



'Think You are Properly Licensed? Think Again! A Common Situation in which a Contractor is Not Properly Licensed and the Severe Consequences that can Result

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When a Contractor could be "Deemed" Unlicensed

The Contractors State License Board issued "you" a contractors license years ago and the website confirms that the license is "active." You have nothing to worry about, right? Wrong! If you have changed your form of business entity, then you may not be properly licensed.

This happens quite often. Business starts to pick up and a contractor who has operated as a sole proprietorship for quite some time decides it is time to incorporate his or her business in order to take advantage of the benefits of operating as a corporation. He or she files the necessary paperwork with the Secretary of State. The business is now officially a corporation but it is the same person(s) behind the scenes (i.e., the same owners, just a new name or business form). All is well, right? Wrong!

Although it might be the same person(s) in control (i.e., John Doe sole proprietorship is now John Doe, Inc., with John Doe as President), the law makes critical distinctions between the sole proprietorship and the corporation. It does not matter if the president of the corporation holds a contractors license as an individual (i.e., sole proprietorship).

In *Opp v. St. Paul Fire & Marine Ins. Co.* (2007) 154 Cal.App.4th 71, the Plaintiff, William Opp, held a contractors license as a sole proprietorship. When he formed a corporation, Mountain Connection, Inc. ("MCI"), he failed to transfer the license over to the corporation but executed a subcontract for work on a university in MCI's name. When the prime contractor failed to pay MCI for

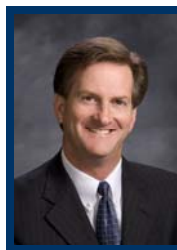


work performed, Opp sued to recover the amounts due and owing. The court held that Mr. Opp could not recover the amounts due and owing because MCI was not properly licensed when the work was performed. Specifically, the court held that the specific business entity that entered into the contract (i.e., the corporation) must be properly licensed, even if the same person who runs the corporation is licensed as an individual. Therefore, it is critical that a contractor who incorporates his or her business transfer his or her contractors license to the corporation, or obtain a new contractors license for the corporation.

What happens if a contractor enters into a contract without being properly licensed? There are two very harsh results: (1) The contractor has no right to payment for the work performed, even if there were absolutely no issues with the quality or timeliness of the contractor's work; and (2) the contractor can be made to disgorge (i.e., pay back) all amounts previously paid for the work performed.

The Consequences of Failing to be Properly Licensed

What happens if a contractor enters into a contract without being properly licensed, such as if they enter into a contract on behalf of their *corporation* while only being licensed as a *sole proprietorship*? There are two very harsh results: (1) The contractor has no right to payment for the work performed, even if there were absolutely no issues with the quality or timeliness of the contractor's work; and (2) the contractor can be made to disgorge (i.e., pay back) all amounts previously paid for the work performed. These harsh consequences are provided for in Civil Code section 7031. At first glance, many contractors refuse to believe that this can be the result since it is so harsh. Believe it! The severe consequences for even a technical failure to be properly licensed cannot be overstated. For information on how to transfer a license from a sole proprietorship to a corporation, consult counsel or visit the Contractors State License Board website at <http://www.cslb.ca.gov/>.



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