

The CALIFORNIA LICENSED CONTRACTOR



August, 1941

Governor Signs Contractors' License Law Amendments

The amendments to the Contractors' State License Law (Chapter 9, Division III of the Business and Professions Code) have become law by the signature of the Governor, who has approved two bills of the recent Legislature dealing with this subject. Senate Bill 761, introduced by Senator Foley of San Jose, and Assembly Bill 278, presented by Assemblyman Earl Desmond of Sacramento, provided for these changes.

Included in the two bills are suggestions of the Contractors' State License Board and Registrar Allen Miller, and from the industry itself, which made its desires known through the California Contractors' Legislative Council which group speaks for over 10,000 individual contractors.

The amendments, which become effective September 13, 1941, deal with the following subjects:

- Definitions of classifications
- Limiting operations with classifications
- Licensing of "owner-builders"
- Refusal of licenses to minors
- Period during which renewal is allowed after expiration reduced to ninety days
- Requirement of bond from those who have been suspended or revoked for certain actions
- Control when individuals who are personally barred seek to enter the contracting business as members of an organization
- Other minor points, principally for purposes of clarification were included

The Senate Bill introduced by Senator Foley was paralleled in the Assembly by a measure sponsored by A. Frank Waters of Los Angeles. The Waters Bill was not pressed for passage when it became certain that Senator Foley's proposal would be successful.

After passage of these measures they were carefully scanned by Honorable Dwight W. Stephenson, Director of the Department of Professional and Vocational Standards, of which Department the Contractors' Board is a division. The bills bore his recommendation when placed before the Governor for approval.

Under the Desmond Bill, an applicant for a contractor's license who has been suspended for a violation of Section 7108 or 7120 (Diversion of funds; or failure to pay a construction obligation when having the capacity) may be required to file a bond or a cash deposit in order to secure the license. This should not be taken to mean that the Registrar *must* issue the license if the bond is posted. He may require the bond if it seems proper and equitable to do so. The application may still be rejected if the facts in the particular case merit that action.

The amount of the bond may range from \$250.00 to \$1,000.00 and in lieu of a bond a cash deposit, equal to the amount of the bond demanded, may be posted. Wages are given a prior claim against the bond. All parties injured by wilful acts of the bonded contractor may bring a claim against the cash deposit or the bond. If the individual who is applying for a license was a responsible officer or member of a corporation whose license was suspended or revoked, the bond may be required of him as though it had been his own license which was suspended or revoked. Furthermore, if the license of the organization was suspended for a violation of Section 7116 (the doing of a wilful or fraudulent act) in addition to either Section 7108 or 7120, the bond may be required.

The Desmond Bill does not authorize the Registrar to require a bond as a precedent to

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THE CALIFORNIA LICENSED CONTRACTOR

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Governor Signs State Contractors' License Law Amendments

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reinstatement of a license. It applies only in the case of an application for an original license. However, should a person under suspension have reason to feel that the Registrar might terminate the suspension upon the posting of a bond, that person could surrender his license (already under suspension) and the Registrar could cancel it. Thereupon, the person could immediately file an original application. By doing this, which would include meeting all the requirements of original applicants, the person would be in a position to petition the Registrar for issuance of a license, and the Registrar, if he saw fit to do so, could approve the application subject to the bond being posted.

Under the Foley Bill one of the most important changes deals with classification. The present wording of the law binds the Board to narrow definitions of the various classifications or divisions of the contracting business and the definitions are written into the law. These definitions do not entirely comply with custom and usage in the industry. Neither the Registrar nor the Board has been permitted to deviate from these classifications. Under the new wording, however, definitions of the various classifications can be drawn up in order to meet the actual practice in the industry. No arbitrary divisions will need to be made which are unreasonable;

on the other hand, it will be possible to divide into separate classifications such various crafts as actually and by common practice are dissociated from each other.

The law will now more clearly and forcefully settle the authority of the Board to require a licensee to operate within the limits of his own classification. This authority, which, in the opinion of the Attorney General, impliedly existed, was not clearly authorized by the wording of the law and this section has now been very clearly stated. There can be no longer the slightest doubt as to the intention of the Legislature that the Board may classify all groups within the industry where there is a reasonable standard for classification recognized by the industry itself; and that within certain reasonable limits, the activity of contractors may be limited to the classifications in which their license is issued.

Permission is given, however, for parties who desire to change their classification, to take examination for the new classification without fee, which will permit changes without financial cost or unreasonable hardship.

Owners of property, who are building for sale thereon, will now be specifically exempt from the Contractors' Act, providing their job is being done by a licensed contractor or contractors. If the owner operates his own project by direct employment for wages, however, he must be licensed himself. The law reasonably makes it necessary that one or more licensees be responsible for all of the operations of any project; but does not penalize the owner who is building for sale on his own property by making him secure a license, if he is willing to have licensed contractors actually take over the work. In the past while the Act attempted to require a license of the owner even when his job was being done by contract, prosecuting officers, as well as the courts of the State, looked with considerable disfavor upon the requirements. The result was that the enforcement of the Act in such instances was almost impossible. When insisted upon by the Department, the result was ill will between the Board and local administrative officers and the courts. In addition, it discouraged owners from employing contractors who held licenses, since the owner was himself required to have a license and could thereafter perform all of the services of a contractor by virtue of the fact that he was licensed.

The Contractors' Act was previously silent as to the Registrar's authority to refuse licenses to applicants who had been formerly connected with copartnerships or corporations whose licenses had been suspended or revoked

for cause. While it was successfully assumed that the Registrar could refuse a license to a former officer of a corporation whose license had been suspended, providing the officer had exercised control over the corporate operations, there was always the possibility that the assumption might be successfully attacked in court. This possibility has now been removed. Along this same line the Contractors' Act now specifically makes it impossible for a person, who for good cause can not secure a license, to purchase an interest in a corporation that holds a license and to then become an active officer. In a few instances individuals whose licenses have been suspended or revoked were able to get a foothold in the construction industry by purchasing a small amount of stock in a construction corporation. Thereafter they were elected to an office which carried with it responsible duties. While this problem was generally successfully met, there was always the question of the authority of the Registrar to interfere with the selection of officers by a corporation in view of a lack of specific authority to do so.

An even more difficult situation has arisen in the past when a party under suspension has been employed by wages for a corporation, with duties that were those of a responsible managing employee. Under the new wording of the law, corporations and copartnerships are prohibited from employing as an officer, director or associate, partner or responsible managing employee, any person whose license is under suspension or who has been refused a license for good reasons. This prohibition naturally does not hold in the case of an officer of a corporation who had no knowledge of nor participated in any way in the prohibited acts for which a license was suspended.

Minors who could not previously be refused a license because of their lack of legal majority, may now be refused a license unless they shall first have had a guardian appointed by court. The requirements of a guardian also applies in the event a minor is a member of a partnership or an officer, director, associate, partner or responsible managing employee of a corporation which seeks a license.

The avoidance of jurisdiction by surrendering a license before the Registrar has had time to suspend it, can no longer take place. The Registrar must accept a license when surrendered and must cancel it, and he must, of course, record the license as not being in force if it is not renewed by June 30th. His jurisdiction will hereafter be extended past the time when the license is in force, for

the purpose of disciplinary action by the suspension or revocation of a license. The Registrar will be able to continue with investigations and proceedings even though the license shall cease to be effective and he may reach a decision and suspend or revoke the license.

Two years ago a licensed contractor from a small Southern California town was the defendant in two separate complaints against his license, which complaints were filed in June. Before the cases could be heard, June 30th—the end of the fiscal year—had arrived and the contractor did not renew his license for the ensuing year. Under the existing law the Registrar was forced to dismiss the action because of lack of jurisdiction.

In the event that this contractor should apply for renewal of his license, it is doubtful whether one of the complainants would be able to appear against him because of the nature of his employment and the fact that he could not obtain time off to attend the trial.

The second complainant has since died.

Upon both jobs involved there is now a question whether matters complained of can be successfully shown, by reason of the fact that the jobs have been altered or done over in such a manner that the original situation has been materially changed. This would then make it more difficult to present evidence to deny a license, and without such evidence the applicant would have to be issued a license.

Recently this same contractor made his appearance in another community as an unlicensed contractor, associating himself with a licensed contractor. Under this arrangement both parties were using the one license issued to an individual. A complaint was filed by the inspector in that territory charging violation of Section 7117 of the Business and Professions Code, as well as other acts which were in violation of the law.

This matter took place at the end of the fiscal year and it was necessary to take extraordinary measures to bring this case to trial before June 30th—the end of the fiscal year, after which the Registrar would have had no jurisdiction in the event the licensee did not renew his license.

Under the amended act, this will no longer be the case, as the Registrar can proceed to a hearing and a decision which will become a matter of record against the applicant if he should later apply for a license. It will not be necessary to have a trial upon the new application, for a license can be refused because of the record showing that applicant has been found guilty of violation of the Con-

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5,666 Delinquent Contractors Are Suspended

Contractors licensed during the fiscal year ending June 30, 1941, totaled 38,966. This included all classifications. Of this total, 5,666 failed to renew, and for failing to renew, their licenses were ipso facto suspended, and will remain suspended until all provisions of the Act and the Rules and Regulations of the Contractors' State License Board have been complied with.

Presumably contractors who failed to renew their State Contractor's license, which expired on June 30, 1941, had good reason for not renewing or they would have done so. However, for the information of the contractor who intended to renew but carelessly failed to do so, the following excerpts from the Contractors' State License Law may be of interest and of some help in the governing of the delinquent contractor's construction activities.

Section 7140, Article 9, which has to do with renewal of licenses, reads as follows:

"All licenses issued under the provisions of this chapter shall expire on June 30th of each year.

"A license may be renewed without penalty by the filing of a renewal application with the registrar not later than June 30th of each fiscal year. To be effective such renewal application must be made upon forms prescribed by the board and must be accompanied by the annual renewal fee prescribed by this chapter or fixed by the board. Otherwise a license, application for renewal of which has not been so filed on or before June 30th of each fiscal year, shall be ipso facto suspended until a renewal application is properly filed, and shall be renewable only if the application for the renewal thereof is filed with the registrar not later than September 30th of each year on a form prescribed by the board and is accompanied by the penalty fee prescribed by this chapter.

"No license shall be renewed under any conditions unless the prescribed renewal application, together with all prescribed fees, is filed with the registrar on or before September 30th of each year."

To those contractors who are delinquent and who expect to continue in business, the following information may be of value and assist them in making up their minds to get in good standing before the deadline.

To secure a license after September 30, 1941 you must execute in full an application form, and you must take the written exam-

ination now required of all applicant contractors. (Exception: If an applicant has previously qualified by examination required of applicants for licenses in the class in which he desires to operate and has operated under such license for the twelve months previous.)

The filing of an original application involves a delay of some ten days to two weeks after the examination has been taken. This may apply even when the applicant has previously been licensed.

No bid may be submitted until a license is actually issued. The penalty is the same as for taking a contract while unlicensed.

Penalty for submission of a bid or for performing any act constituting a part of the business of contracting before a license is issued carries a maximum fine of \$500.00 and six months.

Sections 7028 and 7031 are of particular interest to the delinquent or unlicensed contractor and they are quoted herewith:

"7028. It is unlawful for any person to engage in the business or act in the capacity of a contractor within this State without having a license therefor, unless such person is particularly exempted from the provisions of this chapter."

"7031. No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this State for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract."

The foregoing is not a solicitation for the renewal of contractors' licenses, but a notice that failure to renew before September 30th will cause each delinquent considerable lost time and possible legal entanglements.

WARNING NOTICE

If you are one of the 5,666 contractors who has not renewed his license, you are urged to carefully read the article appearing above on this page. Failure to renew your license (by payment of the \$5.00 renewal fee plus the \$5.00 delinquent fee) on or before September 30, 1941 will result in your no longer enjoying this renewal privilege; and should you desire a license after this date it will be necessary for you to complete an original application for license and successfully pass the prequalifying examination.

Why Licenses Are Suspended or Revoked

Editor's Note: This is the seventh of a series of fifteen articles to be run in a like number of issues of the California Licensed Contractor. Each will be preceded by a brief statement of all of the sections of the Business and Professions Code that constitute cause for action against a contractor's license. In each of the articles one of the sections will be featured by an explanation and by examples taken from our files.

The sections are Nos. 7106 to 7120, inclusive, and are grouped in Article 7 of Chapter 9 of Division III of the Business and Professions Code of California.

Power of suspension for violation of these sections is given the Registrar in Section 7090 of the same article, which states, "The Registrar may upon his own motion and shall upon the verified complaint in writing of any person, investigate the actions of any contractor within the State and may temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

Consolidation 7106. The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.

Abandonment 7107. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action.

Misuse of funds 7108. Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose constitutes a cause for disciplinary action.

Disregard of specifications 7109. Wilful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications constitutes a cause for disciplinary action.

Violation of laws 7110. Wilful or deliberate disregard and violation of the building laws of the State, or of any political subdivision thereof or of the safety laws or labor laws or compensation insurance laws of the State constitutes a cause for disciplinary action.

Preservation of records 7111. Failure to make and keep records showing all contracts, documents, records, receipts and disbursements by a licensee of all of his transactions as a contractor and open to inspection by the registrar for a period of not less than three years after completion of any con-

struction project or operation to which the records refer constitutes a cause for disciplinary action.

Misrepresentation 7112. **Misrepresentation of a material fact by an applicant in obtaining a license constitutes a cause for disciplinary action.**

Violation of contracts 7113. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action.

Unlicensed persons 7114. Aiding or abetting an unlicensed person to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action.

Violation of this law 7115. Failure in any material respect to comply with the provisions of this chapter constitutes a cause for disciplinary action.

Fraud 7116. The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action.

Personnel variance 7117. Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

7118. Knowingly entering into a contract with a contractor while such contractor is not licensed as

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provided in this chapter constitutes a cause for disciplinary action.

Lack of reasonable diligence 7119. Wilful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

Withholding money 7120. Wilful or deliberate failure by any licensee or agent or officer thereof, to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

The subject matter of this article, which is the seventh in our series explaining in detail the causes for disciplinary action provided by the Business and Professions Code and applicable to the licensed contractors states the following conditions under which a license may be suspended or revoked:

7112. Misrepresentation of a material fact by an applicant in obtaining a license constitutes a cause for disciplinary action.

This section provides that a license may be either suspended or revoked after issuance, if the applicant at the time he applies for a license stated as a true fact something which was false. The section does not also require that the true fact, had it been known, would have been grounds for the refusal of the contractor's license. The only elements to be proved are that the statements made by the applicant constituted a misrepresentation and that the misrepresentation shall have been "material." An inconsequential error by an applicant could not be used as the basis for a charge. It is, of course, impossible to give a definition of what constitutes a material misrepresentation that will apply in all cases.

In the event of an action against a license holder because of misrepresentation, the Registrar will determine from the facts in the particular case whether or not the untruthful statement was a material misrepresentation. A misleading statement that causes an incorrect conclusion by the Registrar in passing upon an application is no better than an openly false statement. It will always be so treated. No harsh or unvariable rule is invoked regarding a technical error when the actual facts of the case are that the applicant's character is good and that he has not by past procedure proved himself unfit to be a contractor.

For instance, let us say that an applicant, prior to the filing of his application had been licensed as a contractor and then retired from the business for a period of time. While he was previously licensed he diverted funds upon a rather large job and as a consequence of this diversion a lien was filed and perfected. The outcome was that the owner in addition to paying the contractor for the proper cost of the job paid an additional sum for the release of the lien. If the loss to that owner only amounted to \$15.00 certainly we would have to concede that a person could question the materiality of the loss caused to the owner.

Since the loss was caused by diversion of funds, it falls within part "(a)" of Section 7069 of the Business and Professions Code and it is cause for refusal of a license.

The applicant knowing this, fears that his license would automatically be refused should he report the circumstances, even though the loss of \$15.00 might have been subsequently repaid by the applicant, since it is an established principle that the violation of a law can not afterward be cured even though the losses that arose therefrom were settled. The applicant, feeling that he is going to be refused a license for reasons that seem to him unjust, reports upon his application that no such occurrences ever happened. Upon the basis of that statement, his application is approved and license is issued.

Thereafter, to the misfortune of the man who is now licensed, it is reported by someone that he misrepresented facts upon his application for a contractor's license. A charge is filed and the Registrar learns that the applicant did make a misrepresentation and that the misrepresentation was for the purpose of securing a license. The Registrar then is almost forced to feel that the applicant did commit a dishonest and deceitful act. Although the original violation of the Contractors Act might not have been sufficient for

the refusal of a license, the Registrar could properly feel that the dishonest statement by the applicant required punishment and he could therefore order suspension of the license.

The above hypothetical case has actually been paralleled in a number of actual instances. Most of the time the misrepresentation was a material matter because it showed a definite lack of honesty in the applicant's approach to the State, even though the original incident, which should have been reported, was not in itself material.

In studying an application or the circumstances under which an application has been questioned because of a false statement, the Registrar's approach to the matter is always from the standpoint of what the character of the applicant appears to be as reflected by the facts. As above shown, if the applicant appears by his own statements to be dishonest or deceitful, any of his prior difficulties will be considered as being more serious than had they been committed by a man who is truthful in disclosing the facts and is willing to rely upon justice in presenting his petition for a license. It would not be humanly possible to avoid being influenced to feel this way.

In studying cases to determine whether or not the licensee committed a material misrepresentation of fact upon his application, the Registrar will always bear in mind the requirements of Section 7069 of the Business and Professions Code, which provides that "an applicant shall possess good character." The same section states that lack of character may be established by the following:

"(a) That the applicant has committed or done any act which, if committed or done by any licensed contractor would be grounds for the suspension or revocation of a contractor's license.

(b) That the applicant has committed or done any act involving dishonesty, fraud or deceit whereby the applicant has been benefited or whereby some injury has been sustained by another.

(c) That the applicant bears a bad reputation for honesty and integrity.

(d) That the applicant has been convicted of a felony."

It is obvious that the Legislature intends the Registrar to refuse licenses to applicants whose character is known to be bad. In the event a party with a bad reputation does secure a license by misrepresentation and the matter of his fitness to retain a license is brought before the Registrar, the Registrar is thoroughly justified in, and in fact will permit the introduction of any evidence in support of the charge of misrepresentation which will

tend to show the true character of the individual. That is, if the fact of a material misrepresentation is first established.

There are many chances for an applicant to materially misrepresent facts. For example, failure to report a true name, if this is done for the purpose of hiding a record that would not bear investigation, would certainly be material misrepresentation. On the other hand, an applicant may have changed his name for good and sufficient reasons. In the days of his youth he may have had difficulties with other children who were somewhat cruel because of a peculiar family name. He might actually misrepresent his true name upon his application by giving the name under which he had been well and favorably known in business for a number of years. Since gain by fraud or deceit would be entirely lacking from this act, and no one would be injured, this misrepresentation would not be material, although it might subject the party to rather exhaustive investigation. An applicant who does not do business under his baptismal name or under the name which he has legally adopted is given an opportunity to disclose his true name to the Registrar and the license can still be issued in the name style under which he prefers to be known. General statutes regulate this procedure.

Applicants with bad records of financial troubles are frequently tempted to misrepresent facts by failing to report under the proper questions the full and true details of these troubles. For instance, an applicant recently reported he had gone through bankruptcy. His statement was that the "bankruptcy became necessary to clear off deficiency judgments against me in the years after the depression of 1930." He further said, "Before then I had been building and selling and signed some trust deeds and mortgages upon properties which I later sold. The purchasers let the property go back and the mortgage companies took deficiency judgments against me and I had to resort to bankruptcy in order to make a living."

A check of the bankruptcy was made in accordance with our usual procedure and had the facts been as stated by the applicant, the application would have been approved. Among the creditors listed by this applicant when he filed bankruptcy were the names of two material men and three subcontractors. Interviews with these old creditors proved the statement by which he explained his bankruptcy was not a true statement. The application was set for hearing and at the hearing the prosecuting inspector quickly proved the

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applicant had misrepresented facts in filing his application by reporting no construction bills unpaid. (Bankruptcy is not payment; it merely protects against executions.)

However, it further developed that the debts of these material men and subcontractors were very small and in fact represented an infinitely small percentage of the total claims against the applicant at the time of bankruptcy. Bankruptcy had been taken some five years before the application was filed. The applicant swore that he did not recall these few very small claims at the time he filed the application and that he did not have his bankruptcy file to refer to, as it was in the possession of his attorney. Upon these facts and these alone it would appear this applicant could hardly be charged with lack of character because of a misrepresentation upon his application. It should be noted that evidence did not show the claims of the subcontractors and material men were caused by any violations of the punitive sections of the Contractors Act, such as diversion of funds.

However, the entire aspect of the case was changed when the inspector called a "surprise" witness. He was one of the material men shown on the bankruptcy report. He had lost the large sum of \$7.00 through the applicant's bankruptcy. This man testified that the applicant, some few weeks prior to the filing of his application, had asked him to sign his application for a contractors license, certifying to the applicant's good reputation. The material man had refused to sign saying he could not properly do so since the applicant still owed him a few dollars although he had "nothing against the applicant personally." On cross-examination, this witness admitted he had enjoyed favorable business operations with the applicant over many years and had sold him thousands of dollars of material and the small balance arose out of the last business done between them, just before financial troubles engulfed the applicant.

This testimony showed the applicant did have some recollection of this old material bill at the time his application was filed and, therefore, he deliberately and wilfully made a misrepresentation upon his application when he explained that his bankruptcy was only to clear off deficiency judgments, and that claims in connection with construction work were not involved. Had this applicant been approved before the facts came to light, his license would still have been subject to cancellation for misrepresentation under the section being dealt with.

A common type of misrepresentation which can cause difficulty not only to the

applicant but to those who assist him occurs when parties sign an applicant's form certifying to his reputation for honesty and integrity, stating they have known the applicant for a certain stated period of time. It is common knowledge throughout the industry that an applicant for a contractors license must secure certifications for honesty and integrity and that the License Board insists the parties so certifying must have known the applicant at least one year in order to have some basis for the statements made as to the applicant's reputation. Parties who certify these applications are frequently themselves licensed contractors. In several instances these licensed contractors have signed an application for a would-be contractor whom they have not known for a year. But upon signing the application they state they have known him for a year or more. This is a deceitful act and when such instances have come to the attention of the Registrar, punitive measures were instituted.

Furthermore, charges against the licenses of contractors who assisted an applicant by making the misstatement of time have been filed on the ground that contractors who have so assisted the applicant in making a misrepresentation were themselves violating Section 7114 of the Business and Professions Code which prohibits a contractor from "aiding or abetting an unlicensed person to evade the provisions of this chapter. * * *"

The types of misstatements upon an application which may be grounds for suspension of the license if issued may be roughly divided into two classes. The first class would be misrepresentation designed to keep the Registrar from learning of acts of dishonesty, fraud and deceit. These acts could have been connected with or could have arisen out of construction operations, or any other type of enterprise or activity. The second class would be misrepresentation designed to keep the Registrar from learning of acts when the applicant had been engaged in the construction industry, which are prohibited by the punitive sections of the Business and Professions Code, but these acts may not have been dishonest or fraudulent. In fact they may have caused no reflection on the man's honesty and integrity.

Section 7107, for instance, prohibits abandonment without legal excuse of a project. A contractor who because of financial obligation outside of his control could not complete the job would be abandoning the job and he would have no legal excuse for the abandonment. Yet it could hardly be called deceitful or fraudulent if the circumstances were beyond his control and if the contractor had

exhausted all of his own resources in order to attempt a completion of his contract. Under these circumstances, however, a license could be suspended or revoked.

If a contractor had abandoned a contract under these particular circumstances and later applied for a license, upon his application form, if truthful, he would be obliged to disclose the abandonment since there are questions sufficiently inclusive to require full information about all previous construction difficulties. The particular act (abandonment) which he failed to disclose would not have been a dishonest act in any sense of the word but his *failure to disclose* the abandonment would have been dishonest and upon that ground he would be charged.

Due to the highly developed system of credit exchanges throughout the United States, and which cover a great majority of contractors, even though many of them are not aware of the fact, cases of misrepresentation by an applicant (in so far as financial difficulties are concerned) are remarkably rare.

There have been a few instances where a licensee is later found to have misrepresented facts upon an application by failing to report a criminal conviction. Parties with criminal records, through their experience, are sufficiently aware of the identification systems through the country, all of which interlock. These parties seldom attempt to misrepresent facts. The Registrar has from time to time received letters from licensees protesting that a license must have been issued to a party by a misrepresentation since that party had been previously convicted of a felony. The assumption of those licensees that mere conviction is grounds for refusal of a license is wrong. Before such a protest is made one should bear in mind the fact that a person may be convicted of a felony, for instance, because of what the courts may have decided was negligent operation of an automobile. Certainly a man's reputation for honesty and integrity was not involved in an unfortunate incident of that sort. Furthermore, he has received whatever punishment the people, through the courts, believed was required; he has paid his debt to society. To hold that record against him in the issuance of a license would be contrary to the principles of our American democracy. The Registrar would exercise his right of choice of approval or rejection and would approve the application, if no further matters were involved.

In this connection it is again proper to state that the Registrar after license issuance,

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Do You Know That—

By GLEN V. SLATER, Assistant Registrar

(In each edition of the "California Licensed Contractor" I will attempt to give in this column excerpts from the various laws that directly affect your contracting business. For this edition I have chosen "The State Unemployment Insurance Act" with which every contractor should be familiar. The article that follows was prepared by a member of the staff of the State Department of Employment.)

"State Unemployment Insurance Act"

By HENRY MACARTHUR, Public Relations Officer

—More than 50,000 California employers meet requirements of the Unemployment Insurance Act, and contribute to the Unemployment Trust Fund.

—Approximately 2,000,000 California workers are "covered" by Unemployment Insurance in this State—that is, if these workers are without employment they may, if they meet all the eligibility requirements in the act, draw up to \$460 in weekly payments not to exceed \$18 per week.

—The Unemployment Trust Fund account of California in the United States Treasury totaled \$170,722,181 on June 1, 1941.

—The California Department of Employment operates a state-wide system of employment agencies, with offices in 81 California communities, through which employers may hire workers without charge either to employer or to worker.

—Placements of workers in California business and industry now total more than 40,000 each month.

—The active file of registered applicants for work in all occupations has dropped from nearly 600,000 in January of 1940 to approximately 350,000 in May of 1941.

—Since January 1, 1936, when contributions to the Unemployment Trust Fund were first required by law, California employers have contributed \$315,534,927 to the Fund.

—Since January 1, 1938, the California Department of Employment has paid \$155,652,700 to California workers as unemployment insurance.

—Every California employer, regardless of the number of persons he hires, should register with the California Department of Employment, and following this registration, the Department will determine whether the employer is required to pay contributions to the fund.

—Employers who hire four or more persons for 20 days or some part of 20 days, each day being in a separate calendar week, are required to pay contributions to the Unemployment Fund.

—The California Department of Employment maintains an Appeals Section, where either employer or employee may seek redress from an original determination on an unemployment insurance claim, and such an appeal may be filed in any of the Department's 81 offices.

—Administrative funds for the California Department of Employment for the most part are granted by the Social Security Board, and with the exception of a small percentage, are not an obligation of the State of California. This small percentage the State is required to appropriate to match funds appropriated by Congress under the Wagner-Peyser Act.

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What Goes On

Construction Industry Meetings

Contractors will be advised through this column of conventions and meetings of the various trade groups and contractors' associations if we receive such information prior to the deadline, which is the fifth day of the month preceding months of issue. Months of issue are February, May, August and November.

Associated Tile Contractors, Inc., of Southern California, through its genial Secretary, Jack Ball, requests that members of the Construction Industry be advised through The California Licensed Contractor that at the Thirty-eighth Annual Convention of the Tile Contractors Association of America held in Detroit, Michigan, May 13th to May 15th, the Pacific Coast was honored for the first time by the election of Mr. Ed Pollak of Musto-Keenan Company of Los Angeles, as their National President for the ensuing year. Mr. J. W. Broxholme, President of the Los Angeles Marble & Tile Company, was selected as Director representing the Pacific Coast for two years.

The selection of these two California contractors to fill two of the highest offices of the National Association speaks well for the part California Tile Contractors, through their State Associations, have taken in National Association work.

San Mateo County General Contractors Association at their annual meeting held Wednesday evening, June 11, 1941, voted to incorporate under the name of the **Peninsula General Contractors and Builders Association, Inc.** Newly elected officers are: James B. Oswald, President; James Arthur, Vice President; Emil G. Steinegger, Secretary; Directors: Messrs. Neils Schultz; Herman T. Holsher; Hugh H. MacDonald, and Hays McLellan.

The annual report revealed that the Association, under the direction of the Board of Directors and its Manager, Mr. Fred H. Crane, had a very successful year, and that the outlook was very encouraging for the continuation of an active and prosperous building season.

The offices will be continued in the present location—209 Park Road, Burlingame, California.

Pacific Coast Building Officials Conference will hold its Nineteenth Annual Convention at Santa Barbara, California, September 30th to October 3d. Convention headquarters will be Hotel Mar Monte, where there will be accommodations for some 100 delegates. The Hotel Californian is also designated as an official convention hotel. Those attending the Conference should make their reservations as soon as possible direct with the hotels.

According to Hal Colling, Managing-Secretary of the Conference, whose office is at 124 West Fourth Street, Los Angeles, California, a fine registration is expected as a program of unusual interest and scope is being planned.

Building Contractors Association of California, Inc., announce the Ninth Annual Congress of the Building Contractors Association of California will be held in Los Angeles on Friday, November 14th, at which time delegates from 25 chapters in the 10 districts serving more than 100 cities and communities in the State will assemble to transact the business of the Association.

This Annual Congress promises to be one of the most important meetings ever held by the Association, according to Paul L. Burkhard, President of the State Association.

Many items vital to the building industry and our National Defense Program will form the basis for discussion.

The Congress will close with the Annual Banquet held on the evening of November 14th, which all licensed contractors are invited to attend.

Other officers of the Association are E. H. Depew, of San Diego, Vice President; R. A. Cranford, Huntington Park, 2d Vice President; Fred M. Smoll, San Bernardino, Secretary; Floyd B. Layne, Hollywood, Treasurer; and F. W. Sanford, Business Secretary. The office of the Association is located at 1709 West 8th Street, Los Angeles, California.

The California State Builders' Exchange mailed the following letter which will be of interest not only to the members of the various local Builders' Exchanges which make up the California State Builders' Exchange, but to the many contractors affiliated with other construction trade associations or groups.

"To All Building Organizations:

The **California State Builders Exchange** is holding its **Annual Convention** on **Friday and Saturday, September 26th and 27th** at the **Hotel Oakland** and the

Builders Exchange of Oakland will be hosts on that occasion.

The legislative sessions will be held all day Friday and Saturday morning. We are especially inviting the building organizations to attend these sessions, which we assure you will be of great benefit to the industry.

As the dates of the Convention fall at the same time as our Annual Golf Tournament we are inviting you to attend this annual event also. For those who do not play golf there will be a dinner and floor show in the evening (stag).

Every year more and more men bring their wives to the State Convention and this year we expect a large delegation, so we have prepared a special program for the ladies with lunch at the Hotel Claremont and a sight-seeing trip around our East Bay.

On Friday evening the Grand Banquet and Floor Show will be held in the Ivory Ball Room of the Hotel Oakland.

Put these dates on your calendar. We shall be glad to have you attend any and all legislative meetings and any of the social events.

Reservations may be made at the Builders Exchange of Oakland, 2059 Webster Street, Oakland, GLencourt 7400.

(Signed) WM. E. McGRATH, President,
P. S. RICKER,
Convention Chairman."

The **National Electrical Contractors Association** will celebrate its 40th birthday at Houston, Texas, where the annual convention will be held October 6th to 8th. Hundreds of members and their families from every State in the Union and from Canada will be in attendance to take part in the deliberations and to enjoy the elaborate entertainment provided by the Houston Chapter. J. J. "Joe" Newitt, Secretary of the Los Angeles Chapter, 132 West First Street, announces that Los Angeles will be well represented by a number of delegates.

A nine-day post convention "all-expense tour," Houston to Old Mexico and return, will be the closing thrill. The rate is \$70.00; and includes meals, both on trains and during stop-overs; accommodations at one of the finest hotels in Mexico City; sightseeing trips, with English guides; baggage transfers; all tips to train porters, waiters, bell-boys, guides and drivers; tourist cards and necessary taxes; in fact, everything but railroad fares. Here's a chance for a real vacation.

The **Heating, Piping & Air Conditioning Contractors National Association** and the **American Society of Heating and Ventilating Engineers** held their conventions and meetings in San Francisco on June 16-19, inclusive. Over 1,200 delegates and their wives were present, many from countries outside the United States. Mr. A. S. (Pat) Whitmore, Manager of the Heating & Piping Contractors Association, was in charge of the Pacific Heating and Air Conditioning Exposition which was held in the San Francisco Civic Auditorium. The program and exhibits were both instructive and interesting, and the attendance and interest in this practically new industry were above expectations.

From all reports the Exposition was the best of its kind ever held in the United States. The Air Conditioning Society of San Francisco, and the Heating and Ventilating Engineers assisted in making the affair an outstanding success.

Painting and Decorating Contractors of America, California Council, will hold their Executive Board Meeting in Yosemite Valley on Saturday and Sunday, September 6 and 7, 1941. Matters of interest and importance to the various California Associations will be taken up by the Board members, according to Ralph S. Exley, Secretary.

Mr. Exley, who is also Secretary of the Painting and Decorating Contractors' Association of San Francisco, can be addressed at 919 Divisadero Street, San Francisco, California.

ALARM IS RAISED AGAINST LACK OF PRICE COMMITMENTS

Many leading experts in the construction industry are today warning contractors that unsettled labor and material costs and uncertain supply sources constitute an immediate danger to the bidders who do not or can not absolutely protect their costs. In the next issue of the **CALIFORNIA LICENSED CONTRACTOR** will be an article dealing with Section 7113 of the Business and Professions Code under the title "Why Licenses are Suspended or Revoked," in which this subject is more fully dealt with. There is not a contractor in California who should not be concerned with this problem.

Private Building Construction Standards

Joint committees of the Associated General Contractors and the American Institute of Architects have been endeavoring, during the past year, to arrive at mutually acceptable construction procedures which could be recommended as "Standard" with respect to private building construction.

This joint activity originated with the National officers of both organizations in Washington and their basic standards were transmitted to local Chapters for consideration, revision, and adoption.

The Southern California Chapter of both the Associated General Contractors and the American Institute of Architects have agreed upon such construction procedures as stated in the enclosed reprints from the Southwest Builder and Contractor's issue of June 20, 1941.

Upon examination you will find that these procedures establish reasonably fair and equitable standards upon many matters of vital interest to the owner, architect and contractor. They are an unofficial code of ethics, but while endorsed by both organizations, they are only recommended standards. We believe, however, that if followed they will be found generally helpful to owners, architects and contractors.

Item No. 1—Retained Percentage on Fixed Price Contracts

It is recommended that where a corporate surety bond is furnished that the retained percentage be not in excess of 10% and in the case of unbonded contracts that the retained percentage be not in excess of 15% of the contract price, provided that receipted bills or releases are submitted by the contractor.

Item No. 2—Date by Which Monthly Estimates Should be Paid

It is recommended that construction contracts provide for monthly payments to the contractor on or before the 5th of the following month. It is also recommended that the contractors cooperate with the architects in submitting their estimates early enough in the month so that the architect will have sufficient time in which to check the estimates.

Item No. 3—Unit Prices

Practically unanimous opposition was expressed to the practice of requiring general contractors to submit unit prices with a lump sum bid and including such unit prices in the contract to be used as a basis of determining the cost of extra work or work omitted during the course of construction.

It is, therefore, recommended that (a) Bidders be not required to submit unit prices with their bids but that (b) where the submission of such unit prices is necessary that the location of the work in the building be taken into consideration in asking for unit prices.

Item No. 4—Cost of Extra Work

It is recommended that in addition to the cost of labor, and materials necessary to be furnished on

account of the additional work performed on the project by the general contractor, or changes in work called for by the original plans and specifications, the following additional items of cost, in appropriate amounts shall be permitted to be included by the contractor, viz.: Profit and overhead of 15%, and when involved, insurance, bond, job costs, taxes, contractor's equipment and any direct charges such as trucking, surveyor's fees, etc. However, the contractor shall submit a detailed list with a breakdown of the extras to the architect.

Item No. 5—Cost of Work Deducted

When during the course of construction the owner may desire changes in the work called for by the original plans and specifications such as to warrant a reduction in the contract price, it is recommended that in determining the amount by which the contract is to be reduced that the following items of cost be included in appropriate amounts and when involved, viz.: Labor and materials, insurance, bond, job costs, taxes, contractor's equipment and any direct charges such as trucking, surveyor's fees, etc. Profit and overhead of 15% is not to be deducted.

Item No. 6—Base Bid and Alternates

As a fundamentally sound principle, we believe that in designing a building and in preparing the plans and specifications the designer should be accurately informed by the owner as to the amount of money he has available and will spend for the structure, complete and ready for occupancy. Further, the designer, so informed, should design the said structure complete, the cost of which is estimated to come within the funds available.

We, therefore, recommend that the base bid include all items necessary for a complete structure. But, where alternates are deemed necessary in order to provide a possible reduction in the scope of the project or a modification of design or architectural treatment such as to reduce construction costs, then under these conditions we recommend that such alternates be kept to a minimum in number, be subtractive only and that the low bid be determined on the basic bid or upon the alternates in sequence, and that the method be stipulated in the bid form.

Item No. 7—Pre-inspection of Materials at the Plant

It is recommended that members of the A. I. A. be urged to make pre-inspections of materials or manufactured articles where it is practical to do so, in accordance with the provisions of Article 13, "Inspection of the Work," 5th Edition of the Standard Documents of the A. I. A. and that the contractor notify the architect when materials are ready for such inspection. Duplicate samples shall be supplied in sufficient time so as not to delay the progress of the work, one sample to be held by the architect and the other to be retained by the contractor.

Item No. 8—Payment for Materials Stored at the Site

It is recommended that architects refrain from modifying the provisions of Article 4 entitled "Progress Payments" as contained in the "agreement" appearing in the 5th Edition of the Standard Documents of the A. I. A.

Item No. 9—Bid Opening Day and Hour

We believe that it is correct to assume in general that one day of the week as well as another would be

acceptable to the owner and the architect for the opening of bids. This, however, is not true in the case of the bidders, who always are confronted with last minute quotations and bid compilations.

It is, therefore, recommended that the day set for the receipt and opening of bids shall not be on a Saturday, Sunday, Monday or holiday, or any day immediately following a holiday. Further that the hour of the day so set shall not be earlier than 2:00 P. M.

Item No. 10—Form of Bid Security

The practice of determining the amount of a bid bond or other form of bid security by specifying it as a percent of the bid prices many times results in insufficient bid security, which might disqualify the bid in question or bar an intended bidder from placing a bid. These conditions may easily come about where the amount of the proposed bid has been determined shortly in advance of the bid opening date and bid security obtained, only to find at the last minute before submitting the bid that the amount must be changed. The time is too short to obtain new bid security and the bidder thus faces difficulties.

It is recommended that the amount of bid security be predetermined by the architect in the form of a fixed amount and all bidders so notified in "instructions to bidders." The amount could well be fixed as a percent of the architect's cost estimate for the work.

Item No. 11—Taxes Imposed after Date of Receipt of Bids

After bids have been submitted by general contractors and an award subsequently made, if extra cost is imposed on the contractor performing the work, due to the imposition of new direct sales or defense taxes directly affecting the cost of labor and/or materials, then the contractor shall be reimbursed by the owner for the cost of such taxes.

It is, therefore, recommended that the cost of any new direct sales or defense taxes applying to a job after the contract has been awarded is to be added to the contract price provided that on the bid opening date no public knowledge was available as to future imposition of such taxes.

Item No. 12—Issuance of Addenda by the Architect

It is recommended that: (a) Every effort be made to keep the issuance of addenda to a minimum; and (b) No request for alternates or addenda except those of an explanatory nature shall be issued by the architect within five days preceding the date set for the receipt of bids.

Item No. 13—Bid Form

It is recommended that the architect submit a Bid Form upon which the contractor shall submit his bid and it is further recommended that additions, deletions, stipulations, or interlineations on the bid form shall disqualify same.

Governor Signs State Contractors' License Law Amendments

(Continued from page 3)

tractors' Law, and, in the opinion of the Registrar, such record is sufficient grounds for refusal.

In the past a licensee has had the opportunity to renew his Contractors' license at any time within 12 months after June 30th, while under the law as amended he will only have ninety (90) days, which means that if

he does not renew by September 30th he will have to file a new application.

Under the present law the Board does not have the right to subject a renewal applicant to an examination, and neither does the Registrar have the authority to secure reasonable information from the licensee upon his renewal application form. In the amended law the failure of an applicant to give such reasonable information requested will be deemed as sufficient reason to refuse a license.

In the past a contractor whose license had been suspended would pay his renewal fee of \$5.00. In some instances such suspensions would be in effect for years. Hereafter, any licensee whose license has been in suspension for a period in excess of 12 months can be denied reinstatement by the Registrar.

In many suspensions certain terms and conditions imposed by the decision of suspension are complied with shortly after decision has been rendered, and the Registrar may renew such suspended license if the suspension has been for less than a year. A second such renewal is prohibited.

The enactment of Senate Bill No. 761 and Assembly Bill No. 278 into law by the Governor constitutes a triumph for the industry.

While these amendments to the Act were almost entirely for the purposes of clarification, they carry considerable force with them. Problems of enforcement which arose in the past will be made simpler, and the Registrar and the Board will be greatly assisted by the assurance that the grounds upon which decisions are made and opinions passed will successfully stand the test from a legal standpoint.

Why Licenses Are Suspended or Revoked

(Continued from page 9)

in considering the charge of misrepresentation, will go directly to the heart of the matter. He will consider all competent evidence which reveals the man's character, if the primary charge of misrepresentation is established.

The matter of qualification of applicants, in so far as honesty is concerned, is a matter which should be carefully studied and understood by the industry as a whole. The operations of the Contractors License Board in connection with this phase of activity should be clearly understood. As has been previously stated, the Registrar adopts no harsh rule or unvariable procedure which will cause the automatic refusal or even the automatic suspension of a license because of a misrepresentation by an applicant, unless the character of the applicant is shown by the facts to be bad.

National Housing Act Extended And Liberalized

California building contractors were properly pleased when the President signed Congressional FHA legislation which:

1. Extends Title II until 1944.
2. Extends Title I until 1943.
3. Increases authorized mortgages under Title II from four to five billion and Title I from one hundred to one hundred sixty-five million dollars.
4. Earmarks 35 per cent (previously 25 per cent) of Title II funds for loans upon existing construction.
5. Increases the maximum Title I loan for improvement of existing multifamily dwellings from \$2,500.00 to \$5,000.00.
6. Increases the Title I maximum for new structures from \$2,500.00 to \$3,000.00, with a 15-year repayment maximum.
7. Sets the repayment period for repair and improvement loans for multiple dwellings at five years and nonresidential structures at three years.
8. Establishes a maximum Title I loan of \$2,500.00 for improvements to existing structures of nonresidential character.

The importance of the extension of modernization loans should not be overlooked because of the present activity in nonresidential construction. Should material supplies or prices suddenly and seriously affect new residential construction, remodelization will greatly increase. In such a case, FHA is ready with adequate financing.

Furthermore, contractors must not lose sight of the fact that low values for old property will decrease sales of new homes. The purchaser of a new home is frequently the owner of a residence which he no longer desires to occupy. The sale price of that old property is the most important factor in determining whether or not he can build or buy a new home. Without a strong market for property in sections dominated by older residences, the individual seller will give up his program of building and remain in a greatly deteriorated and possibly antiquated home. The difference in price between the old and the new is either prohibitive, or offers too great economies. With a reasonable supply of money for modernization of older property, the entire market for existing residences is kept up and the individual finds his sale price better than would otherwise be the case.

Land values are stabilized when existing structures are not allowed to deteriorate greatly and become unsightly and the reten-

tion of value in older property keeps them from being thrown on the market at prices so low that they force themselves upon the consideration of parties who would otherwise be interested in a new or newer home.

History has shown to every contractor that the condition of the residential construction business parallels the realty. In real estate circles the extended benefits of the National Housing Act in respect to refinancing, modernization and purchase of older dwellings is given great importance. The real estate editor of the Los Angeles Times, Mr. Charles C. Cohan, says that "fortifying the value and market stability of older homes is a very significant part of realty welfare."

In many sections of the State there has been a lack of construction money for the improvement and modernization of small income property such as duplexes and flats. The present housing situation in California is such that owners of properties within this class find it good business to maintain their properties in first class condition. By raising the Title I maximum for such loans from \$2,500.00 to \$5,000.00, FHA has made available funds which will finance a large amount of reconstruction work.

Likewise by raising the maximum Title I single-family construction loan from \$2,500.00 to \$3,000.00 increases in the availability of funds for the financing of residences in a price class is at present extremely active.

If prices and supplies of materials are as greatly affected by National Defense work as many contractors expect them to be, there may be a decided increase in sales of older residences. In most transactions of this sort, when financed by the FHA, there is a substantial amount of modernization work done and, therefore, the industry is interested in the FHA provisions for the insurance of mortgages for modernization and improvement on existing homes. The FHA is continuing to insure mortgages of such homes up to 80 per cent of appraised valuation.

By and large, through the extension and changes of the National Housing Act, the contracting industry seems assured of a flow of dollars through its accounts no matter what changing conditions may bring.

Do You Know That—

(Continued from page 9)

—Employers may secure lower contribution rates than the required 2.7 per cent of their pay rolls, provided they meet the experience rating provisions of the Unemployment Insurance Act.

—It is possible for an employer to contribute as little as 1 per cent of his pay roll to the Unemployment Trust Fund instead of 2.7 per cent, provided his reserves in the fund total certain percentages.