



## LAW ADVOCATE GROUP, LLP

9701 Wilshire Blvd. Suite 1000 Beverly Hills, CA 90212

Phone: 310-651-3065 Fax: 310-601-7110

[www.LawAdvocateGroup.com](http://www.LawAdvocateGroup.com)

## Doron F. Eghbali Real Estate Law

### [What Are the Basics of Real Estate Contractors Licensing Requirements?](#)

Monday, September 26, 2011 by [Doron F. Eghbali](#)

To protect the public against dishonesty and incompetency, real estate contractors in CA are required to adhere to rather stringent guidelines. Whenever such rules and regulations as promulgated by the Contractor's License Board is inconsistent with the public's interest, the public's interest prevail. It is rather imperative for contractors and the public at large to ascertain and acknowledge their respective requirements and rights.

#### **WHO IS A CONTRACTOR?**

Probably, the most salient inquiry is to ascertain who is considered a contractor subject to such rules and regulations. Under CA Business & Professions Code Section 7026, a contractor is synonymous to a builder and is any person who "undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility..."

In addition, subcontractors and specialty contractors are considered contractors under such Business & Professions code.

#### **WHAT ARE SOME OF THE EXCEPTIONS TO THE LICENSE LAW?**

This is imperative to ascertain the exclusions from such law. Here are SOME of the exclusions:

**1. Activities by Contractor Outside of California:** The California license law has been held not to apply to contractor activities done outside of California. In other words, if a California Corporation enters into a contract to perform construction in another state, the California corporation is not obligated to abide by the California license law requirements. On the other hand, a non-California corporation entering into a contract to perform construction in California is required to comply with California license law.



**2. Activities by Contractor for Finished Products:** The California license law does not apply to sale or installation of finished products that do not become a fixed part of the construction. In addition, the license law does not apply to any material supplier or manufacturer FURNISHING finished products which does not contract for the installation of such products.

#### **SALIENT NOTE**

For purposes of this section, "finished product" does NOT encompass carpet installation. In addition, installation of prefabricated swimming pool is deemed NOT be within this exception.

**3. Activities by Contractor for Construction of Personal Property:** The California license law does not apply to construction, alter, improvement or repair of personal property.

**4. Activities by Contractor To Be In Aggregate Under \$500:** The California license law does not apply for minimal work where the aggregate contract price for labor, materials and all other items is LESS than \$500.

#### **SALIENT NOTE**

For purposes of this section, the exception does NOT apply WHEN:

- The work is divided into disparate projects each worth \$500 to evade the law.
- The work is part of a major or larger project by similar or different contractor.

#### **WHAT ARE THE PENALTIES FOR CONTRACTING WITHOUT LICENSE?**

The penalties for contracting without license encompass criminal as well as prohibition against collection of compensation of work done without a valid license.

##### **1. Criminal Penalty**

The **FIRST** CONVICTION could be punishable by a fine not exceeding \$5000 OR by imprisonment in a county jail NOT exceeding six months OR both. (CA Business and Professions Code Section 7028 (b)).

The **SECOND** CONVICTION carries a fine GREATER between:

1. 20% of the contract price
2. 20% of the aggregate payments made to or at the direction of the unlicensed contractor; OR
3. \$5000 and imprisonment in the county jail NOT exceeding 90 days, except when the interests of justice are served with a lesser fine or prison sentence.



The **THIRD** or **SUBSEQUENT** conviction could be punishable by:

1. Fine of not less than \$5,000 NOR more than the greater of \$10,000 or 20% of the contract price; OR
2. Fine of 20% of the aggregate payments made to or at the direction of the unlicensed contractor an imprisonment in the county jail by not more than 1 year or less than 90 days.

## **2. GENERAL PROHIBITION BY UNLICENSED CONTRACTOR**

It is salient to ascertain NO PERSON in the business of contracting is permitted to bring any action in law AND equity for compensation without ALLEGING the contractor was DULY licensed at all times during the contract.

### **SALIENT CAVEAT**

This article in no way supplants or provides the rather esoteric legal analysis and counsel required in any specific provision. This article ONLY provides a GENERAL and BRIEF overview of this rather esoteric legal topic.

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***DORON EGHBALI** is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. Doron Primarily Practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More information, Please, Visit: HERE.*