

Using the Small Claims Court

Filing a Small Claims Court Construction Claim

This pamphlet supplements the Department of Consumer Affairs' (DCA) publication, *The Small Claims Court—A Guide to its Practical Use*, and is intended to help you file a suit against a contractor in small claims court when restitution is your intent. Details about fees, timelines, and procedures can be found in DCAs' publication, which you may download from www.dca.ca.gov.

Small claims court is a special court in which disputes are resolved inexpensively and quickly. Consumer claims are limited to \$10,000 or less. The rules are simple, the proceedings are informal, and attorneys are not allowed.

The Contractors State License Board (CSLB) investigates complaints against contractors and is mandated to address violations of Contractors' State License Law. CSLB may end up taking administrative disciplinary action against the license if the charges are proven valid. Administrative disciplinary actions can range from issuing a citation to suspending or revoking the license, along with a possibility of fines and restitution.

Collecting on a Small Claims Judgment

In addition to using the methods described in DCA's booklet to collect on a judgment after you've prevailed in court, you can use the services of CSLB's Judgment Unit. The unit cannot collect a judgment for you or force a contractor to pay, but it can suspend the contractor's license until the judgment has been satisfied. A contractor cannot legally work with a suspended license.

To notify CSLB of an unpaid judgment, send a copy of the small claims court document to: Contractors State License Board Judgment Unit, P.O. Box 26000, Sacramento, CA 95826. The judgment must properly identify the contractor and be both monetary and construction-related.

The courts will identify the contractor based on how you named the defendants, so be sure to correctly list names as they appear on CSLB's website. If a defendant is improperly identified in a judgment, you can request a corrected judgment, but they are rarely granted.

Construction-related judgments can extend beyond Contractors' State License Law violations; they can include secondary damage to your property, such as lawn damaged by work trucks. Such construction-related judgments also should be sent to CSLB's Judgment Unit.

If CSLB receives an acceptable copy of an unsatisfied judgment within 90 days of the judgment, the contractor is allowed 90 days to pay the judgment. The license is suspended after 90 days, until paid. If CSLB receives an unsatisfied judgment that is 91 days or older, the license is immediately suspended until paid. CSLB cannot suspend the license if the contractor files bankruptcy and cannot pay a judgment. In that case, collecting from the contractor's surety company may be your only recourse.



CONTRACTORS STATE LICENSE BOARD

P.O. Box 26000
Sacramento, CA 95826-0026
800.321.CSLB (2752)
www.cslb.ca.gov • CheckTheLicenseFirst.com

DEPARTMENT OF CONSUMER AFFAIRS

13P-069/0615

A CONSUMER GUIDE TO Using the Small Claims Court

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**CONTRACTORS STATE
LICENSE BOARD**

Department of Consumer Affairs



How to Name the Defendants

For a small claims court judgment to be enforced, you must correctly name the defendants (those who are being sued).

You should name every person and every entity you believe is liable—individuals and businesses—and let the court decide if those individuals and entities you name are proper defendants and are legally responsible.

When suing a contractor, use these steps to gather the correct information:

1. Check CSLB's website, under "Instant License Check," for the contractor's name and the license number. Note the business name, a DBA (doing business as), if there is one, and any personnel listed for each license.

2. Identify the type of business entity under which your contractor holds a license:

- **SOLE OWNER** – One person owns and is named on a license.
- **PARTNERSHIP** – More than one person owns and is named on a license.
- **CORPORATION** – The contracting business is registered with the Secretary of State's office and there are officers named on the license.
- **LIMITED LIABILITY COMPANY** – The contracting business is registered with the Secretary of State's office and there may be officers, members, and/or managers named on the license.
- **JOINT VENTURE** – Two licensed entities (sole owner, partnership, corporation or limited liability company) work together on projects, and those named on each entity also are named on the joint venture.

NOTE: All of the entities listed above must have a qualifying individual or "qualifier" for every license classification held by the licensee. A qualifier is an individual who is responsible for the licensed contractor's construction operations. A responsible managing employee (RME) may act as a qualifier for any of the entities listed above.

3. Based on the type of license the defendant holds, you should name a:

- **SOLE OWNER** – Name the owner and, if applicable, the business name and any RME listed on the license.

- **PARTNERSHIP** – Name the partnership, all of the partners, and any RME, as applicable.
- **CORPORATION** – Name the corporation, all of the corporate officers, and any RME, as applicable.
- **LIMITED LIABILITY COMPANY** – Name the limited liability company; all of the officers, members, and managers; and any RME, as applicable.
- **JOINT VENTURE** – Name the joint venture, all individually licensed people or entities that make up the joint venture, and qualifiers listed for both companies in the joint venture.

How to Name Individuals and Businesses

You can name individuals, and you can name businesses as defendants, but it is best to name them separately. For example, if you are suing a contractor who holds a sole owner license, write "Joe Contractor, individually, and doing business as Contractor's Construction." For a partnership, you may write "Joe Contractor and Jane Contractor, individually, and doing business as Contractor's Construction, a partnership."

Others You Can Name as Defendants

In addition to the owners, partners, officers, members, managers, and qualifiers on a license, you can name other individuals who were associated with the project when the damage occurred. For example, you can name those who are no longer part of the business, home improvement salespersons, or construction site supervisors.

Naming the Surety Company as a Defendant

You also can name the surety company that carries the contractor's license bond. Some surety companies won't pay the judgment unless they are named as a defendant.

Check CSLB's website to be sure you correctly name the surety company that carried the bond at the time damages occurred. Claims against a surety company must be made within two years after the damage occurred. In some cases, this time frame is shortened under certain statutory provisions. You should file your claim as soon as possible.

If you are including the surety company in your claim, you must prove:

- You have a right to file against the bond.

If you are a homeowner, you must prove:

- You are the homeowner contracting for home improvements made to your personal family residence;
- The damages you are claiming; and
- That the damages you are claiming arose out of violations of Contractors' State License Law.

Request that the court include in its order the specific Contractors' State License Law code violations that the contractor committed. The court can order the surety to pay up to \$6,500 relative to all claims against the principal (the licensee). (Code of Civil Procedure section 116.220(c)). Claims by consumers above \$10,000 must be filed in superior court, except as noted under the following section.

Naming the Registrar as a Defendant

If the CSLB website says the Registrar holds a cash deposit in lieu of the license bond, you must name the Registrar as a defendant in your small claims court suit in order to be paid. As of January 1, 2012, this amount can be up to \$10,000.

Notifying Defendants

Each defendant you name must be properly notified of the lawsuit. For more information about naming and notifying defendants, see DCA's *The Small Claims Court—A Guide to its Practical Use*, chapters "How Do You Name the Defendant?" and "How Do You Notify the Defendant?" at www.dca.ca.gov/publications.

Resources

California Department of Consumer Affairs (DCA)

www.dca.ca.gov
800.952.5210

Contractors State License Board

www.cslb.ca.gov
CheckTheLicenseFirst.com
800.321.CSLB (2752)

The pamphlet, *A Guide to Contractor License Bonds*, is available on the CSLB website or can be ordered by calling the toll-free CSLB number.