

Licensed Contractor

DAVID R. PHILLIPS, Registrar

Fall 1991

PETE WILSON, Governor

Registrar's Corner

by David R. Phillips, Registrar of Contractors



In this issue we are listing the dates and locations of regular quarterly meetings of the Contractors' State License Board. Within a few days before each board meeting the various board committees meet. These committees are Budget and Administration, Enforcement, Legislation, Licensing, and Public Information. As a practical matter, most of the discussion of the various issues takes place at the committee meetings.

As Registrar, I urge everyone who can possibly attend one of the board or committee meetings to do so. You can be notified of the time, place and subject of committee meetings by requesting and completing a *Mailing List Application Form* which can be obtained from the Headquarters Office (the address is on page 2 of this publication). You may possibly have something to contribute to a discussion. Even if you don't, just attending a meeting may in itself be an interesting experience.

The article on Workers' Compensation Insurance beginning on page 1 of this issue should be read carefully because on and after January 1, 1992 certain conditions must be met which will affect the status of your license.

Each of the other articles should be of some benefit to you.

I want to extend my appreciation to two board members who have just completed their statutory two terms as

members of the board. Frank Geremia, the C-53 member and Don MacGillivray, the B member, have made outstanding contributions during their terms in office.

CSLB Board Meeting Schedule

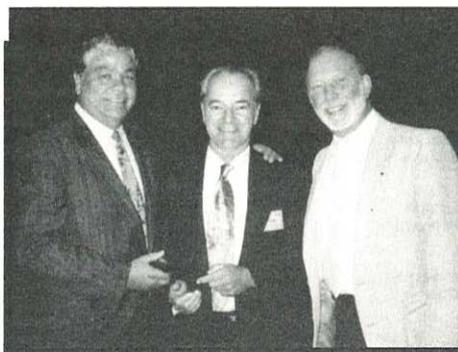
October 11, 1991	Sacramento
January 17, 1992	San Diego
April 24, 1992	Oakland
July 17, 1992	Glendale

New Leadership for State Contractors Board

The members of the CSLB have elected a new chair and vice-chair for the 1991-92 fiscal year.

Roger O. Lighthart, a General Building Contractor member of the board, was

elected the new chairman. As leader of the 13-member Board, he has responsibility for meeting schedule and



Outgoing chair, Joe Valverde passed the gavel to Roger Lighthart, chair, and Jim Frayne, vice-chair, at the July 19 Board Meeting in Ontario. (photo by L. Brooks)

CONTRACTORS BEWARE . . .

Don't Let Your Contractor's License Be Suspended!

Read on . . . or on January 1, 1992 your license may be suspended because of changes in how you are required to report workers' compensation information.

In the past, licensees were required to report in writing to the Contractors State License Board the name and address of the insurer carrying workers compensation on their employees after the policy was issued. If licensees had no employees, they were required to provide a written statement to that effect. However, there were no provisions concerning the suspension of the license, if this information was not furnished.

Recently, Assembly Bill 2282 was

passed, resulting in the following changes in workers' compensation requirements.

Section 7125.1 was added to the Business and Professions Code (B & P Code), which requires on and after January 1, 1992, that applicants and licensees have on file with the Registrar, a Certificate of Workers' Compensation Insurance (issued by the insurer) or a Certificate of Self-Insurance, prior to the issuance of a new license, reinstatement, reactivation or renewal of an existing license, and as a condition of continued maintenance of a license. Applicants or licensees who have no employees are required to have on file an exemption statement certifying under penalty of perjury that they do not employ any person in any manner to be subject to the Workers' Compensation laws of California. A certificate or exemption statement is not required on an inactive license, but is required on an active license.

Section 7109.2 was added to the B & P Code, which provides for the automatic suspension of a license, by operation of law, when the licensee fails to maintain workers' compensation insurance or fails to submit the certificate or exemption statement.

It is important that all active licensees have on file at the Board's Headquarters Office a Certificate of Workers' Compensation Insurance, obtained from an insurance company which is authorized through the Department of Insurance to write workers' compensa-

agendas and presiding over the board meetings to set policy affecting consumer protection, licensing, enforcement, and other issues affecting the state's 280,000 licensed building contractors. With a \$34.5 million annual budget and a staff of 442, the board also oversees efforts to crack

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California Licensed Contractor

Official Publication of the
Contractors State License Board
Fall 1991

STATE OF CALIFORNIA
Pete Wilson
Governor

JAMES CONRAN
Director, Department of Consumer Affairs

DAVID R. PHILLIPS
Registrar of Contractors

**Members of the
Contractors State License Board**

Roger O. Lighthart,	B-Contractor Chairperson
James L. Frayne	Public Member Vice Chairperson
Jack Fenton	Public Member
Frank Geremia, Jr.	C-53 Contractor
Stephen H. Lazarian, Jr.,	Public Member
John Lazzara	Labor Member
Marla Marshall	Public Member
Paul C. Petersen	B-Contractor
Elton "Skip" Michael	Public Member
John H. Moore	C-10 Contractor
Phyllis "Phil" J. Moore, Mrs.	Public Member
Joseph Valverde	A-Contractor
Benny Y. Yee	Public Member

1990-91 Committee Assignments

Budget & Administration Committee
James L. Frayne, Chairperson

Enforcement Committee
Jack Fenton, Chairperson

Legislative Committee
John H. Moore, Chairperson

Licensing Committee
Stephen H. Lazarian, Jr., Chairperson

Public Information Committee
Marla Marshall, Chairperson

Strategic Planning Committee
Roger O. Lighthart, Chairperson

Steve Kolb, Editor

Letters to the editor, articles, information of interest to contractors and suggestions for future articles are welcome. Deadlines for submission are January 1, March 1, June 1, and September 1. Inclusion of submitted material in the quarterly CLC is at the discretion of the editor and dependent on time and space considerations.

Headquarters of the CSLB is located at:

9835 Goethe Road
P.O. Box 26000
Sacramento, California 95826

**DISCIPLINARY ACTION
April to June 1991**

Note: Disciplinary actions do not include licenses suspended for failure to maintain required bonds. The following explanation may be helpful to identify causes of disciplinary action indicated by sections referenced in the table of Disciplinary Actions. **During this period, the CSLB issued 267 criminal (misdemeanor) citations against unlicensed contractors and 567 administrative citations to licensed contractors.**

Business and Professions Codes

490	Relationship of conviction of a crime to licensed activity	7111	Failure to keep records and to make them available to a representative of the Registrar
7018.5	Failure to provide notice to owner regarding lien provisions	7111.1	Refusal to or failure to cooperate with deputy in investigation
7026.7	Advertising as a contractor without a license	7112	Misrepresentation of a material fact on an application
7028	Acting in the capacity of a contractor without a license	7113	Failure to complete a project for the price stated in the contract
7029	Contracting as a joint venture without the required license	7113.5	Avoiding or settling for less than lawful obligations as a contractor through the various bankruptcy proceedings
7029.5, 7029.6, 7029.7	Failing, as a plumbing, electrical sign or well drilling contractor, to display his name, address and contractor's license on each side of the commercial vehicle used in his business	7114	Aiding and abetting an unlicensed person
7030	Failing to include in a contract the notice that contractors are licensed by the Contractors State License Board	7115	Failure to comply with the Contractors' Law
7030.5	Failing to fulfill the requirement that the contractor's license number be placed on all contracts, subcontracts, calls for bid, and other forms of advertising	7116	Committing a willful or fraudulent act as a contractor
7071.11	Judgment or admitted claim against bond	7117	Acting as a contractor out of namestyle
7083	Failing to report a change of address, namestyle, or personnel within 90 days	7117.5	Contracting with inactive license
7090.1	Failure to comply with civil penalty or "order to correct" in Registrar's citation	7118	Contracting with unlicensed person
7097	Suspension of additional licenses	7119	Failure to prosecute a job with diligence
7098	Revocation of additional licenses	7120	Failure to pay for materials or services
7099.6	Non-compliance with a final citation	7121	Prohibition against associating with suspended or revoked licensee
7107	Abandonment of a project without legal excuse	7122	Participation of license in violating Contractors Law
7108	Diverted funds or property received for a specific job to other purposes	7122.5	Responsibility of Qualifying Person for acts committed by his/her principal
7109	Willfully disregarded plans and specifications, or has failed to complete the job in a good and workmanlike manner	7123	Conviction of a Felony in connection with construction activities
7109.5	Violation of Safety Laws resulting in death or serious injury	7124	A plea of nolo contendere is considered a conviction
7110	Willful disregard and violation of building laws	7124	Employment of unregistered home improvement salesman
7110.1	Violation of Section 206.5 of the Labor Code	7155	Participation in violation by a home improvement salesman
		7157	Model Home kickback prohibition
		7159	Failure to comply with contract requirements
		7161(b)	False advertising

LICENSES REVOKED

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
ACTRA INC.	VAN NUYS	422061	6/26/91	7090.1
ALLSTAR BUILDING AND DEVELOPMENT CO.	AGOURA HILLS	490901	4/26/91	7090.1
ANDERSON, JOHN J.	UPLAND	397365	6/5/91	7090.1
ANTHONY & SONS	CITRUS HEIGHTS	503000	4/26/91	7090.1
AQUATIC CREATIONS	RESEDA	520161	6/14/91	7090.1
BLAINE'S ROOFING CO.	CATHEDRAL CITY	162979	6/7/91	7090.1
BRAVERMAN BUILDERS	HUNTINGTON BEACH	420221	6/14/91	7090.1
BREWER, GREGORY M.	SAN JOSE	418228	6/3/91	7090.1
BUTLER JAMES PAINTING	AZUSA	522789	5/31/91	7090.1
CAIRO LANDSCAPING * CAIRO LANDSCAPING & ENGINEERING INC.	EL CAJON	511527	4/30/91	7090.1
CAIRO LANDSCAPING * CAIRO LANDSCAPING & ENGINEERING INC.	EL CAJON	511527	5/22/91	7090.1
CASARES, J. M.	SPRING VALLEY	407381	5/31/91	7090.1
CHAVEZ J N CONCRETE	SAN DIEGO	332692	6/14/91	7090.1
CHERNEY ROBERT CONSTRUCTION	OCEANSIDE	439718	6/5/91	7090.1
CHILDERS VERLE DEAN CONSTRUCTION	THOUSAND PALMS	430030	5/31/91	7090.1
CUSTOM CONCRETE	JULIAN	490246	5/20/91	7090.1
CUSTOM CONCRETE	MORGAN HILL	406729	6/26/91	7090.1
CYBULSKI GLENN M LANDSCAPE CONST.	PETALUMA	504001	4/26/91	7090.1
JACK DANIELS'S CONSTRUCTION CO.	GRANADA HILLS	511027	5/20/91	7090.1
DESERT EMPIRE ELECTRIC	PALM DESERT	413676	6/5/91	7090.1
DOVER CONSTRUCTION	VALENCIA	461202	6/5/91	7090.1
DUFFY MICHAEL JOHN	REDONDO BEACH	437684	5/31/91	7090.1
ENERGY PLUS INC.	SAN MARCOS	458204	5/31/91	7090.1
FISH, RICHARD DAVID	LOS ANGELES	435342	6/14/91	7090.1
GENEIRA ELECTRIC COMPANY	LOS ANGELES	447430	5/20/91	7090.1
HASPREY KEN CONSTRUCTION CO.	RIVERSIDE	327210	6/5/91	7090.1
JAMES CONCRETE COMPANY	MENTONE	507760	6/14/91	7090.1
JONES, GARY D.	PAYSON, AZ	431133	5/20/91	7090.1
KIN-CON GENERAL CONTRACTOR	STANTON	491486	4/30/91	7090.1
KUTCH, DANIEL	POMONA	411120	6/14/91	7090.1
LCJ DEVELOPMENT	FALLBROOK	497449	6/14/91	7090.1
LAW PLASTERING CO.	MANTECA	489373	4/26/91	7090.1
MC THEWSON CONSTRUCTION	ARCADIA	430750	5/20/91	7090.1

continued on page 3, Disciplinary Action

Are You Properly Licensed?

It seems to be a good idea to remind licensees from time to time of the technicalities involved with the entity in which they are licensed or should be licensed. The licensed entities are individual, co-partnership, corporation and joint venture.

INDIVIDUAL – A person licensed only as an individual or sole proprietorship, whether under his or her own qualifications or those of a responsible managing employee, cannot lawfully contract as any other type of entity. You can contract only as an individual if licensed solely as an individual. Do not form a construction contracting business or enter into a construction contract with another person without first obtaining a partnership license or a joint venture license if the other person is licensed. This also applies if you incorporate. You cannot legally contract for a construction project as a corporation without first licensing the corporation. Incorporate, then apply for and get a license as a corporation. Only then can you legally enter into a construction contract as a corporation.

CO-PARTNERSHIP – Being licensed as a partnership requires con-

tinuing attention to license status and participation by the partners on the license. Remember, when making any changes in partners on a partnership license, a new license is generally required. For example, if "A" and "B" are general partners on a partnership license, no change can be made in that partnership without affecting the license. If "B" leaves and is replaced by a general partner "C," then a new license is required for the partnership of "A" and "C." As soon as "B" leaves the partnership, the partnership no longer exists. It is like getting a divorce. If one of the spouses leaves the marriage and marries someone else, then the first marriage is no longer a legal entity; a new marriage is formed.

Further, if the partnership consisting of "A" and "B" takes on an additional partner "C," there is a change in the partnership and a new license is required. The only exception to this concerns a limited partnership. A limited partner can leave a limited partnership and a new limited partner can be substituted or a limited partner can be added to the original limited partnership without affecting the license. This

is based on provisions of Section 15631 of the California Corporations Code which deals with limited partnerships.

Notification of any changes in limited partnerships must be made to the Registrar. If the limited partner leaves the limited partnership and no substitution is made or a general partner is added, then either the original general partner becomes a sole proprietorship or a new partnership is formed.

If changes such as these occur, licensees are advised to seek professional help either from an attorney or the Contractors' State License Board.

CORPORATION – Any changes in the personnel of a corporation, other than the qualifying individual (RMO or RME), only require that the Registrar be notified of the changes. A corporation license can be carried on as long as the corporation exists. The qualifying person may be changed by completing the proper application for the change.

Should a corporation acquire a subsidiary, the subsidiary must be licensed, even though the officers of the subsidiary are the same as the parent corporation. Divisions created within a corporation do not require the corpora-

tion to be licensed in each of the divisions unless the divisions operate under a business name other than the name of the corporation. This subject may be addressed in a future issue of the *CLC*.

JOINT VENTURE – A joint venture is similar to a partnership in most respects. A joint venture is a partnership of licensed contractors. The main difference involves obtaining a joint venture license. The application is much simpler and a license can be issued almost immediately.

In its simplest form, a joint venture is formed between two individually licensed contractors. The license can be issued in a classification held by either of the joint venturers or can be issued in all classifications held by either or both venturers upon payment of proper fees. A joint venture license can be issued to individuals, partnerships, corporations or other joint venturers, or any combination thereof. A joint venture can only be comprised of currently active contractors licensed in good standing.

Like a partnership, any change in the joint venture requires a new license for the remaining venturers. For example, if a joint venture was made up of three corporations and a joint venture of two individuals, and one of the individuals left this joint venture, a new joint venture license would need to be obtained. The joint venture comprised of the two individuals would no longer exist and, consequently, the main joint venture would cease to exist. This is another example of a complicated matter in which professional advice should be obtained.

We have pointed out several ways in which changes affecting license status may occur. A complete treatment of the subject would take far more space and time to read than will fit in the *CLC*. The primary thing to remember is that any change in the manner in which a construction business is conducted should be thoroughly thought out and professional advice should be obtained before actually making the change.

Disciplinary Action, continued from page 2

LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
MID VALLEY ROOFING	SACRAMENTO	338317	6/26/91	7090.1
MOJAVE DRYWAL INCORPORATED	APPLE VALLEY	492633	6/5/91	7090.1
MUNOZ ROOFING	SEASIDE	456958	4/26/91	7090.1
NEW CREATION LANDSCAPING	VISALIA	377901	6/24/91	7090.1
NIGH CONSTRUCTION CO.	SHERMAN OAKS	299707	4/30/91	7090.1
O'CAMPO R A CONSTRUCTORS	WESTMINSTER	394423	5/20/91	7090.1
OLD ENGLISH HOUSEWORKS	HUNTINGTON BEACH	536509	5/13/91	7090.1
PAREDES ELECTRIC	COLFAX	436876	4/26/91	7090.1
QUICK, DENNIS R.	HESPERIA	379474	6/5/91	7090.1
RELIABLE CONSTRUCTION	ALHAMBRA	279021	6/5/91	7090.1
RIDGEVIEW CONSTRUCTION COMPANY	SAN RAMON	455399	6/3/91	7090.1
ROBERTS CLINTON DAVID	ALTADENA	563962	6/5/91	7090.1
ROOFING PLUS	MORENO VALLEY	406275	5/22/91	7090.1
RYAN, C. A.	AUBURN	124466	6/24/91	7090.1
SEOCO CORPORATION	ENCINO	506321	6/5/91	7090.1
W L SIR CO.	COVINA	291328	5/20/91	7090.1
SPRING, JOHN A.	CITRUS HEIGHTS	503193	6/26/91	7090.1
TWO BROTHERS PAINTING	NAPA	323777	4/29/91	7090.1
WILD URGE CONSTRUCTION	SANTA ROSA	486519	6/24/91	7090.1

LICENSES SUSPENDED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
BALISTRERI, JOSEPH S. GENERAL BUILDING CONTRACTOR	ALPINE	339127	4/8/91	7107, 7109, 7113, 7121, 7154



Contractor Advertising

... None of these laws require the licensed contractor to advertise. However, if a contractor wants to advertise, he or she must do it according to the law!

Construction advertising by contractors is strictly regulated by the Contractors State License Law. An article by Deputy Attorney General Ron Russo in the Spring 1990 *CLC* dealt with the subject. Contractor advertising violations continue to occur. This article is intended to restate and clarify the Board's policy regarding advertising by contractors.

Nine sections of the Contractors State License Law and one Board Rule deal with advertising (sections 7026.6, 7026.7, 7026.8, 7029.5, 7029.6, 7029.7, 7030, 7030.5 and 7030.6 and Board Rule 861).

None of these laws require the licensed contractor to advertise. However, if a contractor wants to advertise, he or she must do it according to the law.

There are three exceptions to this.

They are Sections 7029.5, 7029.6, and 7029.7. These sections require certain contractors to include their names, addresses, and contractor license numbers on the sides of their commercial vehicles.

A brief explanation of the advertising laws follows:

Section 7026.6: Any person who advertises in such a way as to indicate to the public that he or she is a contractor or causes his or her name to be included under any classification for construction or work of improvement is subject to the provisions of the Contractors' State License Law, regardless of whether the person is otherwise exempt.

Section 7026.7: This is a penalty for either advertising as a contractor when not licensed or, when licensed, to advertise as a contractor in a classification other than one in which he or she

is licensed. This section also defines advertising to include the issuance of any card, sign, or device to any person, the causing, permitting or allowing of any sign or marking on or in any building or structure. It also specifies any newspaper, magazine, or airwave transmission or in any directory under a listing for construction or work of improvement.

Section 7026.8: An unlicensed person may advertise for construction work provided the person states in the advertisement that he or she is not a licensed contractor.

The following three sections makes it mandatory for all plumbing, electrical sign and well drilling contractors to advertise on the sides of their commercial vehicles.

Sections 7029.5, 7029.6 and 7029.7: All well drilling, plumbing, and electrical sign contractors must include on both sides of every commercial vehicle used in their business, the name, address, and contractor's license number in letters and numbers not less than 1 1/2 inches high. The well drilling contractor must also display this information on all drill rigs.

Section 7030: Contains a statement which must be included on all contracts in which the contractor acts as a prime contractor. The statement must be in at least 10-point type and must read as follows:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826."

While Section 7030 does not pertain directly to advertising by contractors, it does advertise to the contractor's client the existence of the Contractors State License Board.

Section 7030.5: Every licensed contractor must include his or her license number on all construction contracts, subcontracts and calls for bids. If the contractor advertises, the license number is required to appear in the advertisement as prescribed by the Registrar.

Those types of advertising as prescribed by the Registrar that require the license number are listed in Board Rule 861. The types of advertising are: any card, contract proposal, sign, billboard, lettering on vehicles, brochure, pamphlet, circular, newspaper, magazine, airwave transmission and any form of directory denoting "Contractor" or any words requesting work for which a license is required.

The rule further provides that upon a showing of good cause, the Registrar may grant an exemption to a licensee engaged in interstate contracting from the requirement of including a license number on any advertising lettering on a vehicle registered in this state or any other state. A request for an exemption must be submitted on a form prescribed by the Registrar.

Section 7030.6: Prohibits any person from advertising or promoting his or her services for removal of asbestos unless he or she is certified by the Board to do asbestos work and is registered with the Division of Occupational Safety and Health (DOSH). Any person who advertises to do asbestos work without being certified or registered is subject to being issued a citation by the Registrar.

A violation of any of the advertising laws by an unlicensee is a criminal offense and is punishable by a fine and/or imprisonment. A violation of the laws by a licensee is a cause for legal action against the contractor's license.

Federal Truth in Lending and Regulation Z

Since Section 7163, subdivision [a,(3)] relative to home improvements, references the Truth in Lending Act and Regulation Z, it seems appropriate that the CLC offer readers a discussion of this law and regulation.

Title 1 of the Consumer Credit Protection Act is a federal act better known as the Truth in Lending Law.

Regulation Z became effective July 1, 1967 and is the federal regulation which implemented The Consumer Credit Protection Act.

Truth in Lending applies only to consumer credit transactions offered to a natural person and does not include offers made to corporations or other business entities.

The act applies when the loan is primarily for personal, family, household or agricultural purposes, and is payable in more than four installments.

A creditor under the Truth in Lending Act is one who ordinarily extends or arranges for consumer credit in his or her business. A person who sells his or her home and takes back a second deed of trust is not a creditor under the act. A builder of tract homes taking back a second deed of trust would be a creditor under the act, since the builder may in the course of his or her business, extend credit.

A person who arranges for the extension of credit and who receives a fee, or who participates in the preparation of contract documents required in connection with extension of credit is a creditor under the act.

The main areas in complying with the Truth in Lending are (a) disclosures, (b) rescissions, and (c) advertising.

Disclosure: The main disclosure components are finance charge and annual percentage rate and must be printed in a more conspicuous manner than any of the other terminology in the contract. An exception to this requirement is in the event of the sale of a dwelling.

Rescission: The consumer has the right to rescind any consumer credit transaction until midnight of the third business day following completion of the transaction or the date of the delivery of the disclosure, whichever is later.

Included in Regulation Z are mechanic's liens, second mortgages or deeds of trust taken back by a builder for the sale of homes.

In connection with application of the rescission provisions the creditor must give a notice in writing of these rights to the consumer.

Performance on a contract must be delayed by the creditor until at least the fourth day after the date of the contract to be reasonably assured that the consumer has not taken advantage of the right of rescission.

Provisions are made for emergencies which might arise by waiver of the right to rescind. Waivers can be given only under very specific circumstances.

Advertising: Provisions in Title 1 and Regulation Z are to control advertising which may be misleading although not necessarily false. Any advertisement must include complete information and not just portions which would have a tendency to be misleading.

There are some similarities between the federal Truth in Lending provisions and the Civil Code, Right to Cancel law. The Civil Code provisions deal with home solicitation agreements whereas the federal provisions deal with lending or the financial phase of an agreement.

Any contractor who contemplates getting involved in the financial aspect of the construction business by taking back second deeds of trust in the sale of new homes or the financing of home improvement projects would be wise to seek the advice of a competent attorney who is well versed in construction law and who also is aware of both federal and state laws pertaining to the extension of credit.

New Leadership continued from page 1

down on unlicensed contractors who continue to threaten the financial health of home owners and of California's economy.

Lighthart is president and Chief Executive Officer of the Lighthart Company and Corporation, a mechanical and general building contracting company in Los Angeles. He has played an active role before the board for more than 20 years, first as a contractor and industry representative, and more recently as a member, serving as Vice-Chair and head of the board's Administration and Budget Committee. He is a member of several trade associations, including the Southern California Builder's Association and the National Fire Sprinkler Association. Lighthart also works on advisory boards for the City of Los Angeles and has been instrumental in the state board's expert witness program.

James L. Frayne was elected vice-chair following his reappointment to the Board by the Senate Rules Committee. As vice-chair, he will lead the Administration and Budget Committee for 1991-92.

A Sacramento native, Frayne has served as chair of the State Athletic Commission and executive director of the California Trial Lawyers Association, as well as on the boards of numerous other state and local government and community service programs. He is president of Frayne & Associates, a government affairs and association management consulting firm in Sacramento.

During his previous 4-year term with the board, Frayne chaired the Legislative Committee responsible for formulating and shepherding the legislative program that saw the enactment of several significant statutes affecting consumers and contractors and the Public Information Committee responsible for the Board's public outreach and consumer protection policy.

Frayne's term as a Senate Rules Committee-appointed Public Member of the 13-member board expires in June 1995.

On August 5, Governor Wilson appointed Paul Petersen, of Atherton, as a member of the Board. A native of San Francisco, Petersen began his career in construction in 1935



Paul Petersen

in the traditional roles of apprentice, journeyman and superintendent. He obtained his General Contractors license in 1953 and has served the industry in leadership positions with the National Association of Home Builders, the Construction Industry Advancement Fund of Northern California, and the Building Industry Association of Northern California.

Petersen has also exercised leadership working with construction trades. He served as director and past chair of the Building Industry Association Labor Committee of Northern California where he negotiated labor contracts for the basic crafts of the home building industry. He is one of five co-founders of the Pacific Coast Builders Conference (P.C.B.C.). In 1985 he was one of the first inductees into the California Home Building Industry Foundation Hall of Fame.

He currently is president of the Whitecliff Company, Inc., a San Mateo home building company he began in 1953. A Republican, Petersen fills one of the two General Building Contractor seats on the Board. The appointment requires Senate confirmation.

Members of the board serve without compensation. They receive per diem and expenses associated with attending meetings.

The Home Improvement Contract Form

The home improvement business in California is a large segment of the state's construction industry. Because of the very nature of the home improvement field there is a potential for problems to occur. Problems can occur because of a general misunderstanding of basic requirements and of the agreement entered into by the owner and the contractor.

The problem is graphically illustrated when you consider that approximately 80% of the complaints investigated by the Contractors' State License Board are home-improvement-related.

Attempts to address this problem began several years ago with the introduction of special requirements for home improvement contracts.

The requirement for a special contract form to be used by home improvement contractors became law in 1969. The law in its original form was somewhat ambiguous as to when a written contract was actually required. In 1975 legislation was passed simplifying the requirement as to when a written contract was required and at the same time making very strict down payment limitations.

At that time the down payment on a home improvement contract could be no more than \$100 or 1% of the contract price whichever was the greatest. To get more than \$100 for a down payment it was necessary that the contract price be in excess of \$10,000. Limitations on progress payments were also made at that time. It was soon realized that the down payment was too restrictive. Legislation was passed in 1979 that raised the allowed down payment to the present \$1,000 or 10% whichever is less.

The Home Improvement Contract Form law, Section 7159, makes strict provisions regarding home improvement contracts. Because of the many conditions and restrictions placed on the home improvement contract, people who are performing or who contemplate per-

forming in this field should become very familiar with every aspect of the Section 7159 requirements. Failure to comply with the provisions of Section 7159 is not only a cause for legal action against a contractor, but is also a misdemeanor punishable by a fine of not less than \$100 nor more than \$5,000, or by imprisonment in the county jail for up to one year, or by both the fine and the imprisonment.

Written home improvement contracts are required on all home improvement contracts, whether one or more contracts are involved, and which exceed \$500.

Home improvement is the repairing, remodeling, altering, converting, modernizing or adding to residential property. A home improvement contract is an agreement between a contractor and an owner, or between a contractor and a tenant, regardless of the number of residences or dwelling units contained in the building in which the tenant resides.

Home improvement includes driveways, terraces, patios, landscaping, fences, porches, garages, basements and pools - other than swimming pools which have special conditions under Section 7167, Swimming Pool Construction Contract Requirements.

Any change order in a home improvement contract must be in writing.

A written home improvement contract must contain:

- (a) The name, address, and license number of the contractor;
- (b) The name and registration number of any salesman who solicited or negotiated the contract;
- (c) The approximate dates when the work will begin and be substantially completed;
- (d) A description of the work to be done;
- (e) A description of the materials to be used;
- (f) Equipment to be used or installed;
- (g) The agreed consideration for the work;
- (h) If a down payment is provided for, it shall

be no more than \$1,000 or 10% of the contract price, excluding finance charges, whichever is less;

- (i) A schedule of payments showing the amount of each payment as a sum in dollars and cents;
- (j) The language of the Notice to Owner form required pursuant to Section 7018.5;
- (k) The notice regarding questions concerning a contractor as required by Section 7030;
- (l) Truth in Lending Notice;
- (m) Notice of Right to Cancel;
- (n) Notice, in close proximity to the signatures, stating that the owner has the right to require the contractor to have a performance and payment bond; and
- (o) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin, is a violation of the Contractors' License Law.

The payment schedule must provide for no payment to exceed the value of work actually performed on the project at any given time. This means that the contractor can include in the payment schedule a series of payments which must not be more than the value of the work on the project at any stage of construction at the time when the payment is due.

This payment schedule may provide for the salesman's commission, but it shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor.

The pulling of permits and the drawing of plans can be considered as work performed on the project, but the price placed upon the plans must be in relationship to the actual fair market value of the work performed in preparing the plans.

The payment schedule as required in Section 7159 need not be followed, provided it is stated in the contract that the contractor will furnish a performance



and payment bond, lien and completion bond, bond equivalent or joint control approved by the Registrar.

The payment schedule is not required if the parties to the contract agree for full payment upon completion of the project or that payments will commence upon completion of the project.

Failure of a contractor, without lawful excuse, to commence work within 20 days from the approximate date in the contract when work will begin is a violation of the Home Improvement Contract act.

The contract may include other matters agreed to by the parties. It shall also clearly describe any other document which is to be incorporated in the contract.

Before any work is done, the owner must be furnished a copy of the written agreement signed by the contractor.

All of the sections of law referred to, as well as the required notices, the Right to Cancel law and material on joint control is included in The California Contractors License Law and Reference Book obtainable from the General Services, Office of Procurement (Documents Section), P.O. Box 1015, North Highlands, CA 95660. The price (which is subject to change) is \$12.65 and includes all mailing costs. The book is sent via UPS, so a street address must be given.



Notice of Right to Cancel Home Solicitation Contract

Contractors who are not familiar with the buyer's right to cancel home solicitation contracts or who have grown careless about complying with the law should acquaint themselves with the law; the consequences of not complying can be severe.

Sections 1689.5 through 1689.13 of the Civil Code afford purchasers in home solicitation contracts three days to reconsider their actions and, if uncomfortable with the contract, to give notice to the contractor canceling the contract. If the contractor has not complied with the provisions of these Civil Code sections, the buyer may cancel the contract at any time. If all provisions of these sections have been complied with, the buyer only has until midnight of the third business day after the day on which he or she signs an agreement with the contractor to cancel the home solicitation contract. It is mandatory under this law that the contractor write the agreement or offer in the language as principally used in the oral sales presentation. The contract must contain in an area near the space reserved for the signature of the buyer the following statement in a size equal to at least 10-point bold type:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The agreement must contain on the first page, in type the size generally used in the body of the document, the name and address of the seller where the notice is to be mailed and the date the buyer signed the agreement. The agreement shall be accompanied by the "Notice of Cancellation" in duplicate, written in type of at least 10-point and shall be written in the same language as used in the contract. The "Notice of Cancellation" form which must be at-

tached should be available, preprinted, from legal stationery stores or contractor association offices. The form of the notice can be found in Section 1689.7 of the Civil Code.

The contractor must provide the buyer with a copy of the contract and the notice of cancellation and shall inform the buyer orally of his or her right to cancel at the time the home solicitation contract is negotiated.

The law also provides for the return of any payments made by the buyer within 10 days and the return of any goods delivered to the buyer in substantially as good condition as when received by the buyer.

If the contractor has performed any services pursuant to a home solicitation contract prior to its cancellation, the contractor is entitled to no compensation. If the services result in the alteration of the buyer's property, the contractor must restore the property to substantially as good condition as it was prior to the services being rendered.

Any waiver or confessions of judgment of the provisions of these Civil Code sections shall be void and unenforceable.

A home solicitation contract is any contract made OTHER THAN AT THE PREMISES THE CONTRACTOR NORMALLY CARRIES ON A BUSINESS, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises in an amount of \$25 or more including any interest or service charge.

Home solicitation contract does not include a contract for *repair services* with a licensed contractor if the contract price is less than \$100, if the negotiation was initiated by the prospective buyer (consumer) and there is a statement on the contract, dated and signed by the buyer, stating that the negotiation was initiated by the buyer.

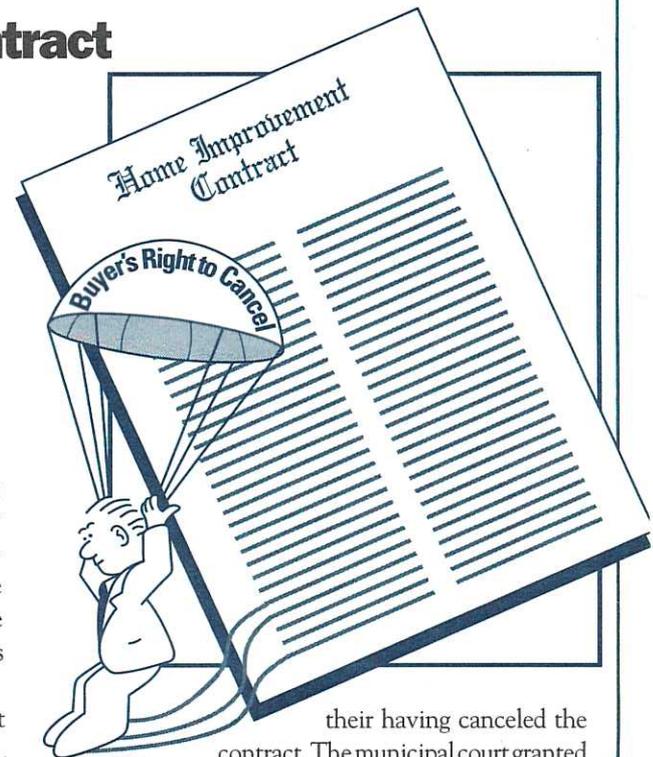
These provisions shall not apply in an emergency situation in which the buyer has initiated the contract and

which is executed in connection with the making of emergency repairs or services provided the buyer furnishes the contractor with a separate dated and signed personal statement describing the situation requiring the immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.

An appellate court case, WEATHERALL ALUMINUM PRODUCTS CO. vs ROBERT SCOTT *et al* clarified the term "Home Solicitation Contract" as it is used in the Right to Cancel provisions.

The facts of the case simply stated are these: Robert Scott *et al* (Scotts) obtained Weatherall Aluminum Products Co's (Weatherall) name and telephone number from the yellow pages of the telephone directory. Scotts telephoned Weatherall who sent a representative to their home. The representative showed Scotts a sample of an insulated wall system. An agreement was reached for the installation of a system in Scotts' home. Scotts signed a contract at their residence and gave Weatherall's representative a \$100 deposit leaving a balance due of \$1,650. The written contract did not contain a notice of the buyer's right to cancel as required by Section 1689.7 of the Civil Code.

Weatherall installed the wall system, but Scotts were dissatisfied with the work and failed to pay the balance due. Weatherall brought suit. After consulting an attorney, Scotts mailed a written notice of cancellation to Weatherall. Scotts answered Weatherall's complaint and filed a cross complaint. Scotts moved for summary judgment on the basis of



their having canceled the contract. The municipal court granted Scotts' motion for summary judgment.

The Appellate Court case was an appeal from the municipal court's summary judgment. The Court of Appeal reasoned that if the contract was a home solicitation contract, then the notification not having been given, Scotts had a right to cancel.

In the appeal, Weatherall contended that the initial solicitation for the contract came from the Scotts, so it was not a home solicitation contract. The Court, in considering this contention started with the language of the statute. The home solicitation contract, as defined, means a contract made at other than appropriate trade premises in amount of \$25 or more. Appropriate trade premises means premises at which the seller normally carries on business or where goods are normally offered or exposed for sale. Thus the court stated that the phrase "home solicitation" focuses not on who initiated the contract between the buyer and seller, but on where the contract was made. Further it is immaterial whether the seller maintains "appropriate trade premises" if the contract was not made at those premises.

The court reasoned that even when the buyer invites the seller into his or

**continued on page 8,
Right to Cancel**

Workers' Comp, continued from page 1

tion insurance, Certificate of Self-Insurance from the Director of Industrial Relations or exemption certification form (13L-50) on or before January 1, 1992 to avoid automatic suspension of their license. Previous workers' compensation or exemption information provided by licensees on renewal or reactivation forms cannot be used in lieu of filing an actual Certificate of Workers' Compensation Insurance, Certificate of Self-Insurance or exemption certification form. It is to your benefit to submit the appropriate certificate as soon as possible. If you do not submit the certificate or exemption certification form (13L-50) by January 1, 1992, your license will be suspended.

If you need information regarding California workers' compensation laws, information on self-insurance, or a Certificate of Self-Insurance, call the Department of Industrial Relations office nearest you. If you need information on obtaining a workers' compensation policy or information on policy premiums, contact an insurer who is authorized through the Department of Insurance to write workers' compensa-

tion insurance. If you have a current workers' compensation policy, contact your insurer and request a Certificate of Workers' Compensation Insurance be sent to the Boards' Headquarters Office.

The Certificates of Workers' Compensation Insurance and Certificates of Self-Insurance must provide the following basic information: license number, business name, policy number, name of insurance company, effective date and expiration date of the policy.

In early August, the Board mailed information concerning these requirements and an exemption certification form (13L-50) to every active and inactive licensee. If you need another exemption certification form (13L-50), contact the Contractors State License Board Office nearest you. The Board does not have Certificates of Workers' Compensation Insurance forms. Each insurer provides their own form.

Send in the required certificate or exemption certification form (13L-50) now. It is your responsibility to comply with the law changing the workers' compensation requirements. Don't let your new year begin with a suspended contractor's license.

Right to Cancel continued from page 5

her home, the seller may be an intimidating presence once inside the buyer's home. A reluctant buyer can easily walk away from a seller's place of business, but he or she cannot walk away from his or her own home. The mere fact that the seller appears at the buyer's home in response to a phone call from the buyer is insufficient to remove the contract from the provisions of the statute.

Weatherall had not demanded return of the goods delivered to Scotts within 20 days after cancellation of the contract so the goods became the property of Scotts without obligation to pay for them. Nor are Scotts obliged to pay for services performed by Weatherall prior to cancellation. Thus, Scotts was entitled to the summary judgment.

If the results appear to be harsh, the court stated, it is clear that the Legislature meant to convey to the merchant to beware. Merchants can easily protect themselves by complying with the right to cancel provisions.

The court affirmed the order granting summary judgment by the lower

court.

Home improvement contractors should not confuse the provisions of the Civil Code sections dealing with home solicitation contracts with provisions of the Contractors License Law which requires home improvement salespeople to be registered. These are two entirely different subjects covered by two different codes. The subject of the "home improvement salesperson" may be taken up in a future issue of the *CLC*.

IN SUMMARY, the Weatherall vs Scotts case was very specific. Any contract for the sale of goods or services or both which is made at other than appropriate trade premises in an amount of \$25 or more shall contain on the first page a right to cancel notice and shall be accompanied by a completed form in duplicate which can be used by the buyer for use to cancel the agreement. It would appear that this applies even when a portion of the negotiation is performed at the appropriate trade premises so long as part of the negotiation is performed elsewhere.

If you do not submit the certificate or exemption certification form by Jan. 1, 1992, your license will be suspended.



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