

# CONTRACTORS' STATE LICENSE BOARD

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*Registrar: David R. Fogt ♦ 24-Hour Licensing and Consumer Information: (800) 321-2752 ♦ Outside California: (916) 255-3900 ♦ Northern Case Management: (916) 255-4027 ♦ Northern Statewide Investigative Fraud Team (SWIFT): (916) 255-2924 ♦ Central SWIFT: (559) 490-0580 ♦ Southern Case Management: (562) 345-7656 ♦ Southern SWIFT: (562) 345-7600 ♦ Internet: [www.cslb.ca.gov](http://www.cslb.ca.gov)*

*Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 7000.6

**C**reated in 1929, the Contractors' State License Board (CSLB) licenses and regulates construction contractors, handles consumer complaints, and enforces existing laws pertaining to contractors. A consumer protection agency within the Department of Consumer Affairs (DCA), CSLB is authorized pursuant to the Contractors' State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; the Board's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR). CSLB licenses almost 290,000 contractors in California.

CSLB licenses general engineering contractors (classified as "A"), general building contractors ("B"), and approximately 40 specialty contractor categories ("C"); in addition, the Board registers home improvement salespersons who market contractor services to consumers. The fifteen-member Board consists of one general engineering contractor, two general building contractors, two specialty contractors, one member from a labor organization representing building trades, one local building official, and eight public members (including one who represents a statewide senior citizen organization). Under

Business and Professions Code section 7002(b), a representative of a labor organization is eligible to serve as a public member of CSLB. The Board currently maintains five committees: executive, enforcement, licensing, legislation, and public affairs.

In May 2017, the Senate Rules Committee reappointed public member Agustin Beltran to another term on CSLB; he has served on the Board since 2014. Since beginning his career as a carpenter apprentice in 1989, Beltran has worked in various facets of the construction industry. Beltran has served on several government boards since 1997, including the Lathrop City Council from 2000–2004, and the Delta Protection Commission from 2002–2004. He currently serves as the President and Director of Public and Governmental Relations for the Northern California Carpenters Regional Council.

On July 25, 2017, Governor Brown [reappointed](#) “B” contractor member Kevin J. Albanese and local building official Nancy Springer. Albanese, an attorney who has served on CSLB since 2013, has been president and CEO at Joseph J. Albanese Inc. since 2014, where he held several positions from 1993 to 2014, including vice president and chief operating officer, project manager, support manager and field superintendent, and fleet manager. Springer, who has served on CSLB since 2013, has served in several positions for Butte County since 2007, including building division manager, interim building division manager, and building official assistant. She has served as a past president of the Counties Building Officials Association of California, and maintains membership with the California Building Officials, Sacramento Valley Association of Building Officials, and International Code Council.

At this writing, CSLB is functioning with one vacancy: a gubernatorial appointee for a specialty contractor member.

# MAJOR PROJECTS

## CLSB Names David Fogt as new Registrar

On April 26, 2017, CSLB Chair Agustin Beltran [announced](#) the Board's selection of Enforcement Chief David R. Fogt to serve as the Board's new Registrar of Contractors, effective May 2, 2017. In the position, Fogt serves as CSLB's executive officer and oversees a \$60 million budget and more than 400 employees in Sacramento and at other offices around the state. Fogt, who earned his painting contractor's license in 1986, began his CSLB career in February 1990. Over the next decade, he worked in a number of supervisory positions in CSLB's enforcement division, and was named Enforcement Chief in October 2001. Fogt served in that position until his appointment as Registrar. Fogt attended his first Board meeting as Registrar on June 15, 2017.

Fogt succeeds former Registrar Cindi Christenson, who formally [announced her retirement](#) on November 29, 2016 after 35 years of state service. Prior to her appointment as Registrar, Christenson served as CSLB's Chief Deputy Registrar for six years; prior to that, she served as the Executive Officer of the Board for Professional Engineers and Land Surveyors for 13 years.

## Deceptive Tactics by Solar Energy Contractors

During its September 29, 2017 [meeting](#), CSLB discussed the status of various outreach, education, and enforcement strategies that it is implementing to reduce the number of complaints regarding solar energy contractors. As solar installations have become more popular, CSLB has seen a huge increase in the number of solar-related consumer complaints. Between January 1, 2016 and September 1, 2017, CSLB received

933 solar-related complaints; of these, 197 were successfully settled, resulting in over \$1 million in restitution, and 97 were recommended for further disciplinary action, including 15 criminal cases. CSLB did a year-over-year analysis of the number of complaints received from January-September 2016 (197 complaints) and January-September 2017 (417 complaints). According to CSLB, this represents a 112% increase in solar-related complaints; nearly 40% of the complaints filed between January 1, 2016 and September 1, 2017 were focused on just 22 contractors.

In response, CSLB has created a Solar Task Force, consisting of seven CSLB staff dedicated to identifying and combatting the issues consumers face in the growing solar industry. According to CSLB, these issues include a general lack of specificity in solar contracts, the exploitation of consumer confidence about solar savings that are unrealized when systems perform below expectations, and complex or often unlawful finance agreements. To help consumers, CSLB has developed an education [web page](#) called “Solar Smart.”

On August 21, 2017, Registrar Dave Fogt appointed Enforcement Supervisor Steve Skogebo to lead the Solar Task Force. Mr. Skogebo plans to schedule meetings with stakeholders in the areas with most complaints and help develop business plans for them so that they can come into future compliance; and perform case reviews with staff one on one. These meetings have already begun and were reported as successful.

CSLB is continuing to analyze the data to determine trends and how best to address them. In May 2017, the Solar Task Force had 234 open complaints. Seventy of these complaints included Property Assessed Clean Energy (PACE) financing, of which 50 alleged misrepresentations. The Solar Task Force and solar industry members have noted

a shift from solar leases and power purchase agreements (PPA) to PACE financing. In addition, the most egregious of the complaints have involved the targeting of the elderly and those who speak English as a second language, both protected classes under California law.

The highest number of complaints by consumers were due to misrepresentations by salespeople. The Task Force has issued many citations to unlicensed solar salespeople and will prepare statistics on this matter for discussion at the next Enforcement Committee meeting.

On September 6, 2017, Registrar Dave Fogt and CSLB staff hosted an informational roundtable entitled “Solar Energy Systems, Energy Efficiency and Title 24 Requirements.” Participation was wide-reaching with representation from the California Solar Energy Industry Association (CAL-SEIA), the electrical and roofing industries, the California Building Industry Association (CBIA), the California Energy Commission, and the Department of Toxic Substance Control. The goal of the roundtable was to hear from the participants about trends in the ever-evolving solar industry so that CSLB leadership and staff can stay ahead of the issues that may arise in the future.

The Board is committed to continue working with CAL-SEIA and others to identify strategies to reduce the number of consumer complaints CSLB receives; discuss what is considered supplemental and incidental work as it relates to a solar installation; and to continue to monitor the workforce sufficiency with the assistance of CBIA. CSLB is also working with DCA to help develop a video and conference as a way to continue to educate consumers on solar-related issues, and will soon begin the process of implementing AB 1070 (Gonzalez Fletcher) (see LEGISLATION).

## “Most Wanted” Unlicensed Contractor Arrested in Oregon

On April 19, 2017, unlicensed contractor Adan Rivas, whom CSLB added to its “Most Wanted” list in July 2015, was arrested in Medford, Oregon on felony aggravated first-degree theft charges. At the request of the Santa Clara District Attorney’s Office, Rivas was extradited to California to face felony and misdemeanor charges in numerous cases; on September 17, he agreed to a plea bargain and pled guilty to eight of 25 counts, and is scheduled to be sentenced in November 2017.

Over the past three years, Rivas victimized more than two dozen Bay Area families by promising landscape and tree removal services, taking excessive deposits, and then abandoning the job. Rivas usually focused his attention on more affluent neighborhoods in Alameda, Contra Costa, and Santa Clara counties, often targeting elderly victims. CSLB is aware of \$250,000 in losses to Rivas’s victims in Santa Clara and Contra Costa counties.

## CSLB Catches 100 Unlicensed Contractors in Nationwide Enforcement Effort

Between June 7, 2017 and June 22, 2017, CSLB’s Statewide Investigative Fraud Team (SWIFT) participated in a nationwide enforcement effort to stop unlicensed contractors. The National Association of State Contractors Licensing Agencies coordinated the campaign, which was undertaken to heighten consumer awareness about the value of hiring licensed contractors and the risks of using those who are not licensed.

Over a two-week period, SWIFT conducted six undercover stings and 14 sweeps of active construction sites in 11 counties throughout California. One hundred suspected

unlicensed contractors may face criminal charges. The operation also led to the issuance of seven administrative citations and 31 stop orders.

SWIFT investigators partnered with multiple local law enforcement agencies to conduct operations at homes in Bakersfield (Kern County), Long Beach (Los Angeles County), Monterey (Monterey County), Orange (Orange County), Santee (San Diego County), and Shasta Lake (Shasta County). Sweep operations were conducted at active construction sites in Los Angeles, Orange, Sacramento, San Bernardino, San Diego, San Mateo, Santa Clara, Shasta, and Sonoma counties.

## Implementation of SB 465 (Hill)

[SB 465 \(Hill\) \(Chapter 372, Statutes of 2016\)](#) is the first legislative response to the tragic Berkeley balcony collapse of 2015. On June 16, 2015, an apartment building balcony collapsed in Berkeley, killing six college exchange students and injuring numerous others. The company responsible for the construction of the building reportedly paid out \$26.5 million in construction defect settlements in the three years prior to the incident. Due to its lack of reporting requirements, CSLB was wholly unaware of this pattern of settlements and consequently was not able to scrutinize the construction company's work prior to the incident. One crucial component of SB 465 is its requirement that CSLB conduct a study to determine whether the Board's ability to protect the public would be enhanced by regulations requiring licensees to report judgments, arbitration awards, and/or settlement payments of claims for construction defects to the Board.

During its June 15, 2017 Board [meeting](#), CSLB discussed its implementation of SB 465's study requirement. Between March and May 2017, the Board researched and collected available settlement data; reviewed the process by which other DCA boards and

bureaus with similar reporting requirements evaluate cases originating from settlement reporting; and studied the criteria insurers use to differentiate between settlements that are for nuisance value and those that are not. Between June and August 2017, the Board conducted mini-stakeholder meetings with SB 465's preeminent proponents and opponents.

In September 2017, the Board examined the fiscal impact that potential reporting requirements would have on CSLB, specifically staff costs, industry expert costs, and Attorney General costs. Between October and November 2017, the Board will compile its findings on all the above components and prepare an initial draft of its report. In December 2017, staff will present the findings from its study during that month's Board meeting and prepare a final draft. Finally, in January 2018, the Board will submit its final report to the legislature for review and further legislative action.

## Workers' Compensation Enforcement Strategies, Resources, and Accomplishments

At its September 29, 2017 [meeting](#), CSLB received an update on staff's efforts to reduce the number of false workers' compensation exemptions on file with the Board.

To maintain an active California contractor license, licensees are required to have on file with CSLB either a certificate of workers' compensation (WC) insurance or a certificate of self-insurance issued by the Department of Industrial Relations. Studies by CSLB's enforcement division have revealed that 59% of the contractors contacted in four targeted classifications that perform outdoor construction (concrete, earthwork/paving, landscaping, and tree trimming) had false WC exemptions on file with CLSB.



Staff updated CSLB on the Sacramento County Pilot Project, where CSLB identified four license classifications that generally use multiple employees to perform outdoor (readily observable) construction. CSLB discovered that out of the contractors with a WC exemption on file that they contacted, the highest violation rate was among tree trimmers (D-49), with 74% of those contractors determined to be in violation of their exemptions.

In June 2017, the Northern SWIFT scheduled a sting operation targeting tree trimming (D-49) licensees. Two of the three scheduled licensees appeared at the sting and were issued stop orders. One licensee was also referred to the district attorney's office for violations of Labor Code section 3700.5 and Business and Professions Code section 7125.4 for failure to have WC insurance. The other licensee provided evidence of WC insurance after the sting operation, but informed CSLB's undercover Enforcement Representative that he was underreporting the number of his employees. This case will be referred to the district attorney's office for premium fraud.

Twelve additional licensees who did not appear at the sting operation were invited to come to CSLB Headquarters. Seven of these 12 licensees denied using employee labor, but five admitted to employing workers. Based on their admissions, CSLB canceled the five WC exemptions. Of the five licensees with canceled exemptions, one filed a new exemption, one canceled his license, and three licenses are pending suspension. CSLB issued advisory notices to all 12 contractors.

The Board discussed future strategies being implemented, such as meeting with the State Compensation Insurance Fund (SCIF) to discuss the ability of CSLB's judgment unit to assist with the collection of audit assessments. A SCIF representative who spoke at the

September CSLB meeting opined that the expense of obtaining a WC policy is likely the reason that contractors avoid WC insurance, and expressed interest in collaborating with CSLB to address WC insurance compliance and the importance of accurately reporting payroll.

CSLB agreed that the following future strategies should be pursued: (1) assess the Sacramento County Pilot Project's effectiveness and, if successful, duplicate this enforcement strategy in other counties with a high number of WC exemptions in targeted classifications; (2) provided data to interested parties, including legislators and industry representatives, to publicize the high number of false exemptions in classifications that require workers; these parties may want to consider proposing legislation to require mandatory WC coverage for additional worker-intensive classifications (similar to the existing requirement for C-39 roofing contractors); and (3) develop strategies with partnering state agencies to perform audits of C-39 roofers who have minimum-coverage policies and are reporting no employees.

## LEGISLATION

[SB 486 \(Monning\)](#), as amended April 20, 2017, amends section 7099.2 and 7124.6 to the Business and Professions Code relating to letters of admonishment issued by the CSLB Registrar. The bill expresses legislative intent that CSLB should only issue letters of admonishment to applicants, licensees, or registrants for minor violations that do not involve financial harm to the consumer and do not result in serious illness or injury.

SB 486 amends section 7099.2, which already requires the Board to adopt regulations governing the assessment of civil penalties, to authorize the Registrar to issue

a letter of admonishment to an applicant, licensee, or registrant in lieu of issuing a citation. The letter must be in writing, must be served on the admonished individual at his/her address of record with CSLB, and must describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated. The letter must inform the admonished individual that her/she may either (1) submit a written request for an informal office conference with the Registrar to contest the letter (which the Registrar must hold, and after which the Registrar may affirm, modify, or withdraw the letter), or (2) comply with the letter and, if required, submit a written corrective action plan to the Registrar documenting compliance. The amendments also preclude the Registrar from issuing a letter of admonition when any one of the following factors is present: (1) the licensee, registrant, or applicant was unlicensed at the time of the violation; (2) multiple violations have been established; (3) the licensee, registrant, or applicant has a history of the same or similar violations; (4) the violation resulted in financial harm to another; (5) the victim is an elder or dependent adult as defined in Penal Code section 368; or (6) the violation is related to the repair of damage caused by a natural disaster. The amendments also authorize CSLB to adopt regulations to further define the circumstances under which a letter of admonishment may be issued.

The bill also amends section 7124.6—which provides that a complaint resolved in favor of the contractor shall not be disclosed on the Board’s website—to provide that a complaint resolved by issuance of a letter of admonishment pursuant to section 7099.2 shall not be deemed to have been resolved in favor of the contractor. The provision further requires CSLB to disclose a letter of admonishment for a period of one year from the date

of service of the letter. Governor Brown signed SB 486 on September 26, 2017 (Chapter 308, Statutes of 2017).

[AB 1357 \(Chu\)](#), as amended July 6, 2017, amends section 7197 of the Business and Professions Code. Section 7197 provides that it is an unfair business practice for home inspectors, employers of home inspectors, or a company that is controlled by another company with a financial interest in a company employing a home inspector to perform or offer to perform, for an additional fee, any repairs on a structure on which the inspector or the inspector's company has prepared a home inspection report in the past twelve months. This bill amends section 7197 to provide that the existing prohibition does not affect the ability of roofing contractor who holds a C-39 license to perform repairs pursuant to the contractor's inspection of a roof for the specific purpose of providing a roof certification if all of the following conditions are met: (1) different employees perform the home inspection and the roof inspection; (2) the roof inspection is ordered prior to, or at the same time as, the home inspection, or the roof inspection is completed before the commencement of the home inspection; and (3) the consumer is provided a consumer disclosure before he or she authorizes the home inspection that includes all of the following: (a) the same company that performs the roof inspection and roof repairs will perform the home inspection on the same property; (b) any repairs that are authorized by the consumer are for the repairs identified in the roofing contractor's roof inspection report and no repairs identified in the home inspection are authorized or allowed as specified in the roof inspection; and (c) the consumer has the right to seek a second opinion. Governor Brown signed AB 1357 on October 5, 2017 (Chapter 508, Statutes of 2017).

[AB 1278 \(Low\)](#), as amended July 3, 2017, amends section 7071.17 of the Business and Professions Code, relating to the reporting of judgments and license suspension for unsatisfied final judgments. Existing law requires CSLB licensees to report a construction-related civil judgment to CSLB within 90 days of the judgment date, and requires the licensee to comply with that final judgment within 90 days. Section 7071.17 directs CSLB to require—as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record—that an applicant previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment to file a bond sufficient to guarantee payment of an equal amount to the unsatisfied judgment with the Board. Section 7071.17 also provides that the qualifying person and any partner of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment shall be automatically prohibited from serving as an officer, director, associate, partner, owner, manager, qualifying individual, or other personnel of record on another license.

AB 1278 amends section 7017.17 to clarify that if a judgment is entered against a licensee, then a qualifying person or personnel of record of the licensee at the time of the activities on which the judgment is based shall be automatically prohibited from serving as a qualifying individual or other personnel of record on another license until the judgment is satisfied. AB 1278 also clarifies that this prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed

entity. Governor Brown signed AB 1278 on October 5, 2017 (Chapter 506, Statutes of 2017).

[AB 1070 \(Gonzalez Fletcher\)](#), as amended September 1, 2017, adds sections 7169 and 7170 to the Business and Professions code, relating to disclosures regarding solar energy system contracts (see MAJOR PROJECTS).

New section 7169 requires CSLB—on or before July 1, 2018 and in collaboration with the Public Utilities Commission (PUC)—to develop and make available on its Internet website a “solar energy system disclosure document” or documents that provides a consumer, at a minimum, accurate, clear, and concise information regarding the installation of a solar energy system, total costs of installation, anticipated savings, the assumptions and inputs used to estimate the savings, and the implications of various financing options.

Under AB 1070, solar energy system companies must provide the disclosure document to a consumer prior to completion of a sale, financing, or lease of a solar energy system. The “solar energy system disclosure document” must be printed on the front page or cover page of every solar energy contract. The “solar energy system disclosure document” must be printed in boldface 16-point type and include the following types of primary information: (1) the total cost and payments for the system, including financing costs; (2) information on how and to whom customers may provide complaints; and (3) the consumer’s right to a cooling off period of three days pursuant to Business and Professions Code section 7159.

At its discretion, CSLB may require the inclusion of other types of supporting information that it and the PUC deem appropriate or useful in furthering the directive, including, but not limited to, (1) the amounts and sources of financing obtained; (2) the

calculations used by the home improvement salesperson to determine how many panels the homeowner needs to install; (3) the calculations used by the home improvement salesperson to determine how much energy the panels will generate; (4) any additional monthly fees the homeowner's electric company may bill, any turn-on charges, and any fees added for the use of an Internet monitoring system of the panels or inverters; (5) the terms and conditions of any guaranteed rebate; (6) the final contract price, without the inclusion of possible rebates; (7) the solar energy system company's contractor's license number; (8) the impacts of solar energy system installations not performed to code; (9) types of solar energy system malfunctions; (10) information about the difference between a solar energy system lease and a solar energy system purchase; (11) the impacts that the financing options, lease agreement terms, or contract terms will have on the sale of the consumer's home, including any balloon payments or solar energy system relocation that may be required if the contract is not assigned to the new owner of the home; and (12) a calculator that calculates performance of solar projects to provide solar customers the solar power system's projected output, which may include an expected performance-based buydown calculator.

Finally, new section 7169 provides that a contract for sale, financing, or lease of a solar energy system and the solar energy system disclosure document shall be written in the same language as was principally used in the oral sales presentation made to the consumer or the print or digital marketing material given to the consumer.

New section 7170 requires CSLB to receive and review complaints and consumer questions regarding solar energy systems companies and solar contractors; and to also receive complaints received from state agencies regarding solar energy systems companies

and solar contractors. Beginning on July 1, 2019, CSLB must annually compile a report documenting consumer complaints relating to solar contractors. The report shall be made available publicly on the websites of CSLB and the PUC. The report shall contain all of the following: (1) the number and types of complaints; (2) the ZIP Code where the consumer complaint originated; and (3) the disposition of all complaints received against a solar contractor. Governor Brown signed AB 1070 on October 11, 2017 (Chapter 662, Statutes of 2017).

**SB 800 (Committee on Business, Professions and Economic Development)**, as amended September 8, 2017, is an omnibus bill that amends sections 7075.1 and 7145.5 of the Business and Professions Code. SB 800 deletes a provision of section 7075.1 that allowed for the reissuance or reassignment of a contractor license number to a corporation or LLC when the new entity acquires a “licensee” in an asset sale. This bill also amends section 7145.5 to use the correct term for “federal employer identification number” and to add the term “individual taxpayer identification number.” These changes will improve the clarity of the CSLL and eliminate a provision that created confusion for applicants and licensees. Governor Brown signed SB 800 on October 7, 2017 (Chapter 573, Statutes of 2017).

**AB 996 (Cunningham and Brough)**, as amended July 17, 2017, would add section 7018.5 to the Business and Professions Code, relating to the CSLB website’s search function for workers’ compensation claims. The new section would require CSLB—on or before January 1, 2020—to adopt an enhancement to the current contractor license check search function on its Internet website to permit consumers and licensees to do all of the following: (a) monitor the status and progress of a successfully filed WC certification being



reviewed by the Board, including a visual tool that provides the date the application was filed, the status of each of the components of the certification that have been filed, and that shows that the review is being reviewed and shown as pending until the final disposition has been approved by the Registrar; and (b) view the daily record of the average time elapsed from the time the Board receives the certification until a final disposition has been approved by the Registrar. *[S. Appr]*

[SB 721 \(Hill\)](#), as amended on May 15, 2017, would add section 7071.20 to the Business and Professions Code, relating to deck and balcony inspections. The new section would establish minimum inspection and repair requirements for “building assemblies” that include load-bearing components in all buildings containing three or more multifamily dwelling units. The bill would define “building assemblies” to mean

balconies, decks, porches, stairways, walkways, entry structures, and their supports and railings, that extend beyond exterior walls of the building and which have a walking surface that is elevated more than six feet above ground level, are designed for human occupancy or use, and rely in whole or in substantial part on wood or wood-based products for structural support or stability of the building assembly.

The inspection must be conducted by a licensed architect, licensed civil or structural engineer, or an individual certified as a building inspector or building official.

This bill is a follow-up to [SB 465 \(Hill\) \(Chapter 372, Statutes of 2016\)](#), which was the legislature’s first response to the June 2015 collapse of a balcony at a Berkeley apartment building that killed six and injured seven (see MAJOR PROJECTS). In addition to the deadly Berkeley balcony collapse, a stairwell at an apartment building in the City of Folsom collapsed in 2015, killing a Cal Poly graduate student. SB 465 establishes more oversight over the construction industry. For example, it requires contractors convicted of crimes related to their work to report that information to CSLB. Because the company that

built the Berkeley apartment building had reportedly settled over \$26 million in construction defect litigation in the three years prior to the collapse and CSLB knew nothing about them because contractors are not required to report construction-related settlements to CSLB, SB 465 also requires CSLB to conduct a study of judgments, arbitration awards, and settlements that were the result of claims for construction defects for rental residential units and, by January 1, 2018, to report to the legislature the results of this study to determine if the Board's ability to protect the public as described in section 7000.6 would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of those claims. The study must include, but not be limited to, criteria used by insurers or others to differentiate between settlements that are for nuisance value and those that are not, whether settlement information or other information can help identify licensees who may be subject to an enforcement action, if there is a way to separate subcontractors from general contractors when identifying licensees who may be subject to an enforcement action, whether reporting should be limited to settlements resulting from construction defects that resulted in death or injury, the practice of other DCA boards with respect to the reporting of settlements, and any other criteria considered reasonable by the Board. SB 465 also requires the Building Standards Commission to study recent balcony failures in the state and submit a report to the legislature of findings and recommendations.

SB 721 imposes no requirements on CSLB. *[S. Jud]*

[AB 1162 \(Bocanegra\)](#), as amended on March 21, 2017, would amend section 7031.5 of the Business and Professions Code, which currently requires a county or city that requires the issuance of a permit for the construction, alteration, improvement, demolition,

or repair of any building or structure to require the applicant for a permit to file a statement that he/she is licensed under the CSL, giving the number of the license and stating that it is in full force and effect or, if the applicant is exempt from the provisions of the CSL, the basis for the alleged exemption. AB 1162 would require a C-10 electrical contractor to additionally include a statement that he/she is in compliance with, and there are no grounds for disciplinary action under, section 108.2 of the Labor Code. *[S. Inactive File]*

## LITIGATION

On August 22, 2017 in *Walker v. Appellate Division of the Superior Court*, 14 Cal. App. 5th 651 (2017), the Second District Court of Appeal held that a criminal restitution order against an unlicensed contractor is properly limited to the victim's actual economic loss and attorney fees which the victim incurred when the unlicensed contractor attempted to recover the remaining balance on the contract.

In August 2013, Sharon Curto entered into a written construction contract with Michael Walker, an unlicensed contractor, to paint her home and to install ten new windows. The original contract price was for \$49,860. Walker continued to bill her and, by November 2013, she had paid him a total of \$61,428. On November 30, 2013, Walker sent Curto a demand letter stating she owed him \$9,851. Curto paid Walker \$2,000 against the \$9,851 balance. Shortly thereafter, Walker sued Curto for nonpayment of the full amount due. Curto hired an attorney to defend her in the lawsuit, and subsequently filed a complaint against Walker with CSLB. During the investigation, the Board discovered Walker was not a licensed contractor and referred the matter to the Santa Monica City Attorney for criminal prosecution.

Walker entered a plea of no contest to a misdemeanor count of contracting without a license in violation of section 7028(a) of the Business and Professions Code. Under Penal Code section 1202.4(f) and Business and Professions Code section 7028(h), a person who utilizes the services of a convicted unlicensed contractor is eligible for restitution, regardless of whether he or she has knowledge that the contractor was unlicensed. During an extensive restitution hearing, Curto demanded that Walker pay her the entire amount she had paid him, plus interest and attorney fees she incurred in defending Walker's civil action. The trial court ordered Walker to pay Curto restitution for the actual economic loss suffered by her, but rejected her arguments that he reimburse her for all payments he received for his construction services and attorney fees incurred by the victim. On appeal by the People, the Appellate Division of the Superior Court of Los Angeles County reversed, holding that the victim was entitled to restitution for the full amount she had paid plus interest, as well as attorney fees. The Appellate Division relied on Business and Professions Code section 7031, which provides that an unlicensed contractor cannot sue for payment of his unlicensed work, and the homeowner has the right to bring a civil action to recover "all compensation paid" to the unlicensed contractor. Walker appealed, contending that the Appellate Division erred in requiring civil restitution in a criminal action, and by ordering restitution of attorney fees.

The Court of Appeal, Second District reversed the Appellate Division on the matter of restitution. The amount of restitution in a criminal matter is guided by Business and Professions Code section 7028(h) and Penal Code section 1202.4; Business and Professions Code section 7031 (which allows a person who uses an unlicensed contractor to recover "all compensation paid to the unlicensed contractor") applies only in civil

actions. The Second District analyzed the legislative history of section 7028(h) and found that its sponsor “specifically stated that section 7031 only applies to a civil action and emphasized the need for a criminal counterpart.” The court also found that section 7028(h) “serves primarily to compensate victims for actual economic losses.” The court concluded that the trial court acted within its discretion in ordering restitution for the actual economic loss suffered by Curto, and also found that the Penal Code defines “economic loss” as including actual and reasonable attorney fees such that the Appellate Division did not err in awarding Curto attorney fees.

On June 13, 2017 in *Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.*, 12 Cal. App. 5th 842 (2017), the Second District Court of Appeal held that an unlicensed contractor could not recover compensation for construction work requiring a license, but was not barred from recovering for non-construction-related services that could be separated from its construction services.

On December 29, 2014, Phoenix Mechanical Pipeline (Phoenix) filed its initial complaint against Space Exploration Technologies Corp. (SpaceX), asserting claims for breach of contract and breach of the duty of good faith and fair dealing, misrepresentation, and unfair business practices. The complaint alleged that in 2010 SpaceX requested that Phoenix Pipeline provide a variety of “Subcontracting Services,” including plumbing, general maintenance and repair, concrete removal and pouring, among others. Phoenix claimed that SpaceX owed \$1,037,045.66 for the services it provided. SpaceX demurred on the ground that Phoenix was not licensed.

Phoenix filed two amended complaints, ultimately adding that Phoenix’s “responsible manager officer,” who oversaw all services provided to any contractors,

companies, or institutions, was owner of another entity, Phoenix Mechanical Plumbing, Inc. (Phoenix Plumbing) and that he held a California contractor's license. The second amended complaint distinguished between alleged construction related services, which it categorized as "Subcontracting Services," and alleged non-construction related services, which it labeled as "Non-Contracting Services." The second amended complaint claimed that no valid contractor's license was required for the Non-Contracting Services.

The Second District found that Phoenix's amended complaint failed to state a claim for construction related services because it did not allege that Phoenix was a licensed contractor. Section 7031 of the Business and Professions Code provides that

no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person.

Since Phoenix did not allege that it was licensed, section 7031 precludes its claim.

Further, the court found that Phoenix may not rely upon a license issued to another. Section 7031 precludes any unlicensed "person" from maintaining an action for contracting services. The court found that in this case, Phoenix—not Phoenix Plumbing—was the entity that contracted with SpaceX and as such required its own license.

Finally, the court found that Phoenix did adequately allege that it provided certain services for which no contractor's license was necessary. Although Business and Professions Code section 7026 defines the term "contractor" as one who undertakes particular tasks and that performing those tasks requires a license, the second amended complaint identifies several tasks (such as "hauling" and "car washing") that might not be

included within the scope of work that requires a contractor's license. The court held only that Phoenix had adequately alleged that it performed certain tasks that did not require a contractor's license and section 7031 therefore does not bar an action for compensation for that work.

## RECENT MEETINGS

At its June 15, 2017 meeting, CSLB discussed staff's draft changes to section 853, Title 16 of the CCR, intended to expand outreach regarding license renewals. Business and Professions Code section 7140 sets forth provisions for renewing an unexpired license, and section 7141 relates to renewing an expired license, including when a delinquency fee is due. Existing section 853 requires the Registrar to mail to each licensee, prior to the expiration of the license, a renewal form with complete instructions for renewal of the license. CSLB staff proposes to add language permitting the Board to email the notice regarding license expiration and the renewal form to licensees for which it has an email address of record. Staff also proposes to clarify how and when a renewal application must be delivered to the Board in order to avoid delinquency fees. Following discussion, CSLB approved the draft changes and directed staff to submit the text to DCA Director and the Business, Consumer Services, and Housing Agency for review; if no adverse comments are received, CSLB authorized the Registrar to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for public hearing.