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## BUSINESS ALERT

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### DO YOU NEED A CONTRACTOR'S LICENSE?

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The contractor's license law (Business and Professions Code ("B&P") Section 7040 et. seq.) sets forth several exemptions to the requirement that persons engaged in work as a contractor hold a contractor's license. The exemption with the most applicability is the "owner-builder" exemption set forth in B&P Section 7044. That section provides for exemptions from the requirement of holding a contractor's license for (1) an owner of property who builds or improves structures on that property who does the work himself or through his own employees with wages as their sole compensation, provided none of the structures, without the appurtenances thereto, are intended or offered for sale; (2) an owner of property, who builds or improves structures thereon, or appurtenances thereto, who contracts for such a project with a subcontractor or subcontractors' licensed pursuant to this chapter (this exemption only applies if the owner either contracts with a general contractor for the construction or, if no general contractor is involved, if four or fewer structures are intended or offered for sale in a calendar year); and (3) a homeowner improving his or her principal place of residence or appurtenances thereto, provided that the work is performed prior to sale, the homeowner has actually resided in the residence for the twelve (12) months prior to completion of the work and the homeowner has not availed himself or herself of the exemption on more than two (2) structures more than once during any three (3) year period.

In *Vallejo Development Co. v. Beck Development Corporation*, (1994) 24 CA4th 922, the court held that a master developer performing post-closing improvement obligations was acting as an unlicensed contractor and therefore could not recover money for the installation of the infrastructure that it installed. B&P Section 7031 governs when and how a contractor may recover money (and how an unlicensed contractor may not). Thus, companies who have fully performed construction work have been denied recovery for the failure to hold a license. Recovery for quantum meruit, reasonable value of goods and services or unjust enrichment is barred, as is recovery for fraud where the fraud was a false promise to pay and the value of damages is the value of the goods and services, as is contractual indemnity for strict liability and negligence.

A recent California cost illustrates the harsh results of this statutory scheme. In *Williams Opp v. St. Paul Fire & Marine Ins. Co.*, 154 CA4<sup>th</sup> 71, 8/02/07, Opp was a California licensed building contractor, and president of building corporation, MCI, which did not hold a contractor's license. MCI entered into a subcontract with a general contractor for work at Cal State University, Stanislaus, inserting Opp's license number in the subcontract. The general contractor had St. Paul Fire issue a payment bond to its subcontractors. Prior to paying its subcontractors, the general contractor filed for bankruptcy. MCI sued St. Paul Fire on the payment bond, who moved for summary judgment against Opp and prevailed on grounds that Opp was not a party to subcontract and hence had no standing to sue on the payment bond. This is a harsh result for technical non-compliance with the contractor's license law.

Sellers of real property may expose themselves to risk when they undertake the obligation to perform post-closing works of improvements for which they are compensated. Developers will often purchase land and subdivide it for use as a multi-store shopping center. Alternatively, some commercial and industrial end-users contract out the development of their stores or plants to middle-man developers. For example, certain retailers purchase land, and then use an entity to act as owner in connection with the actual construction of the store.

Associations (of either homeowners or commercial owners) often have the right, under the CC&R's, to perform repairs on property owned by its members and seek reimbursement from the members for such repairs.

In connection with commercial leases, landlords often give tenants an allowance for tenant improvements to the premises. The allowances are either in the form of cash reimbursement for the cost of some or all of the improvements or in the form of a reduction in the amount of payments otherwise due under the lease.

**Practice Tips:** I see this issue most in the representation of buyers and seller of real property or in the context of commercial leasing. In a recent transaction my client was the buyer of an industrial building that needed final tenant improvements. The seller had originally had an obligation to perform all the improvements and charge my client a certain amount per square foot under the Purchase and Sale Agreement. As it turned out, my client was able to obtain a better deal from his own contractor so the agreement was amended to reduce the purchase price. The seller may have had a licensing problem under this statutory scheme based upon the original purchase/sale agreement. This situation could have been resolved contractually if the seller had gone forward with the post-closing improvements

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