



MFC NEWS

“Building Understanding”

MFC will find out the truth about buildings and answer the hard questions.

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What's New at MFC...

Myles Corcoran has been invited to speak at an upcoming Lorman Seminar about Building Codes with Brad Bening, Esq., Richard Mc Donald, Esq., and others.

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MFC Inspector/Consultants Micah Rodler and Daniel Alcocer recently attended a training seminar to become Certified EPA Lead Renovators. They now know the details and procedures that contractors need to follow in order to comply with the government-mandated Renovation Repair and Painting (RRP) Rule.

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As a follow-up to our last issue on the new **CALGreen** code (which took effect on 1/1/11), MFC has procured a **20% OFF** discount that we can pass along to you for upcoming CALGreen training seminars throughout the Bay Area!

These seminars are in collaboration with the California Building Standards Commission (CBSC) and the California Department of Housing and Community Development (HCD), and offer Continuing Education Units (CEUs) for the AIA, ICC, and LEED.

Go to: www.green-technology.org/calgreen/ to read about and sign up for CALGreen training seminars in Oakland 1/12/11, San Jose 2/2/11, or San Francisco 3/9/11. Enter discount code **MFCCG** to get 20% off your registration fee. We hope to see you there!

CSLB Stings

The Contractors State License Board (CSLB) and its partners in state and local government, law enforcement, and the construction industry have intensified efforts to combat premium insurance fraud, including conducting hundreds of stings and sweeps year-round throughout the state. Governor Arnold Schwarzenegger signed CSLB-sponsored Senate Bill 1254 into law this fall that gives CSLB unprecedented authority to immediately issue a "stop work order" to any licensed or unlicensed contractor that has not secured workers' compensation insurance for employees. The law became effective January 1, 2011. Failure to comply with the stop work order will result in misdemeanor charges, punishable by up to \$10,000 and/or up to 60 days in jail.

For the full CSLB Industry Bulletin, see our website, <http://mfcbuild.com/mfcnews.html>

Quote of the Day

“Buildings, too, are children of Earth and Sun”

~ Frank Lloyd Wright

Wisdom Corner

Ed.: In light of the CSLB's focus and new law 1254, MFC feels it is an important enough topic to offer an additional article on this subject as a follow up to our Spring issue.

New Cases Confirm Harsh Penalties for Unlicensed Contractors

by J. Kenneth Gorman, Esq.



California Business and Professions Code section 7031 prevents unlicensed contractors from filing liens or suing to collect for their work, and as amended in 2001, entitles consumers to recover all sums paid to unlicensed contractors. The statute has been the subject of a number of Appellate cases in the past few years and has attracted attention in the construction world and from attorneys who practice construction law. The cases confirm very strict interpretations of the statute against contractors, often with financially calamitous results for the contractor.

Almost without exception, the Courts of Appeal have upheld Trial Court decisions which barred a contractor's claims against a customer (no matter their legitimacy otherwise), and awarded customers full refunds of all sums paid, including those for labor, materials, and subcontractors, not just overhead and profit.

The Courts state that the reason for the license suspension is immaterial. The only potential "loophole" is that a suspension for a lapse in Worker's Compensation coverage will not result in imposition of sanctions if coverage is reinstated during a grace period established by the Department of Labor.

The cases involve relatively small disputes, but by the end of litigation, the contractor not only loses his/her claim, they have to refund everything and pay the customer's attorneys' fees and penalties. Thus, a \$30,000 dispute in one case turned into a \$200,000+ judgment against the contractor, and put him out of business.

Despite the increasing publicity about the law, contractors continue to be ignorant of it. This author has had contractors say that they do not have to deal with it because

their laborers are "independent contractors" so they do not need Worker's Comp insurance. They are wrong under the Labor Code, and if the customer finds out, they could be subject to financial devastation and license sanctions.

The most recent case demonstrating the no-nonsense approach the courts are taking to this statute is a San Diego County case called *Alatrisme v. Ceasar's Exterior Designs, Inc.* In that case, the trial court held, and the Court of Appeal affirmed that: 1) the fact that the homeowner knew the contractor was unlicensed from the start was not a defense; and 2) even though the contractor got his license in the middle of the job, he had to refund all sums paid for the entire job. He could not keep money for any of the time, labor or materials expended after he got his license.

Alatrisme retained Ceasar's Design to perform landscaping services at Alatrisme's newly-built home. After working for about 5 months, Ceasar's stopped working because Alatrisme refused to pay. Alatrisme had paid Ceasar's \$57,000 by that time. Alatrisme sued to recover the \$57,000. He brought a motion for summary judgment to collect it, alleging that Ceasar's did not have a viable defense since it was an unlicensed contractor.

Ceasar's opposed the motion on the grounds that its owner had known Alatrisme for 12 years, and while they were negotiating the contract, they discussed the fact that Ceasar's did not have a license yet. The owner's son took the exam and received his license during the project. Alatrisme did not express any dissatisfaction with the work, and the work was of professional quality.

Cesar's expended about \$12,000 in labor and materials after it got its license, and \$20,000 worth of materials were built into the project.

The judge granted Alatrisme's motion for summary judgment, finding that the statutes allowed no exceptions. He granted Alatrisme's request for the \$57,000 and denied Cesar's request for reimbursement.

The Court of Appeal affirmed the summary judgment. It discussed BPC § 7031 and recent cases applying it. Though the statute is harsh, it is clear and serves a legitimate legislative purpose – the protection of the public against unlicensed contractors. Accordingly, the Appellate Court confirmed that a homeowner's knowledge that a contractor is not licensed does not defeat the homeowner's claims for reimbursement nor allow the contractor to sue for balance owed. It also found that the issuance of the license during the project did not entitle the contractor to payment for labor and materials performed after that date.

The lesson here is clear and emphatic: contractors need to keep their license fully enforced from start to finish on any project; even one day with a suspended license could result in forfeiture of all money received and all rights to unpaid balances. Traditional concepts of fairness will not save the contractor, and failure to adhere to the rules could result in bankruptcy and a judgment that, unless and until satisfied, will keep a license in suspension and potentially end a contractor's career. △

Ken Gorman heads the litigation team at Lombardo & Gilles, LLP. He has practiced law in the area since 1987. Ken's areas of practice include land use, real estate and business litigation, construction defects, major personal injuries, criminal defense and missing persons.

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About MFC News

MFC News is the e-zine published quarterly by the Editorial team at MFC Construction Consulting, Inc. It is circulated to our colleagues in the construction or construction-related fields.

Myles F. Corcoran and his Team would like to share the best of what we've learned over the years about well-constructed buildings and resolving or avoiding construction disputes.

Please help us make this a "Construction Community" endeavor by sending us your feedback, comments, wisdom, and ideas for future issues. Call 831-476-4502 or email us at: mfcnews@mfcbuild.com.