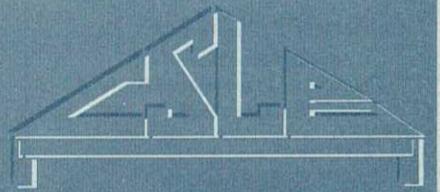


# Licensed Contractor



DAVID R. PHILLIPS, Registrar

Summer 1992

PETE WILSON, Governor

## Registrar's Corner

by David R. Phillips,  
Registrar of Contractors



Unlicensed contracting has been a problem for many years, but it looks like things are about to change. In

1990, a demonstration project was established in Southern California to test the concept of a specialized unit to combat unlicensed contracting. Based on its track record, comparable units for Central and Northern California have been authorized in the Governor's 92/93 budget.

This is very good news for licensed contractors who have long argued that everyone should work by the same rules. Assuming the budget augmentation remains intact and there are sufficient funds to implement the expansion, the units are expected to be operational by Fall 1992.

Another bit of good news is that complaint disclosure procedures have been revised to ensure that we do not release information until a complaint has been fully investigated. This edition includes a special article appearing on this page that describes this Board Rule change.

Contractors are reminded that new Workers' Compensation requirements have been in place since January 1, 1992. To ensure compliance, the Board is planning selected audits. Details are covered in another article beginning on page 1 of this edition.

## Complaint Disclosure Procedures Revised

When our field offices receive a complaint against a licensee, it is first screened and mediated by a Consumer Services Representative (CSR). The CSRs mediate and settle as many complaints as possible without resorting to field investigation. During this phase of complaint processing, the fact that a complaint has been filed is not disclosed to the public.

If the CSR is unsuccessful in mediating and settling the complaint, it is turned over to the field for investigation. Under former Board Rule 863, complaints which were not settled during the mediation phase were considered to have sufficient merit to warrant further investigation and were disclosed, upon request, to the public.

After several meetings and formal public hearings, the Board decided that (1) complaint information was being released before a thorough investigation



had been completed and (2) the Board Rule was not consistent with Business & Professions Code 7124.6 (which provides for disclosure of information on complaints which have been referred for legal action.) Put simply, the regulation needed to be changed to be consistent with statutes.

During public hearings, various individuals and groups opposed to changing the regulation cited the importance of the public's right to know if any complaints had been filed against a licensee as soon as a complaint is filed with the Board. Supporters of the proposal to change regulations stated that it was unfair to licensees to release complaint information before an investigation is completed.

After considering all of the testimony, the Board voted to amend Board Rule 863 so that *complaint information will not be disclosed to the public until after it has been fully investigated and a decision made to refer the complaint for a legal action.*

The amendment was approved by the various levels of review and was filed with the Secretary of State effective April

## Workers' Comp and Your License – Don't Leave Home Without It!

If you have employees, you are required to carry Workers' Compensation Insurance.

Business and Professions Code 7125.1 required that after January 1, 1992, workers' compensation is a condition of licensure. This same law allows an exemption for those who certify under penalty of perjury that they have no employees. Failure to have a Certificate of Insurance or exemption on file with the Board will result in the automatic suspension of the license.

To ensure compliance with this new law, the Board has initiated a two-pronged effort:

(1) A random sample of exemption certificates will be selected for audit and investigation; and

*continued on page 3, Workers' Comp*

10, 1992. Complaint disclosure procedures within the Board are currently being revised to implement the amended regulation no later than July 1, 1992.

*What does this amended regulation mean to you as a licensed contractor? It means that if a complaint is filed against you, that fact will not be disclosed to the public until the complaint has been fully investigated and a determination made that the complaint is valid and warrants a legal action against your license.*

## CSLB Board Meeting Schedule

The next Board meeting is scheduled for July 17, 1992 at the Burbank Airport Hilton Hotel (818) 843-6000.

I hope to see you there.

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

STATE OF CALIFORNIA  
 Pete Wilson  
 Governor

JAMES CONRAN  
 Director, Department of Consumer Affairs

DAVID R. PHILLIPS  
 Registrar of Contractors

**Members of the  
 Contractors State License Board**

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James L. Frayne	Public Member Vice Chairperson
Jack Fenton	Public Member
Stephen H. Lazarian, Jr.	Public Member
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Joseph Valverde	A-Contractor
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**1991-92 Committee Assignments**

- Budget & Administration Committee  
James L. Frayne, Chairperson
- Enforcement Committee  
Jack Fenton, Chairperson
- Legislative Committee  
John H. Moore, Chairperson
- Licensing Committee  
Stephen H. Lazarian, Jr., Chairperson
- Public Information Committee  
Marla Marshall, Chairperson
- Strategic Planning Committee  
Roger O. Lighthart, 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 quarterly CLC is at the discretion of the editor and dependent on time and space considerations.

Headquarters of the CSLB is located at:  
 9835 Goethe Road  
 P.O. Box 26000  
 Sacramento, California 95826

Information ..... (800) 321-CSLB  
 (916) 327-9707

**DISCIPLINARY ACTION  
 January to March 1992**

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	7124	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

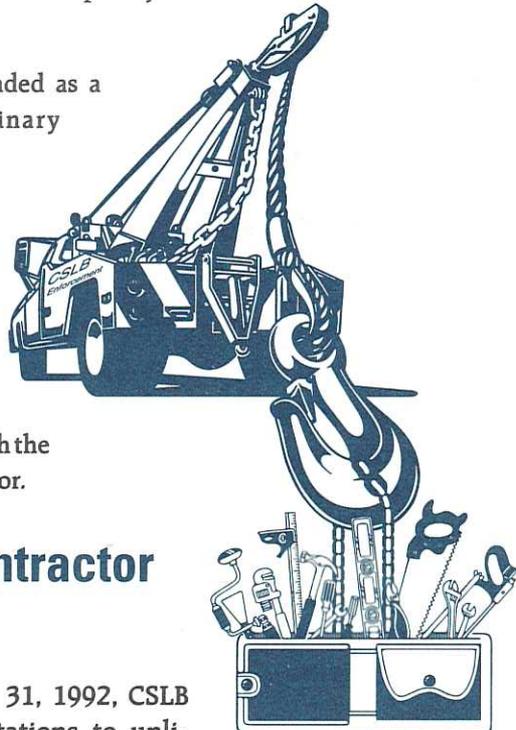
**LICENSES REVOKED**

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
All City Building, Inc.	Reseda	552622	3/29/92	7098
All-Rite Plumbing & Drain Cleaning	Moreno Valley	530857	3/30/92	7085.6
American Landscape Professionals	Hemet	565722	3/30/92	7085.6
Breas, Ruben Mares	Selma	HIS AA036739	12/13/91	7156(a)
Brankovich Construction	San Marcos	510279	3/29/92	7085.6
Bridgford Construction Co.	Granada Hills	392433	3/13/92	7085.6
Cates, Scott E.	Riverside	517101	1/8/92	7085.6
Construction Technicians	Rancho Santa Fe	316829	3/29/92	7085.6
Cornell E V Company, Inc.	Hayward	537823	1/29/92	7090.1
Coyle Landscape	Oxnard	492382	3/29/92	7085.6
Custom Developers of California	Escondido	511187	1/8/92	7085.6
Custom Plastering	Hermosa Beach	502643	1/8/92	7085.6
ESP Construction and Development	Compton	575568	3/13/92	7085.6
Edward's Electrical Service	Orange	404030	3/20/92	7085.6
Force Ten Systems Inc. dba Pierpont Construction Group	Santa Monica	561211	3/29/92	7107,7113,7115,(7159), 7116,7121,7121.5, 7122.5, 7154
Gilbertson Construction Company	Cameron Park	524229	1/29/92	7090.1
Incline Development Co.	Capitola	300674	1/7/92	7113,7120,7121
J W Roofing Co.	San Anselmo	516513	1/7/92	7085.6
Kingdom Builders and Landscapers Co.	Danville	525211	3/14/92	7085.6
Litz Floor Covering	Elk Grove	458948	1/29/92	7090.1
McConnell Construction	Oakdale	450088	1/29/92	7090.1
McCutcheon, Michael D.	Mission Hills	486969	12/09/91	7085.6
Malette, Ronald	Garden Grove	484950	1/8/92	7085.6
Malone Building & Development	Big Bear Lake	508354	3/29/92	7085.6
J.M. Monroe Contracting	Laguna Nieguel	379154	3/27/92	7109,7113,7115,(7030)
Old World Builders	Sacramento	491256	1/18/92	7109,7110 (UBC)
Pischoff Company	San Francisco	447373	1/29/92	7090.1
Pratt, Robert Geoffrey III	Santa Cruz	466455	1/29/92	7090.1
Praul William Plumbing & Heating	Napa	456433	1/29/92	7090.1
Roland, K.Y.	Los Angeles	435581	3/29/92	7085.6
Ronan James Construction Company	San Diego	544953	3/29/92	7085.6
Santa Cruz Tractor Service Inc.	Corralitos	493635	1/29/92	7090.1
Sun Valley Homes Company	Ramona	493198	3/27/92	7107,7109,7113,7097,7098,7121.5, 7095(c)
TEC Construction	Yucaipa	493138	3/29/92	7085.6
Watkins & Sons	Stockton	288375	1/9/92	7109,7113

## CSLB License Suspensions

During the first quarter of 1992, the CSLB acted to suspend licenses resulting from disciplinary action against licensees.

- 1 .....License was suspended as a result of disciplinary action
- 107 ...Licenses were suspended for failure to comply with a citation.
- 46 .....Licenses were suspended for failure to comply with the award of an arbitrator.



## Unlicensed Contractor Citations

From January 1 to March 31, 1992, CSLB deputies issued **532** citations to unlicensed contractors.

## Workers' Comp continued from page 1

(2) CSLB's complaint investigation procedures will be modified to include verification of compliance with workers' compensation compliance. Failure to accurately comply is a cause for disciplinary action.

Violators will be issued a citation which will contain a minimum civil penalty of \$500 and a correction order that will require the contractor to obtain proper coverage within 15 working days of the date the citation is issued. Depending on the severity of the violation, contractors may be assessed a civil penalty as high as \$2,000 or be subject to an accusation to suspend or revoke the license.

If you have an exemption certificate on file with the Board but have employees, you need to obtain workers' compensation insurance. The certificate of insurance must include the following:

- (1) Your complete business name as it appears on the Board's records,
- (2) your license number,
- (3) the complete name of the insurance company through which you have workers' compensation coverage,
- (4) the policy number,
- (5) the effective date of the policy,
- (6) the expiration date of the policy,
- (7) the signature of an authorized representative, and
- (8) the certificate holder must be the Contractors State License Board.

Your insurance carrier must send the original Certificate of Insurance to the Workers' Compensation Unit, Contractors State License Board, P.O. Box 26000, Sacramento, CA 95826.

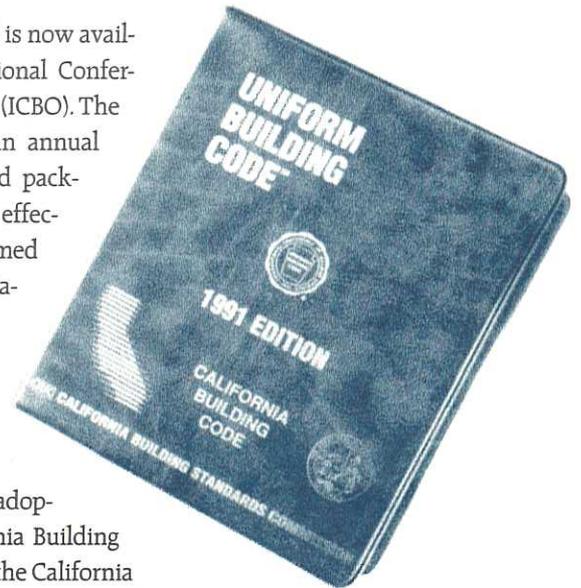
## New Title 24 Available from ICBO

California's new Title 24 is now available from the International Conference of Building Officials (ICBO). The ICBO is also offering an annual subscription service and package as an efficient and effective means to stay informed about all Title 24 regulations.

On December 9, 1991, the California Building Standards Commission approved the State of California's adoption of the new California Building Code, Part 2 of Title 24, the California Code of Regulations. The California Building Code consists of the 1991 Uniform Building Code™ with state inserts. All 10 parts of Title 24 have been updated and become effective July 1, 1992. Parts 2, 3, 4, 5, and 9 consist of model codes with state inserts published as replacement pages for insertion in the loose-leaf editions of the respective code books.

The 10 parts of Title 24 are the Administrative Regulations (Part 1), the California Building Code (Part 2), the California Electrical Code (part 3), the California Mechanical Code (Part 4), the California Plumbing Code (part 5), the California Energy Code (Part 6), the California Elevator Safety Construction Code (Part 7), the California Historical Building Code (Part 8), the California Fire Code (Part 9), and the State Referenced Standards Code (Part 12).

Those who need the state inserts, special binder and the corresponding code can purchase all three in a complete package for one low price. Those who already have the



loose-leaf editions of the corresponding code or codes can order the California inserts and special state binders as separate items. Contact the ICBO Order Department at (310) 692-4226 for current prices.

ICBO also offers an annual update subscription service for all parts of Title 24. For \$79.00 per year, the subscription service will provide annual updates and emergency amendments to Title 24. The service does not include the Title 24 code, which must be purchased separately. Updates and emergency amendments can still be purchased individually.

The International Conference of Building Officials is a nonprofit model code organization that develops and publishes the Uniform Building Code and related publications. For more information on California Title 24, the annual update subscription service, cost and availability of published code sections, and ICBO membership, contact ICBO at (310) 692-4226.

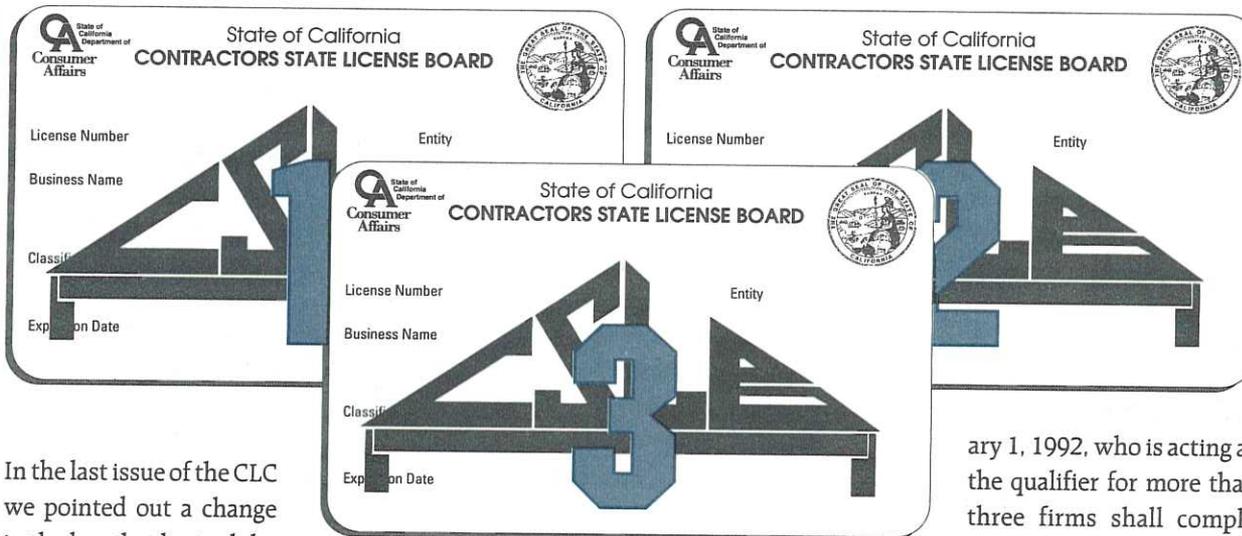
## Is your business address current?

If you move, you must notify the Registrar of Contractors within 90 days of changing your business address in order to keep your license current, active and in good standing. Don't rely on the Post Office to take responsibility.

**File the proper form so we can keep you current!**

## The Three License Rule – More on Knowing Your Limits!

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



In the last issue of the CLC we pointed out a change in the law that limited the number of licenses for which a qualifying person could act as the qualifier. We also indicated that although the law was effective on January 1, 1992, those persons or firms who would be in violation of the law had until January 1, 1993 to make the necessary changes to comply with the new law without facing any penalty. This law probably affects only a handful of licensees. For those it does affect, it is very important for them to understand the new qualifier limitations so they can make necessary changes before the deadline.

For those people who missed the article entitled "Three License Rule: Qualifiers - Protect Yourself and Your License - Important New Law" in the Spring 1992 CLC, we will briefly explain what the law does and why it is important to those firms which may be affected by the change.

Section 7068.1 limits the number of licenses or firms for which a qualifying person may furnish qualifications. Under this section a person may not qualify an additional individual or firm unless certain conditions exist. These conditions are:

- (a) There is a common ownership of at least 20% of the equity of each individual or firm for which the person acts in a qualifying capacity;
- (b) The additional firm is a sub-

subsidiary of, or a joint venture with the first;

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

Section 7068(f) provides that no person qualifying on behalf of an individual or firm shall hold any other active license while acting in the capacity of a qualifying individual. This means that a person who is individually licensed must inactivate his or her license before he or she can act as a responsible managing employee (RME) for another individual or firm. In Rule 823, the Board has mandated that an RME must work at least 32 hours or 80% of the total hours per week, whichever is less, in the construction business of the licensee he or she qualifies. The new change in the law does not affect these conditions in any way.

The change in Section 7068.1 affects the number of licenses a person can qualify for partnerships and corporations. The change is the addition of subdivisions (d) and (e) in Section 7068.1. These subdivisions read as follows:

(d) Notwithstanding subdivisions (a), (b), and (c), a qualifying individual may act as the qualifier for no more than three firms in any one-year period. Any qualifier, on Janu-

ary 1, 1992, who is acting as the qualifier for more than three firms shall comply with this section by January 1, 1993.

(e) Failure to comply with the requirement set forth in subdivision (d) shall result in the disassociation of the qualifying individual and automatic suspension of the licensee's contractor's license effective January 1, 1993.

Subdivisions (a), (b) and (c) are set out above as the conditions in which an individual may qualify additional licenses.

The intent of these changes to Section 7068.1 is to control the professional qualifying people who qualify or attempt to qualify any number of firms under the guise of complying with the provisions of the common ownership, etc. provisions by limiting the number of firms or entities a qualifying person can qualify.

As a practical matter, the changes in the law limit the number of firms (partnerships and corporations) a person can qualify under the conditions of (a), (b) and (c) to just three entities.

As an example, if a person owns at least 20% of the equity of various firms, that person can only qualify three licenses in any one-year period.

As stated in the article in the last issue, "If a qualifying person qualifies a license for a person (entity) and then qualifies a license for another person (entity), that qualifying per-

son is qualifying licenses for two persons (firms). On the other hand, if a qualifying person qualifies two licenses for the same person, that person is qualifying licenses for just one person (firm or entity). There are reasons why a contractor would want or need to have more than one license. Contractors who wish to contract under more than one business name would need an additional license for each name. Also, if a contractor has more than one classification and desires to keep the businesses separate, he or she may want a license for each of the classifications.

We are trying to get this information to licensees who are affected by this change in law so they can take action to comply before the deadline of January 1, 1993.

Immediately after the deadline, we will begin checking records to isolate licenses that are qualified by qualifiers who appear on more than three licenses. Those qualifiers not in compliance with the conditions will be disassociated from the licenses, and the licensees will be notified that their licenses will be suspended effective 90 days from the date of the deadline. Since the law does not specify which licenses from which the qualifier will be removed, the qualifier will be removed from the most recent licenses issued beyond the three license limitation.

Licensees have been invited to write to Bob Christensen, Licensing Deputy, P.O. Box 26000, Sacramento, CA 95826 if there are any questions concerning this matter. Licensing Deputy Christensen reports that only a few letters have been received and that these letters have not inquired about anything other than what was covered in the Spring issue. Feel free to write if you have questions.

## General Guidelines for Home Improvement Contracts

By 1991 legislation, effective January 1, 1992, the home improvement provisions of the Business and Professions Code were combined with the provisions concerning swimming pools. This resulted in changes in the numbering and content of some sections in Article 10 of the Contractors State License Law. Although an article on the home improvement contract form was included in the Fall 1991 CLC, it is being repeated to reflect the changes made by the 1991 legislation. The format is changed to make the material easier to read and to make it more accessible according to subject.

### Home Improvement Contractor

A home improvement contractor, including a swimming pool contractor, is a contractor licensed by the Contractors State License Board who is engaged in the business of home improvement either full-time or part-time.

### Home Improvement

Home improvement is the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and includes but is not limited to, the construction, erection, replacement, or improvement of driveways, swimming pools (including spas and hot tubs), terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structure on land adjacent to a dwelling house.

### Home Improvement Contract

A home improvement contract is an agreement, whether oral or written or contained in one or more documents between a contractor and owner or between a contractor and tenant, for the performance of a home improvement.

#### 1. Enforcement of License Law

Section 7159 of the Contractors State License Law provides for spe-

cific requirements to be included in contracts with owners or tenants for home improvements and the construction of swimming pools when the home improvement contractor or the swimming pool contractor is acting as a prime contractor. The primary purpose of Section 7159 is the enforcement of the Contractors State License Law as it relates to home improvements and the construction of swimming pools on residential property.

#### 2. Provisions of Other Laws Must Be Included

The provisions of Section 7159 are not all-inclusive as to what must be included in a written contract. Other information must be given to the homeowner or tenant. For example, the notice about questions concerning a contractor, as specified in Section 7030, must be given. Additionally, all statements, writings, or notices required by other state or federal laws such as "Truth in Lending" and "Notice of Right to Cancel" provisions, must also be included, where applicable. The contract may include other matters agreed to between the parties.

#### 3. Contracts in Excess of \$500

A prime contractor who is licensed or subject to the provisions of the Contractors State License Law must adhere to the requirements of Section 7159 when he or she enters into a contract with an owner or tenant to repair, remodel, alter, convert, or modernize a building or structure, or to construct a swimming pool. The contract must be in writing if the total contract price, including all labor, services and materials to be furnished by the contractor in one or more contracts, exceeds \$500.

#### 4. Swimming Pool Contractor

A revision in the Contractors State License Law which became effective on January 1, 1992 combined all the

provisions of swimming pool contracts with those of home improvement contracts. All the provisions of home improvement contracts apply to contracts for the construction of swimming pools. However, there are some additional provisions which are exclusive to swimming pools. Also, there are two exceptions to the requirements under the provisions of the Home Improvement Act for swimming pool contractors:

(1) A swimming pool built for use and enjoyment of other than a single family unit is exempt from the provisions:

(2) A swimming pool built as part of an original building plan by the same contractor who builds a single-family dwelling unit on the premises is exempt.

#### 5. Swimming Pool Construction, Owner-Built

Specialty contractors licensed by the Contractors State License Board, when contracting as a prime contractor to an owner or tenant for one or more of the crafts or trades required in the construction of a swimming pool, are subject to Section 7159.

#### 6. Contract Requirements

A contractor entering into a contract for home improvement which amounts to more than \$500 must put the contract into writing and the contract must be signed by all parties. The writing, as specified in Contractors State License Law Section 7159, must contain:

- The name, address and license number of the contractor, and the name and registration number, if applicable, of any salesperson who solicited or negotiated the contract.
- The approximate dates when the work will begin and be substantially completed.
- For a swimming pool, a plan and

scale drawing showing the shape, size dimensions, and construction and equipment specifications. For all other home improvements, a description of the work to be done and description of the materials to be used. The agreed consideration (price) for the work.

- A schedule of payments showing the amount of each payment as a sum in dollars and cents.
- The language of the Notice to Owner form required by Section 7018.5.
- The notice regarding questions concerning a contractor required by Section 7030.
- Truth in Lending Notice, if applicable.
- Notice of Right to Cancel.
- Notice, in close proximity to the signature, stating that the owner has the right to require the contractor to have a performance and payment bond.
- A notice that failure by the contractor, without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin, is a violation of the Contractors License Law.
- The contract shall state that upon satisfactory payment being made for any portion of the work being performed, the contractor shall, prior to any further payment being made, furnish to the owner or tenant contracting for the home improvement or swimming pool, a full and unconditional release from any claim or mechanic's lien for that portion of the work for which payment has been made. (This requirement is new for home improvements, but has always been a requirement for swimming pool contracts under the Contractors State License Law.)

## Home Improvement Contract

continued from page 5

- l. The contract may also contain other matters agreed to, and the writing shall be legible and be in a form that clearly describes any other document which is to be incorporated into the contract.
- m. Prior to any work being done the owner shall be furnished a copy of the written agreement signed by the contractor.

### 7. Downpayment

On contracts for home improvements other than for swimming pools, the payment schedule may provide and a home improvement contractor may receive up to 10% of the total contract price or \$1,000, whichever is the lesser amount, as a downpayment. On contracts for swimming pools, the swimming pool contractor may receive no more than \$200 or 2% of the contract price, whichever is less, for a downpayment.

### 8. Progress Payments On Home Improvement Contracts (Other Than Swimming Pool Contracts)

The payment schedule on home improvement contracts other than for swimming pools may provide for progress payments, but these payments cannot be in excess of the value of the work performed at any given time, excluding finance charges. This means the value of the work performed in relation to the total cost of the project. For example, on a \$5,000 contract, the contractor may receive \$500 as a downpayment. A payment schedule could be set up requiring progress payments when 25%, 50% and 75% of the work has been completed, and final payment upon completion of the project. When 25% of the work is completed, the payment due would be \$750 (\$1,250 minus the \$500 downpayment). The second \$1,250 would be due when the project is 50% completed and so on until the final payment is made when the project is completed.

### 9. Progress Payments On Swimming Pool Contracts

The payment schedule on swimming pool contracts is similar to the schedule for home improvements except for the downpayment and the final payment. The downpayment can be no more than \$200 or 2%, whichever is less. The final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking or fencing required by the contract is completed.

### 10. Bond Alternative to Payment Schedule

If a contractor wishes to receive more than ten percent or \$1,000 as a downpayment and/or wishes to receive payments on a schedule that results in his or her receiving more money on the project than the value of the work performed at any given time, he or she can do so if the contract provides for the contractor to furnish (1) a performance and payment bond, (2) a lien and completion bond, or (3) a bond equivalent approved by the Registrar. If the contractor provides one of these bonds, the bond must cover 100% of the contract value. Therefore, if one of these bonds is provided by the contractor and assuming the owner otherwise agrees, then the contractor could receive any amount of money in advance on the project and/or arrange any payment schedule he or she desired without regard or limit to the actual value of the work completed on the project at any given time.

### 11. Alternative to Performance and Payment Bond, etc.

Although the Registrar has been given the authority to accept a bond equivalent, the conditions for any alternative to the bond are so restrictive and the financial condition so prohibitive that only a very few contractors are willing or able to comply with requirements for a bond equivalent.

### 12. Joint Control

A joint control, as approved by

the Registrar, covering full performance and completion of the contract can be used as an alternative to payment requirements in the contract. A joint control acts as an escrow holder of a consumer's money and prevents the contractor from being paid more than the value of work already completed. It also safeguards the consumer's property from a mechanic's lien. Although a joint control service relieves the contractor from the requirement of actually including a payment schedule in the contract, the joint control company must dispense all payments in accordance with the payment schedule as provided in Section 7159. Any joint control to be approved by the Registrar must include an addendum which was developed through mutual agreement of the Registrar and joint control company representatives. A copy of the addendum may be found in the section, "Provisions of Home Improvement Contracts" in the Contractors License Law and Reference Book.

### 13. Salesperson's Commission

If the contract provides for a payment of a salesperson's commission out of the contract price, the payment shall be made on a pro rata basis in proportion to the schedule of payments.

### 14. Building Permits

The obtaining of a building permit is considered work performed and payment can be received for the actual cost of the permit after it has been issued.

### 15. Preparation of Plans

The preparation of plans for a project is considered work performed and payment can be received to pay for the cost of the plans. The amount charged for the plans must be based upon the fair market value of the plans.

### 16. Finance Charges

It is not expected that finance charges are to be considered as part of the amount of the contract between the owner and the contractor. Although finance charges in many instances are included on the contract

form, in compliance with state and/or federal law, they are not considered under Section 7159 when determining the amount of payment which can be made at any particular phase of the project. Only actual construction costs to the owner are considered.

### 17. "Cost Plus" Projects

"Cost plus" agreements can be considered to meet the provisions of Section 7159 when the agreement provides for payment to be made to cover only the actual work performed. A payment schedule can be drawn up to indicate in which phase of the project "draws" or payments are to be made. The contractor then would bill only for actual labor and materials used plus the agreed upon percentage for overhead and profit.

### 18. Failure to Commence Work on Time

A contractor who, without lawful excuse, fails to substantially commence work within 20 days from the approximate date specified in the contract for work to begin is in violation of Section 7159.

### 19. Violation of Section 7159

A violation of Section 7159 by a licensee or a person subject to be licensed is a misdemeanor. The misdemeanor is punishable by a fine of not less than \$100 nor more than \$5,000 or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

### 20. Kickback Penalty

A contractor may give tangible items not to exceed a value of \$5.00 to prospective customers for advertising or sales promotion purposes, but the gift cannot be conditioned on obtaining a home improvement contract. Only one of these gifts may be given per transaction. All other gifts or inducements used to compensate or reward an owner for the procurement of a home improvement transaction is a misdemeanor and a cause for legal action.

NOTE: The sections of the Con-

continued on page 8, Home Improvement Contract

## The Home Improvement Salesperson (HIS): What You Need to Know to Stay Legal

In the Fall 1991 CLC, in the article entitled "Notice of Right to Cancel Home Solicitation Contract" we stated that there were differences between the requirements relative to the home solicitation contract and the requirements affecting home improvement salespersons. We also said that the subject of the home improvement salesperson would be addressed at a future date. That time has come.

The Home Improvement Salesman registration law was added to the Contractors State License Law by legislation in 1972. The law became effective on March 7, 1973. It requires all persons engaged in selling home improvement contracts for home improvement contractors to be registered with the Registrar of Contractors for each contractor for whom he or she sells home improvements.

In order to refresh the reader on what constitutes a home improvement, a home improvement contractor, and a home improvement contract, we will cite the laws defining these terms.

Section 7150.1. A home improvement contractor, including a swimming pool contractor, is a contractor as defined and licensed under this chapter who is engaged in the business of home improvement either full-time or part-time.

Section 7151. "Home improvement" means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures on land which is adjacent to a dwelling house. "Home improvement" shall also mean

the installation of home improvement goods or the furnishing of home improvement services.

For purposes of this chapter "home improvement goods or services" means goods and services, as defined in Section 1689.5 of the Civil Code, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

Section 7151.2. "Home improvement contract" means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder. "Home improvement contract" also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

Now that we know what a home improvement is and what a home improvement contract is, and how to

define the contractor that performs home improvement contracts, it is time to look into what a home improvement salesperson is and who needs to be registered to operate as a home improvement salesperson.

Section 7152. (a) "Home improvement salesperson" is a person employed by a home improvement contractor licensed under this chapter to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

(b) The following shall not be required to be registered as home improvement salespersons:

- (1) An officer of record of a corporation licensed pursuant to this chapter;
- (2) A qualifying person, as defined in Section 7068;
- (3) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale;
- (4) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson;
- (5) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

The definition of a salesperson is all-inclusive and covers anyone who

sells home improvements for home improvement contractors. However, as with the provisions for the licensing of contractor, there are certain exemptions to the requirement to be registered.

Any person who is a member of the personnel of a licensee, as listed on the application or as listed in the official records, including the qualifying person need not be registered.

If a home improvement salesperson uses an assistant to contact various people to find out if there is interest in the product he or she is selling and to set up appointments for the salesperson, that assistant need not be registered. However, if the assistant does any part of the sales presentation, that person must be registered.

A home improvement contractor who maintains an establishment for the negotiation of contracts or for the retail sale of goods or services, need not retain registered salespeople to run that establishment. In other words, the salespeople in the contractor's place of business need not be registered if the customers or prospective buyers are coming to them and are not being sought out by the salespeople. The customer may initiate contact with a salesperson, whether by telephone or in person, at the contractor's place of business, and invite the salesperson to his or her home to finalize contract negotiations. That salesperson does not need to be registered.

Finally, a person employed by a licensed contractor who does repair or service work which is initiated by the buyer is not required to be registered.

There may be some confusion as to whether a salesperson needs to be registered with respect to the written contract requirement. According to Section 7159, any home improvement

## CSLB Toll-Free Automated Phone Response System 1/800/321-CSLB

Not long ago, telephone callers trying to reach CSLB headquarters attempted to get through on an operator-staffed phone system that was only capable of handling 25% of all incoming call attempts. Only a quarter of those who tried were helped when they connected. More than 75% of those who tried, never got beyond a busy-signal.

In February 1991, the CSLB installed an Automated Telephone Response System (APRS) designed to respond to 90% of all incoming call

attempts. We have been through several versions of the software that runs the system; we still have to do some fine-tuning before we achieve the 90% customer-satisfaction-on-first-attempt rating.

In the meantime, those who are heavy and frequent users of the system may consider subscribing to the PC dial-up access for on-line licensing information. For information about services and costs, contact Carolyn Rooney, 916/366-5216.

## Home Improvement Contract continued from page 6

tractors State License Law, the required notices, the Right to Cancel law and the material on joint control are included in The California Contractors License Law and Reference Book,

which can be obtained from the Department of General Services, Office of Procurement (Documents Section), P.O. Box 1015, North Highlands, CA 95660.

## HIS continued from page 7

contract which exceeds \$500 in value must be in writing. This \$500 limitation has nothing to do with the \$300 "minor work exemption" to the contractor licensing requirement. A home improvement contract may be oral or written, depending on the amount of the contract. Under the proper conditions a salesperson must be registered regardless of whether the contract is oral or in writing. Therefore, the amount of the contract has nothing to do with whether or not a salesperson is required to be registered.

In an article titled "Notice of Right to Cancel Home Solicitation Contract" in the Fall 1991 CLC, we stated that the requirement for a salesperson registration and the requirement for the cancellation notice were two different subjects

– they shouldn't be confused. A contract, any part of which is negotiated in the home, must include the notice of the right to cancel and two copies of the Notice of Cancellation forms. It doesn't matter who initiated the contact or where it was initiated. As you can see, this is different from the requirement to register as a salesperson as discussed above.

A salesperson may sell for more than one contractor, but must have a separate registration for each contractor.

Also remember that the failure to be registered if acting as a home improvement salesperson is a misdemeanor.

A contractor who hires a salesperson who is not registered to sell home improvements can have his or her license disciplined.



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