

CONTRACTORS' REVIEW



License Lending, Is It Worth It?

The board is very concerned about the construction phenomenon of license lending. License lending is one of the most serious violations of the contracting statutes a contractor can commit. At the present time, the minimum sanction is a \$5,000 fine. If you have held a license for a reasonable amount of time and should have known better, the sanction is license revocation. The revocation by statute is 12 months. After this time frame, you will have to apply for initial licensure and submit a new financial statement. Depending upon the circumstances, the board may permanently revoke your license. If you are guilty of license lending a second time, the result will more than likely be permanent revocation.

If you are not the prime contractor for a project and you sign for a building permit listing your license as the contractor of record or the contractor responsible for the project, you are guilty of license lending. A prime contractor is an entity that contracts directly with an owner to perform general or mechanical construction. If an entity has the contract with the owner, and you work under contract for the entity that has the contract, you are a subcontractor. You are not working for the owner because you do not have the contract with the owner.

If you obtain a building permit for an unlicensed contractor and you perform work as a subcontractor for the project, this is an additional violation known as aiding and abetting an unlicensed contractor and

can significantly increase the fine or sanctions imposed by the board.

Don't think that no one will find out or no one will turn you in because you have done it in the past and did not get caught. Since the new contracting laws have gone into effect, contractors have no qualms about reporting improper license activity because the board can now issue a multitude of different sanctions concerning contracting violations.

If you lose your qualifying party status and do not qualify as a South Carolina licensed entity for four consecutive years, you will have to meet the examination requirements should you qualify for license reinstatement.

A \$5,000 fine or being put out of business for a year or more can cause a lot of contracting entities to go out of business and impact the livelihood of your family. Knowing what can and will happen for license lending, is it worth it?

Labor Shortages Concern Most Contractors Report from the AGC

Contractors responding to a Construction Financial Management Association (CFMA) survey advised that recruitment and retention of skilled workers continues to be the single greatest challenge for contractors. Eighty-six percent of the 710 contractors in the survey identified "shortage of skilled field help" as the first of the five most challenging issues for the industry over the next five years.

Over one-half identified the shortage of training for field help and the shortage of trained project managers as major issues as well. Sources of future work were a primary concern of 14 percent of responding contractors. Litigation and changing technology were primary concerns of less than 5 percent.

Over 60 percent of responding contractors expected continued growth in contract volume in 2000, with industrial and nonresidential contractors the most optimistic. Fifty percent of the contractors surveyed were open shop, 35 percent were union, and 15 percent were dual shop.

The United States Bureau of Labor Statistics (BLS) reports that the construction industry is expected to experience annual average job growth of 0.9 percent between 1998 and 2008, creating 550,000 new jobs and increasing total industry employment to 6.535 million. Craft worker employment is expected to increase by 8.4 percent over this period, creating 390,000 new jobs. This growth rate and attrition are expected to create 1.422 million total craft worker job openings over the 10-year period. In addition, job openings in nine different craft specialties are projected to increase by 10 percent or more.

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Ignoring Mail Will Not Work

When a contractor sees certified or regular mail coming from the board, sometimes he/she chooses to ignore it. The licensee may know that there is a problem with his/her license and thinks if it is not signed for or if he/she does not answer certified or regular mail, nothing will happen. At this point, the licensee may think that he/she is free and clear of any problems and can continue to do business as usual. This is totally wrong! Putting your head in the sand and hoping problems will go away can lead to serious consequences for a licensee.

Let's say someone wants to subpoena you to testify in court. If the subpoena server can't find you, you haven't been subpoenaed. It doesn't count until the subpoena is in your hands. Certified or regular mail that is sent by the South Carolina Contractors' Licensing Board is different. If the board sends you mail, and you do not receive it because you moved to a different address or you choose to totally ignore the mail, you have been duly served, and it does count. Under state statute, certified or regular mail may be sent to the last known address of record that the licensee has given this office. If you have moved and failed to notify the board of your new address, the old address will be used and is acceptable as notification. It is the licensee's responsibility to inform this office of his/her correct mailing address, and it is his/her responsibility to accept certified and regular mail from the board.

Refusal to sign for certified mail is the same as notification.

A contractor that ignores certified or regular mail from the board may be surprised later when action has been taken against his/her license, and he/she did not submit his/her side of the story because mail was ignored. Furthermore, if a contractor's license is revoked because an outstanding complaint has not been addressed, the board will not consider license reinstatement until the complaint has been resolved. License revocation for any reason is for a minimum of 12 months. If the outstanding complaint is resolved and the licensee wants his license reinstated, he will have to apply for initial licensure, submit a new financial statement, and appear before the board for licensure consideration.

Some licensees receive mail from the board and do not respond to the issues as required. This is a violation of the statutes for failing to respond to a directive from the board and could result in an additional \$500 sanction. If there is a problem concerning your license, you must submit a written response to the allegations.

Certified and regular mail from the board is very important in the operation of your business. You must pay attention to all mail from the board and respond to all mail as required. Keep all changes pertaining to licensure up-to-date. It could mean the difference between the life and death of your contracting business.

The Contractors' Review is a publication of the S.C. Contractors' Licensing Board and the South Carolina Department of Labor, Licensing and Regulation. It is distributed three times annually to licensees, building officials, architects, awarding authorities and various federal, state and local government officials. Suggestions for articles of interest for publication in this newsletter are welcome. Send written notification to Board Administrator Ron Galloway, or call him at (803) 896-4686.

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TELEPHONE NUMBERS

- General Information (803) 896-4686
- Licensing:
 - General Contractor (New)
 - Tracy Gunter (803) 896-4608
 - Mechanical Contractor (New)
 - Tammy Thompson .. (803) 896-4627
 - General & Mechanical (Expired)
 - Denyel Wheeler (803) 896-4795
- Alarm and Fire Sprinkler:
 - Patti Muckelvaney ... (803) 896-4624

- Inspections:
 - Chas Nicholson (803) 896-4611
 - Stan Bowen (803) 896-4856

- Complaint and Violation Compliance:
 - Terry King (803) 896-4796

- Customer Services:
 - Leigh Padgett 896-4459

Fax: (803) 896-4364

Board Meeting Dates

Quarterly board meeting dates have been established for the year 2000. Meetings will begin at 10 a.m. and will be held at the South Carolina Department of Labor, Licensing and Regulation, 110 Centerview Drive, Kingstree Building, Columbia. Meetings are open to the public. The following dates are scheduled for the remainder of this year:

- July 20
- October 19



Bid Requirements for Contracting

Due to such a positive response in the last newsletter about the article on bid requirements, many individuals have requested that we reprint the article and expand the explanation criteria. The board during the April 20, 2000, quarterly board meeting approved the following summation of contractor bid requirements:

Based upon the definition of "general contractor" or "mechanical contractor," a license is required to bid a construction project only if the overall scope of work for construction falls within the regulated major general contractor classifications of building, highway, public utility, specialty or general contractor subclassifications or the major mechanical contractor subclassifications. The total cost of construction, including all labor, profit and materials, regardless of who buys and pays for the materials, determines whether or not a license is required. If the total cost of the project is greater than \$5,000 and the nature of the work falls within one of the general or mechanical contractor major or subclassifications, a proper license is required.

In order to determine which major or subclassification license is required, it must be determined under which major license classification the work should be placed. In other words, what type work is the project? Is it a building, highway, public utility, specialty or mechanical project? Is most of the work related to or ancillary to one of the major or subclassification licenses? A general contractor with a major or sub general contractor classification may submit a bid for the entire project if 40 percent of the total cost of construction is within his/her license classification and group limitation. A mechanical contractor may submit a bid for the entire project if 51 percent of the total cost of construction is within his/her license classification and group limitation. A general contractor with a specialty subclassification may submit a bid for the entire project if 51 percent of the total cost of construction is within his/her license classification and group limitation.

If the scope of work for a construction project is within one of the general or mechanical contractor major or subclassifications, any properly licensed contractor

that meets the above required bid percentages may submit a bid. When any regulated contracting project does not have a segmented scope of work that is equal to or greater than 40 percent, any properly licensed contractor that has a scope of work in the project may submit a bid. Refer to the S.C. Code of Laws, Section 40-11-340, 1979, as amended.

If the project is determined not to be within the general or mechanical contractor major or sub-classifications, any entity that engages in a scope of work that is within the project may submit a bid. Any unlicensed contractor that is awarded the bid must hire properly licensed contractors for any regulated work that is within the major or subclassifications and is over the \$5,000 threshold requiring licensure. A contractor's license is not required to perform the unregulated work.

An example of a project not requiring licensure would be when the project is a demolition and building project. The demolition of the existing building could be \$400,000 and building a new building on the site could be \$100,000. There is construction involved, some regulated and some not regulated. The regulated building work is 20 percent of the cost of the project. This is under the 40 percent requirement to bid the work. Therefore, a demolition company may bid the job along with a properly licensed building contractor. The demolition entity could demolish

the building but would have to hire properly licensed contractors to construct the building. There would not be anyone more qualified to demolish the building than a contractor who does this for a living. It would be imprudent, but not unlawful, for a licensed building contractor to bid the project because he/she could demolish the building and not have any expertise in demolition.

The installation of equipment is another example of work that does not require a license as a general or mechanical contractor. An architect, engineer or awarding authority may determine that the majority of the scope of work to be performed is the installation of equipment. This type of project is not within any general or mechanical contractor classification and is, therefore, an unregulated project, because the total cost of the unregulated work is more than the total cost of the regulated portions and no single regulated portion is more than 40 percent of the total cost. Thus, anyone may submit a bid, including the unlicensed contractor. However, any unlicensed contractor who is awarded the bid for the total job must hire properly licensed contractors for any subcontract work greater than \$5,000 for work that is within any contractor licensing classification. No license is necessary for a subcontractor engaged in the unregulated portion of the project.

Visit Our Website

You are invited to visit our website to obtain an abundance of information concerning this board. You will find a history of the board, a listing of the current board members, the new general and mechanical contracting statutes and regulations, burglar/fire alarm statutes and regulations, fire sprinkler statutes and regulations and previous newsletters.

www.llr.state.sc.us/contractr/clb.htm

New Contracting Statute Affects Architects, Engineers and Construction Contractors

New definitions and requirements for construction managers have been established in the contracting law for commercial construction projects. An article appeared in the April 1999 newsletter concerning the requirement for construction managers to file a letter of intent with the board indicating that an entity is engaging in construction manager work. The board is concerned that many entities performing construction management may not be aware of this new requirement. If an entity is performing construction management and does not file a letter of intent with the board, this may cause serious problems for the project in question and may be grounds for denial of performing duties as a construction manager. Please refer to Sections 40-11-20(5), 320 and Regulation 29-5 in the new code.

In addition, new Section 40-11-200 no longer requires awarding authorities to submit a list of prospective bidders to the Contractors' Licensing Board for construction projects. Under Section 200, it is a violation for an awarding authority, owner, contractor or an agent of an authority, owner or contractor to consider a bid, sign a contract or allow a contractor to begin work unless the bidder or contractor has first obtained a proper contractor's license.

A construction manager is an entity, which may be an organization, team of organizations or individual, with the expertise and resources to provide construction management services. This entity is working for a fee for the project owner. The manager's duties are to supervise and coordinate the work of design professionals and multiple prime contractors while allowing the design professionals and contractors to control individual operations and the manner of design and construction. Construction management is the process of professional management applied to a construction project from the project inception to completion for the purpose of controlling time, cost, scope and quality. All contracts for design, construction, equipment, etc., are made directly with the owner. The construction manager provides professional services to the owner by organizing the effort, developing the

management plan, monitoring the participants' progress against the plan, and identifying actions to be taken in the event of deviance from the plan.

In order to be a construction manager, you must be licensed as a South Carolina general or mechanical contractor, architect or engineer. The applicant seeking to be listed as a construction manager must designate one of the aforementioned licenses to qualify for the practice as a construction manager. An architect or engineer licensed in South Carolina who is monitoring the execution of design plans or who is performing as an on-site representative for construction quality assurance, or both, for a project owner is not considered a construction manager as defined in the Chapter 11. Architects and engineers may not lawfully assume the role of a general or mechanical contractor as defined in the Code unless properly licensed pursuant to the Code. Construction managers must not perform design work themselves unless properly licensed as an architect or engineer. Construction managers may hire or terminate the various design professionals and prime contractors with the direction and approval of the owner.

Entities performing construction and construction management work on the same project must be treated as general or

mechanical contractors rather than construction managers and must be licensed as general and/or mechanical contractors. Section 11-35-3245 of the State Procurement Code specifically forbids a construction manager from performing construction work on a project when he is the construction manager for the project.

Any entity currently licensed with the state of South Carolina that has a general contractor, mechanical contractor, architect or engineer's license and performs construction management work in this state must submit to the board a letter of intent to be a construction manager. The entity must also submit a financial statement to meet the financial requirements as set forth in Section 40-11-260.

In conclusion, construction managers apply and integrate comprehensive project controls to manage the critical issues of time, cost, scope and quality. They are employed to meet the owner's specific needs and interests in the project.

If you want to be listed as a construction manager and can meet the financial requirements, call the Contractors' Licensing Board at 803-896-4627 or 803-896-4686 and ask for the Construction Manager Application Letter, or you may send a request by fax to 803-896-4364.

Governor Appoints Four New Board Members

Governor Jim Hodges has appointed two new licensed contractor board members and two new at-large board members to serve on the board. The new appointments replaced long-time board members Chairman Harry R. Kent, vice chairman W. Michael Grady, Gary Shelton and I. Carolyn Briscoe. The former board members' initiative, professional competency, devotion and spirit of sacrifice for their honorable service helped provide better protection to the public through regulation of the contracting statutes in South Carolina. The new members are Mark G. Plyler, Wendi J. Nance, James T. Tharp and Hubert J. Chandler. Plyler resides in Columbia and owns his own business, Picture Perfect, located in Lancaster. Nance lives in Columbia and is the executive director of the YWCA of the Midlands. Tharp is the President of McCrory Construction Company Inc., located in Columbia. He will be representing building contractors. Chandler is the president of Chandler Construction Services Inc., located in Ninety Six. He will be representing public utility contractors. The board feels that the qualifications and expertise of the four new members will enhance the effectiveness of the board to better protect the health, welfare and safety of the public.

Disciplinary Actions Against Licensees

The following fine amounts for violations of the statute are based on board policy; general contracting less than \$50,000 is \$500; anything over that amount is \$500 plus one percent of the project up to \$5,000; mechanical contracting less than \$17,500, is \$500 plus one percent of the project up to \$5,000, unless circumstances in the case warrant other consideration.

Consent Order and Citation Fines Paid

The following individuals and entities were issued a consent order for violation of the general and mechanical contracting statutes:

- Incotec Inc, Charlotte, NC / Exceeded license limit, \$500.
- Wellington Power Corp, Pittsburgh, PA / Bidding in wrong name, \$500.
- Daniel James, Florence, SC / No license, \$500.
- Webb Heating & Air, Seneca, SC / No license, \$500.
- William Baker, Myrtle Beach, SC / Joint venture with unlicensed contractor, \$500.
- Air Tech Mechanical, Inc, Spartanburg, SC / \$500.
- Gen-Con, Inc Murrells Inlet, SC / Joint venture with unlicensed contractor, \$5,000.
- Carolina National Builders, Murrells Inlet, SC / Joint venture with unlicensed contractor, \$5,000.
- Clarence Felder, Blackville, SC / License lending, \$3,000, license suspended for three months.
- Titan Construction, Gaffney, SC / License lending, \$5,000.
- Hersey Builders, Lancaster, PA / No license, \$2,000.
- Diedrich Fehr & Sons, Cross Hill, SC / No license, \$1,500.
- Associated Industrial, Eden, NC, / Bid outside license classification, \$500.
- Intergration Inc, Mt. Pleasant, SC / Performed work outside of license classification, \$500.
- Fitness Pro, Columbia, SC / No license, \$500.
- Earnest Alread, Mullins, SC / No license, \$500.
- Southeastern Industrial, Inc, Pickens, SC / No license, \$500.
- Kaleidoscope Construction, Greenville, SC / No license, \$2,000.
- Alcar Constructors Inc, Concord, NC / No license, \$500.
- Companion Construction, Inc., Greer, SC, / No license, \$500.
- Hyder's Services, Greenville, SC / No license, \$500.
- Southeastern Industrial Inc., Rock Hill, SC / No license, \$500.
- Sharp Construction Company of Sumter, Inc., Sumter, SC / Entering into a contract with an unlicensed contractor, \$500.
- Total Fire Protection, Greenville, SC / Submitting a false engineer's seal, \$500.
- Todd Manwaring, Greenville, SC / Failing to make repairs within the time frame ordered by the Department, \$500.
- Consolidated Southern Industries, Anderson, SC / License lending, \$5,000 fine for the licensed entity and \$5,000 fine for the qualifying party.
- Kelly General Contractors, Greenwood, SC / Failing to make repairs within the time frame ordered by a Hearing Officer, \$2,000.
- Burgess Construction Company, Columbia, SC / Complaint filed due to construction problems, \$500.
- Associated General Contractors, Eden, NC / Bid outside of license classification, \$500.
- Environmental Engineering Services, Columbia, SC / Bid outside of license classification, \$2,500.
- J. Logan White, North Myrtle Beach, SC / Complaint filed due to construction problems, \$700.
- Hyden Services, Gaffney, SC / Unlicensed practice, \$500.
- State Roofing Company Inc., Columbia, SC / Bid outside of license classification, \$2,150.
- Payne Adams Construction Company, Columbia, SC / Bid in wrong name, \$1,000

Cease and Desist Orders

The following individuals and entities were issued an Order to Cease and Desist any commercial construction due to not being properly licensed:

- Abrams Plumbing Co, Columbia, SC
- Deidrich Fehr & Sons Construction, Cross, Hill, SC
- Hersey Builders, Hersey, PA
- Long & Bartley Builders, Newberry, SC

Action By Administrative Law Judge

- D. Scott Londeau, Bluffton, SC / Working as an unlicensed fire sprinkler contractor, four counts, \$12,000.

License Sanction Overturned

- Joe Mcray, Georgetown, SC, license suspended for six months after receipt of Final Order, license number G-14558, license suspension was stayed during appeal. Upon completion of appeal, an Administrative Law Judge overturned the suspension, and the license remains in good standing.

License Revocations by the Board

- Robert M. Webb, Surfside Beach, SC, license number G-14706 / License was revoked due to a complaint concerning construction problems.
- D. W. Construction, Columbia, SC, license number G-98267 / License was revoked due to a complaint concerning construction problems.
- Bredman Group, Inc., Simpsonville, SC, license number G-15484 / License was revoked due to an outstanding complaint concerning construction problems. In addition, the Respondent's qualifying party status was revoked for a period of one year.

Current General and Mechanical Contractors Classification Abbreviations

As of April 1, 1999, the abbreviations on the license pocket card are listed below and indicate the general and mechanical contractors' classifications.

GENERAL CONTRACTOR

	<u>Sub-Classification</u>	<u>Abbreviation Key</u>
<u>Building</u>	Building	BD
<u>Highway</u>	Highway	BR, GD, AP, CP [Must take all four exams]
	Asphalt Paving	AP
	Concrete Paving	CP
	Bridges	BR
	Grading	GD
	Highway Incidental Paving	HI AP, CP [Must take both exams]
	Roads	GD, AP, CP [Must take all three exams]
<u>Public Utilities</u>	Public Utilities	1U or 2U; PL; WL; WP * [Must take all four exams]
	Public Electric Utility	1U or 2U (see note)*
	Pipelines	PL (Formerly Gas Distribution)
	Water & Sewer Lines	WL
	Water & Sewer Plants	WP
<u>Specialty</u>	Boiler Installation	BL (See note under Mechanical)
	Concrete	CT
	Boring & Tunneling	BT
	Marine	MR
	Masonry	MS
	Pre-engineered Metal Buildings	MB
	Interior Renovation	IR (Formerly Non-Structural)
	Railroad	RR
	Specialty Roofing	SR
	General Roofing	GR
	Structural Framing	SF (Formerly Steel)
	Structural Shapes	SS
	Swimming Pools	SP
	Wood Frame Structures	WF

Notes: * 1U is the Public Electrical Utility Classification for those licensed prior to 4/1/99; those licensed after 4/1/99 will be given the classification as 2U. Public Utilities consists of all four classes: public electric utility, pipelines, water & sewer lines and water & sewer plants.

Deleted Classifications as of 4/1/99: Communications & Instrumentation (CI); Heavy (HE); and S.C. Dept. of Highways (SCDH).

Have You Moved?

It is the responsibility of the licensees to keep the board office aware of current address and telephone information. When these changes occur, please notify this office immediately.

Please send in a card with the following information:

Date: _____

Name of Licensee: _____

Old Address: _____

New Address: _____

Old Phone Number: _____

New Phone Number: _____

Signature: _____

Abbreviations- *continued from page 6*

MECHANICAL CONTRACTORS

Sub-Classification

Air Conditioning
 Electrical
 Heating
 Lightening Protection
 Packaged Equipment
 Plumbing
 Process Piping
 Refrigeration

Abbreviation Key

AC
 EL
 HT
 LP
 PK
 PB
 1P or 2P **
 RG

Notes: **Processed Piping is designated as 1P prior to 4/1/99. Those licensed in Process Piping after 4/1/99 is designated as 2P and may not engage in boiler work.

Effective 6/11/99 a new classification, "Boiler Installation" (BL) was created under General Contractors' category and will be required for boiler work in **industry only**, not to be used for work to heat a building. If licensed prior to 4/1/99, the "Boiler Installation" classification under the General Contractor category can be issued upon request in writing. Note that upon renewal for 2000-2001, **two** licenses will need to be paid for and renewed—Mechanical Processed Piping and General Contractor Boiler Installation.

S.C. Department of Labor, Licensing and Regulation
Contractors' Licensing Board
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NASCLA National Association of State Contractors' Licensing Agencies

If you need information on contractor licensing in other states, you need a copy of the *Contractors State Licensing Information Directory*.

The 2000 edition identifies more than 150 state agencies that regulate the construction industry. The directory summarizes the pre-qualification, licensing, examination and bonding requirements. Information regarding reciprocity, license classifications, incorporating and fees is also included. 180 pages.

Please send _____ books at \$34.95 each (4th class mail) \$ _____

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