

**CONTRACTORS STATE LICENSE BOARD
15-DAY NOTICE OF MODIFIED PROPOSED LANGUAGE**

Title 16, Division 8

Article 6. Bonds

NOTICE IS HEREBY GIVEN that the California Contractors State License Board has proposed modifications to the text of Sections 858 – 858.9 of the California Code of Regulations which were the subject of a regulatory hearing on January 10, 2011. A copy of the modified text follows below. Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before June 3, 2011 at 5:00 p.m. to the following:

Betsy Figueira, Licensing Division Manager
Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827

Changes for originally proposed language are shown with underline for added text.

Changes for the modified proposed language are shown with double underline for newly added text and with ~~double strikethrough and single underline~~ for text that was originally proposed as added text but is now being modified to be removed.

Adopt Section 858 as follows:

§858. Blanket Performance and Payment Bond Defined

(a) The purpose of these sections is to establish requirements for contractors seeking to obtain approval from the Registrar for a blanket performance and payment bond (hereafter referred to as “blanket bond”) as specified under the provisions of paragraph (a)(8) of Section 7159.5 of the Code.

(b) For the purposes of this Article, the term “blanket bond” means a single surety instrument, executed by an admitted surety that is conditioned for the payment in full of all claims that arise from the obligations created by a licensee under any contract that is subject to the provisions of Section 7159 of the Code (hereafter referred to as “home improvement contract”) and as set forth in Section 858.1 of this Article.

(c) For the purposes of this Article, the term “obligation” has the same meaning as set forth under Section 1427 of the Civil Code: “An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.”

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7151, 7159, and 7159.5, Business and Professions Code; and Section 1427, Civil Code.

Adopt Section 858.1 as follows:

§858.1. Blanket Performance and Payment Bond Requirements

(a) A blanket bond that is filed on behalf of a licensee to satisfy the provisions of Section 858 shall be underwritten for a dollar amount that is sufficient to cover one-hundred percent (100%) of the home improvement contracts for which the licensee has an obligation.

(b) Upon written request by a licensee, the Registrar is authorized to approve a blanket bond that is capped according to the schedule listed under subsection (c) provided the following conditions are met:

(1) The licensee, or the parent company of the licensee, is required to submit annual reports (Form 10-K) to the United States Securities and Exchange Commission (U.S. SEC).

(2) Upon the filing of a request that the blanket bond be capped, a copy of the most recently filed Form 10-K shall be submitted to the Registrar. Thereafter, a copy of any Form 10-K report shall be submitted to the Registrar within 10 days of filing with the U.S. SEC.

(3) The net worth of the applicable firm shall, initially and annually thereafter, be not less than 10 times the sum of the blanket bond as determined by the Registrar. Each net worth calculation shall be applicable to the period for which the most recent Form 10-K report was submitted to the U.S. SEC.

(c) The blanket bonds for which a request has been submitted under subsection (b) shall comply with the following schedule:

(1) If a licensee, or the parent company of a licensee, is classified as a “large accelerated filer” by the U.S. SEC, the amount of the blanket bond shall be \$10 million.

(2) If a licensee, or the parent company of a licensee, is classified as an “accelerated filer” by the U.S. SEC, the amount of the blanket bond shall be \$5 million.

(3) If a licensee, or the parent company of a licensee, is classified as a “non-accelerated filer” by the U.S. SEC, the amount of the blanket bond shall be \$1 million.

(d) A licensee who is granted approval of a blanket bond pursuant to subsections (b) and (c) is not subject to the biennial financial reporting requirement specified under

Section 858.4 (a)(2). However, the qualifier’s certification statement must be submitted biennially as specified under that section.

(e) For the purpose of executing the qualifier’s certification statement required under Section 858.2 (a)(4), the provisions of subsections (a), (b), and (c) of Section 858.1 shall be referenced collectively as “the 100% rule.”

On the date that this section becomes effective, any licensee that has a blanket bond on file with the Board that fails to comply with the 100% rule shall achieve compliance not later than 90 days after the effective date of the section. The Registrar is authorized to rescind the approval of the blanket bond in accordance with the provisions of Section 858.8 of this Article if the licensee fails to comply with any provision of this section.

(f) The form of the blanket bond specified under this section is subject to the approval of the Registrar and shall conform to the following with regard to content:

Bond No. _____

License No. _____

BLANKET PERFORMANCE AND PAYMENT BOND
CALIFORNIA HOME IMPROVEMENT CONTRACTS

KNOW ALL BY THESE PRESENTS: That _____
(Business Name as Shown on the License)

with the following address for service:

(Street Address) (City) (State) (Zip Code)

as Principal, and _____
(Name of Surety)

a corporation organized under the laws of the State of _____
and authorized to transact a general surety business in the State of California (herein referred to as “surety”), are held and firmly bound unto each owner or tenant of a residence or dwelling unit as the beneficiaries with whom the Principal, as of the date of this bond and thereafter, enters into a home improvement contract as defined in Section 7151.2 of the California Business & Professions Code for repairing, remodeling, altering, converting, or modernizing such building or structure; and the aggregate contract price specified in one or more improvement contracts including all labor services and materials to be furnished by the Principal as the contractor exceeds _____ dollars (_____) in the just and full sum of the amount of each individual contract for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That, WHEREAS, Sections 7159 and 7159.5 of the California Business & Professions Code provide for bonding requirements for contractors entering into contracts covered by these provisions of law, AND, WHEREAS, the Principal desires to file a blanket guarantee to operate as security in accordance with Section 995.020 of the California Code of Civil Procedure, to cover the performance and payment of all obligations resultant from such contracts in order to conduct business under the exemptions specified under paragraph (8) of subdivision (a) of Section 7159.5 of the California Business & Professions Code.

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the understandings, covenants, terms, conditions, and agreements of said contracts, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contracts; and if the Principal shall promptly make payments to all persons, whether or not in direct contractual relationship with Principal, supplying labor or material or both for the prosecution of the work provided in said contracts, then this obligation is to be void; otherwise, it is to remain in full force and effect as though separate bonds in the full amount of the contract price had been written on the individual contracts.

PROVIDED, HOWEVER, this bond is issued subject to the following express conditions:

1. This bond may be cancelled by the surety in accordance with the provisions of Sections 996.310 et seq. of the California Code of Civil Procedure.

2. This bond shall be deemed continuous in form and shall remain in full force and effect and shall run concurrently with the license period for which the license is granted and shall continue beyond that period and every succeeding license period or periods for which said Principal may hold this license or until the effective date of rescission of the Registrar's approval of the bond, after which liability hereunder shall cease in accordance with provisions of Section 996.360 of the California Code of Civil Procedure.

3. This bond to become effective _____
(Date)

4. Even though this bond may be in effect for more than one year, the surety's aggregate liability for all contracts covered hereunder shall in no event exceed the amount set forth above.

5. The surety signing this bond is jointly and severally liable on the obligations of the bond, the obligations of the statutes providing for this bond, and the applicable provisions of the Code of Civil Procedure regarding bonds.

(Name of Surety) (Address for Service)

I declare under penalty of perjury under the laws of the State of California that I have executed the foregoing bond under an unrevoked power of attorney. I further declare that I have relied upon the "Qualifier's Certification Statement" to determine that, as of the date of execution, according to data provided by the Principal, the penal sum of this bond is a good faith valuation of the funds required to safeguard the financial interests of the beneficiaries relative to the obligations for which this bond is posted.

Executed in _____, on _____, under the laws of
(City and State) (Date)
the State of California.

Certificate of Authority # _____

Signature of Attorney-in-Fact for Surety _____

Printed or Typed Name of Attorney-in-Fact for Surety _____

Address of Attorney-in-Fact for Surety _____

_____, Telephone Number ()
(City and State)

Signature of Principal (Qualifier for the License) _____

Executed in _____, on _____
(City and State) (Date)

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7151.2, 7159, and 7159.5, Business and Professions Code; Sections 1427 and 1474, Civil Code; and Sections 995.020, 996.310 et seq., and 996.360 of the Code of Civil Procedure.

Adopt Section 858.2 as follows:

§858.2. Application for Approval of Blanket Performance and Payment Bond

(a) A licensee seeking approval of a blanket bond shall meet the applicable conditions specified under this Article and submit to the Board an Application for Approval of Blanket Performance and Payment Bond, form 13B-35 (11/2010), that includes the following information:

(1) The name and address of the licensee as listed on the license record and the license number.

(2) The name of every person listed on the license record of the applicant who, as specified under Section 7068 of the Code, is acting as a qualifier for the license.

(3) The reviewed year-end financial statements and a report prepared by a certified public accountant (CPA) duly licensed by the California Board of Accountancy or licensed by another state board of accountancy. The reviewed financial statements shall include supplemental information related to the liquidity ratios of the licensee's business and shall particularly include the current ratio and the quick ratio, the calculations for which are specified under subparagraphs (A) and (B) below. The review report, or a separate supplementary report, shall include an explanation that the information has been subject to the review of the CPA. The review report shall cover the two fiscal years immediately preceding application for approval of the blanket bond, and should be prepared in accordance with the current Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accounts.

(A) Current ratio calculation: current assets; divided by current liabilities.

(B) Quick ratio calculation: current assets minus inventory; divided by current liabilities.

(4) A certification statement, signed under penalty of perjury by the qualifier for the license, which shall conform to the following language:

QUALIFIER'S CERTIFICATION STATEMENT

(Unless otherwise noted, all section references are to the California Business & Professions Code.)

The undersigned declares that, in accordance with Sections 7068 and 7068.1 of the Code, he or she is a qualifier for the licensee identified below (hereafter referred to as "licensee") and is responsible for exercising the direct supervision and control of the licensee's operations as is necessary to secure full compliance with the laws and regulations that are under the jurisdiction of the Contractors State License Board. As a qualifier of the licensee, the undersigned has reviewed sufficient financial information to execute this certification as it pertains to the licensee's home improvement sales and services that are subject to the home improvement contract requirements specified under Section 7159 of the Code. As of close of business on _____ the

_____ (Date)
blanket performance and payment bond (bond) number _____ issued by
_____ (Bond Number)

_____ as surety is, according to my comprehension
_____ (Name of Surety Company)

of the data derived from the licensee, in an aggregate amount that is sufficient to comply with the "100% rule" as specified in the provisions of Section 858.1 of Title 16, Division 8 of the California Code of Regulations. The undersigned also certifies that he or she will monitor the relevant business activity of the licensee; exercise due diligence to secure ongoing compliance with the 100% rule; and notify the Registrar within 30 days of the licensee's refusal, failure, or inability to comply with the 100% rule.

The undersigned also certifies that, upon approval of the blanket bond by the Registrar, the contract forms that will be used by the licensee for all transactions which are subject to Section 7159 of the Code will contain a notice which informs the property owner that

a blanket performance and payment bond is on file with the Registrar of Contractors, or in lieu thereof, a notice that clearly identifies the name and address of the surety that has issued the blanket performance and payment bond.

As a qualifying individual for the licensee, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on _____ at _____,
(Date) (City and State)

(Name of Licensee as it Appears on the License) (License Number)

(Printed Name of Qualifier) (Signature of Qualifier)

(b) A licensee shall be licensed in this state in an active status for not less than five years prior to submitting the application provided for by this section.

(c) Except as otherwise provided under this subsection, an application for approval of a blanket bond shall not be accepted for consideration if any member of the personnel of record of the licensee, or any home improvement salespersons registered to the licensee, was found to have been responsible for, participated in, or otherwise culpable relative to any legal action that is subject to disclosure under Section 7124.6 (e)(2) or 7124.6 (e)(3) of the Code, or is named on a license that is suspended pursuant to Section 7071.17 of the Code.

(1) Any person who, after the effective date of the most recent disciplinary order applicable to that individual, is listed on an active license for three consecutive years with no violations resulting in disciplinary action may make application as provided under this Article.

(d) The application shall be signed by the person qualifying on behalf of the licensee who has executed the qualifier's certification statement required under this section. In the case of a responsible managing employee qualifier, the application shall also be signed by the owner, partner, or current corporate officer.

(e) The application shall be accompanied by a blanket bond that complies with the provisions of Section 858.1 of this Article and is underwritten by a surety that has been admitted in the State of California.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7068, 7068.1, 7124.6, 7159, and 7159.5, Business and Professions Code.

Adopt Section 858.3 as follows:

§858.3. Minimum Standards for Blanket Performance and Payment Bond Approval – Cause for Denial

(a) For each of the year-end financial statements for which a report is required under Section 858.2, the following standards must be met in order to qualify for blanket bond approval:

(1) The quick ratio shall not be less than 1:1, or, in lieu thereof, the current ratio shall not be less than 2:1.

(b) In addition to any other cause for denial, the Registrar may deny or rescind approval of the blanket bond based on information in the reviewed report or the information contained in the supplemental information required under subparagraph (a)(3) of Section 858.2 if the information demonstrates the licensee will be unable to meet current liabilities.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Section 7159.5, Business and Professions Code.

Adopt Section 858.4 as follows:

§858.4. Blanket Performance and Payment Bond Biennial Certification and Financial Reporting Requirements

(a) Except as otherwise provided under this Article, a licensee that maintains a blanket bond under this Article shall comply with the following:

(1) A certification statement as specified in Section 858.2 of this Article, signed under penalty of perjury by the member of the personnel of record who is listed as the qualifier for the license in accordance with Section 7068 of the Code, shall be submitted biennially to the Registrar as specified under subsection (b).

(2) With each application to renew the license for which the blanket bond has been posted, reviewed year-end financial statements and a report prepared in accordance with the provisions of Section 858.2 (a)(3) shall be submitted to the Registrar as follows:

(A) If it has been one calendar year or more since the Registrar's approval of the blanket bond, the licensee shall submit a copy of a review report and the accompanying financial statements covering the entire period that is subsequent to the approval, but not more than the two fiscal years immediately preceding the license renewal date.

(B) If it has been less than one calendar year since the Registrar's initial approval of the blanket bond, the reviewed report required by this subsection shall be submitted at next renewal period that is more than one calendar year subsequent to the initial approval of the blanket bond.

(b) The due date for the qualifier's certification statement and any reports required under this section shall coincide with the license renewal period of the license for which blanket bond approval has been granted. For each subsequent renewal cycle, the certification statement and reports of financial statements shall be submitted to the Registrar no later than the date the license is due to expire.

(c) The Registrar may rescind approval of the blanket bond based on information in the reviewed report or in the supplemental information that demonstrates the licensee's business may not be able to meet its current liabilities.

(d) If a licensee fails to submit the certification statement or comply with the financial reporting requirements as specified by this section, the Registrar may rescind approval of the blanket bond in accordance with the provisions of Section 858.8 of this Article.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7068, 7068.1, and 7159.5, Business and Professions Code.

Adopt Section 858.5 as follows:

§858.5. Blanket Performance and Payment Bond Audit Authorization and Procedures

(a) The Registrar may order an audit of a licensee that has an approved blanket bond on file if he or she deems an audit is necessary to ensure that the sum for which the blanket bond has been filed is sufficient to protect the public.

(1) The Registrar shall provide a licensee with not less than 30 days written notification that an audit is to be conducted pursuant to this section. The notice shall specify the period to be covered by the audit and set a date for the audit to begin. The audit period shall not exceed the period that is specified for the retention of licensee records under Section 7111 of the Code. Delivery of the notice shall be by certified mail to the current business address of record listed on the license record. Upon written request, the Registrar may grant the licensee an additional 30 days to prepare for the audit.

(2) For any audit conducted pursuant to this section, the licensee shall, pursuant to the receipt of the audit notice, provide access to the licensee's books, business records, and documents in accordance with the provisions of Section 7111 of the Code.

(b) Upon completion and review of the audit and all relevant information, the Registrar shall determine if the licensee is in compliance with the 100% rule specified under Section 858.1.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7111 and 7159.5, Business and Professions Code.

Adopt Section 858.6 as follows:

§858.6. Authorization and Procedures for Ordering the Amount of Blanket Performance and Payment Bond to Be Increased

(a) Pursuant to an audit conducted in accordance with Section 858.5 of this Article, the Registrar is authorized to order an increase in the dollar amount of the blanket bond to an amount that meets the requirements specified in Section 858.1 of this Article. The adjustment determination shall be based on the information contained in records of the licensee that are required to be made available for an audit as specified under this Article.

(b) An order to increase the sum of the blanket bond pursuant to this section shall be sent by certified and regular mail to the licensee's address of record. The order shall include a notice that failure to increase the dollar amount of the blanket bond within 30 days of the date of the order is cause for rescission of approval of the blanket bond.

(c) If a licensee fails to comply within 30 days of the date of an order that is issued pursuant to this section, the Registrar shall rescind approval of the blanket bond in accordance with the provisions of Section 858.8 of this Article.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Section 7159.5, Business and Professions Code.

Adopt Section 858.7 as follows:

§858.7. Maintenance of the Blanket Performance and Payment Bond

(a) In order for any licensee to maintain the Registrar's approval of a blanket bond in accordance with this Article, all provisions of this section are applicable:

(1) No member of the personnel of record of the licensee, nor home improvement salesperson registered to the licensee, shall have been found to have been responsible for, participated in, or otherwise culpable relative to any acts or omissions that resulted in any discipline that is subject to disclosure under Section 7124.6 (e)(2) or 7124.6 (e)(3) of the Code. The approval of the blanket bond posted by a licensee found to be in violation of this section is subject to rescission in accordance with the provisions of Section 858.8 of this Article. In determining whether or not to rescind approval of the blanket bond for violations of this section, the Registrar shall give due consideration to protection of the public as set forth in Section 7000.6 of the Code.

(2) No member of the personnel of record of the licensee, nor home improvement salespersons registered to the licensee, shall be named on a license that is suspended pursuant to Section 7071.17 of the Code. The approval of the blanket bond posted by a licensee found to be in violation of this section is subject to rescission in accordance with the provisions of Section 858.8 of this Article. In determining whether or not to

rescind approval of the blanket bond for violations of this section, the Registrar shall give due consideration to protection of the public as set forth in Section 7000.6 of the Code.

(3) Whenever any qualifier who has executed and filed the qualifier's certification statement required under this Article disassociates from the licensee, a subsequent qualifier for the licensee shall complete, execute, and file the qualifier's certification statement contained in the application form specified under Section 858.2 of this Article. The qualifier's certification statement required by this paragraph must be filed within 90 days of the date that the former qualifier who executed the qualifier's certification statement disassociated from the license, as noted on the official license record of the Board.

(4) The failure to file an acceptable qualifier's certification statement within 90 days as specified under subdivision (3) of this subsection is cause for rescission of approval of the bond in accordance with the provisions of Section 858.8 of this Article. If a licensee files a written request prior to the date the qualifier's certification statement is due, the Registrar may grant an additional 30 days within which to file the certification statement. The licensee's request shall clearly state the reason(s) why additional time is needed to file the qualifier's certification statement.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7000.6, 7071.17, 7124.6, and 7159.5, Business and Professions Code.

Adopt Section 858.8 as follows:

§858.8. Rescission of Blanket Performance and Payment Bond Approval

(a) The Registrar may rescind the approval of any blanket bond (also referenced as "approval rescission" under this section) if any provision or condition specified under this Article is not satisfied.

(b) To rescind the approval of a blanket bond, the Registrar shall send written notice by certified and regular mail to the licensee's address of record that specifies the date of and the reasons for the Registrar's decision to rescind approval of the blanket bond. When appropriate, the notice shall also contain the conditions that must be met to prevent the rescission.

(c) The rescission shall, as of the date specified, extinguish the licensee's authorization to use the blanket bond in satisfaction of the provisions under subsection (a)(8) of Section 7159.5 of the Code.

(d) The licensee shall be given not less than 30 days notice prior to the effective date of the rescission of the blanket bond. Prior to the effective date of the rescission, the licensee may file a written appeal of the rescission of the blanket bond with the Registrar. A written appeal is considered timely if it is postmarked prior to the date the

rescission would otherwise become effective. Where a rescission is not appealed timely, the blanket bond shall be rescinded on the effective date specified by the Registrar. If the rescission is appealed timely, the effective date of the rescission shall be delayed until a decision on the appeal is issued, and a notice regarding the appeal and the pending decision of the Registrar shall be posted as specified under subsection (b) of Section 858.9.

(e) Upon cancellation of the blanket bond, the Registrar's approval shall be automatically rescinded effective on the date of the cancellation.

(f) Upon the effective date of the Registrar's approval rescission, the licensee shall be subject to and comply with the provisions of subsections (a)(3), (4), and (5) of Section 7159.5 of the Code and shall, in addition to complying with all other requirements specified under Section 7159 of the Code, include the Mechanics' Lien Warning disclosure as part of all home improvement contracts that are subject to that section.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7159 and 7159.5, Business and Professions Code.

Adopt Section 858.9 as follows:

§858.9 Posting of Blanket Performance and Payment Bond Information to License Records

(a) Upon approval of a blanket bond by the Registrar, regardless of the effective date of the blanket bond, the following information shall be posted to the public license record of the licensee named as principal on the blanket bond:

(1) A statement indicating that the licensee has an approved blanket performance and payment bond on file with the Board.

(2) The date that the blanket bond was approved.

(3) The number of the blanket bond.

(4) The dollar amount for which the blanket bond has been filed.

(5) The name and address of the surety company on the blanket bond.

(b) Whenever a licensee is notified of a decision to rescind the approval of the licensee's blanket bond, the Registrar shall post a notice on the public license record indicating that the rescission is pending. The notice shall be posted to the license record no earlier than 5 calendar days and no later than 10 calendar days after the date that written notification of the rescission is sent to the licensee. If the rescission is appealed timely by the licensee, the Registrar shall also post a notice that an appeal

has been filed and indicate that the decision to rescind the approval of the blanket bond is delayed pending the outcome of the licensee's appeal.

(c) Upon rescission of approval of a blanket bond or its cancellation, the statement specified in paragraph (1) of subsection (a) shall be changed to indicate the disposition of the blanket bond and the effective date thereof. The information in paragraphs (2), (3), (4), and (5) of subsection (a) shall remain on the license record for not less than five years after the date the blanket bond was rescinded or cancelled.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Section 7159.5, Business and Professions Code.