

## **Vignettes**

### **(Or How You Spent Your Summer)**

November 2018

Even though it is Fall, it still feels like Indian Summer. So we will keep this column light. What follows are several common matters that seem to happen again and again. (It is something like the old Bill Murray movie “Groundhog Day”.) The following old chestnuts have popped up recently.

**Expired CSLB License.** A national construction firm with whom we do some work let its California contractor’s license expire. While the reasons are understandable - new staff, bad calendaring – being an unlicensed contractor was a potential catastrophe.

Under California Business and Professions Code Section 7031, an unlicensed contractor has no standing to bring a complaint or cross-complaint against its client, including for any monies not paid. **AND** it can be made to disgorge all moneys paid in the course of the project, regardless of the quantity or quality of work. Thus, hypothetically, the contractor could have completed a \$1,000,000 house that is a thing of beauty, won all kinds of awards, and still have to pay back the entire amount it received for the work. Additionally, if a client alleges that the contractor was unlicensed, the burden is on the contractor to prove licensure by obtaining a certificate from the CSLB.

We repeat our often stated opinion – this is the most draconian business law on the books.

Fortunately in this case, this company also notified another attorney in Sacramento with whom it works - who could jump right on the problem directly with the CSLB staff. Because this is something that happens somewhat frequently, there are CSLB “fix-it” rules and regulations that permit reinstatement and back dating so there is no lapse in the licensure.

Further, in this case the CSLB staff was cordially cooperative. The problem was solved. But it was a closely run thing.

**What To Do?** The Board states that it sends out notices before the expiration of a license. However, in the cases we’ve handled these notices sometimes go astray – including unreported changes of address. It is thus not a good idea to rely solely upon this method of communication. Calendar the expiration date efficiently and frequently. Also put on your calendar to check online at least quarterly your “active” status and the date of expiration. The information shows up in your information/status page on the CSLB website.

**Use Your Client Contract Template.** We spend a considerable amount of our time reviewing and revising contracts for our general contractor and subcontractor clients and generating templates (model contract forms that simply need the blanks of the specific project information filled in). These templates include commercial contracts, home improvement contracts of various stripe, and subcontracts.

We have our own templates and also edit the AIA forms. We think we do a pretty good job in generating CSLB/California Business and Professions Code compliant home improvement contracts. This is important because of their many, many, many statutory requirements and notices (down to the size of font).

We thus feel mild chagrin when we get back a contract from a client which is not the one we prepared for him or her. While occasionally it is a new contract form, usually the client is simply using their previous personal contract template.

We understand the why; old habits die hard, and the older form is familiar. But we urge the reader to use his or her new template because it is compliant. Why court trouble with the CSLB? If the contract is too long, it can be abbreviated, to some extent. If there is a term that doesn't make sense or you don't like, let your attorney know and it can usually be fixed.

**P.S.** Since we wrote this column, the tragedies of the huge fires in the north and the south struck. We join the people of California in sending our prayers for the survivors and condolences to those who have lost loved ones.

\*\*\*\*\*

Bryant H. Byrnes, Esq. practices construction law in the San Francisco Bay Area and is counsel to the San Francisco NARI Board of Directors.

Brian J. Trowbridge, Esq. of Trowbridge Law Office practices construction law, business law, succession and estate planning, and employment law in the San Francisco Bay Area.

For Bryant and Brian's previous articles, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade." They are also available on his website under "Articles," and on Brian's website under "[Publications](#)."

As always, these articles are summary discussions only - to simply give you a heads up on various construction topics. The information contained herein is not legal advice.