050.5 of the Health and Safety Code of California law. If the coroner determines that the remains are likely to be those of a Native American, he or she shall contact the California Native American Heritage Commission.

The Governor's Office of Community Relations has taken the lead on a conference to educate the building industry further on the law. "Governor Pete Wilson attaches importance to enforcing laws protecting California Indian cultural heritage and resources," noted Bella Meese, Chief Deputy Director of the Governor's Office of Community Relations. "But," she goes on to say, "he supports the education of the building industry to develop a relationship of trust between Indian descendants and property owners." The Contractors State License Board will be co-sponsoring the conference, along with the Governor's Office of Community Relations, Native American Heritage Commission, and the Department of Consumer Affairs. The conference titled; *Preservation and Pro-*

*tection: Meeting Requirements for Preserving California's Native American Cultural Resources. A Conference for Contractors, Developers and Local Government*, will be held on July 16, 1992 as an adjunct to the CSLB Board Meeting in Los Angeles/Burbank. Registration is limited, so register early. For information concerning the "Preservation and Protection" Conference contact Peter DeMarco at:

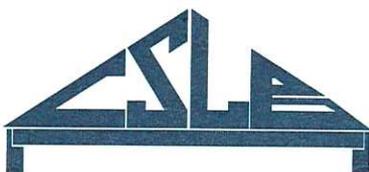
Governor's Office of Community Relations  
1400 10th Street, Room 222  
Sacramento, California  
(916) 445-1114.

The Contractors State License Board attaches great importance to the protection of Native American artifacts and remains. In addition to hosting the conference, the CSLB is actively working to ensure that contractors and others involved with the construction industry are informed about these requirements. The 1992 edition of the California Contractors License Law and Reference Book (soon to be published) will include a chapter on the preservation of Native American cultural resources. The board's new Law and Business Examination will also contain questions on this topic.



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