SMALL CLAIMS BOOT CAMP - “HOW TO” HANDOUTS

HOW TO SUE AN UNLICENSED CONTRACTOR

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(CCP 116.370)

How to Sue an Unlicensed Contractor

- A person who uses an unlicensed contractor may sue the contractor to recover all money paid for the work they performed.

- A contractor may not sue a property owner to recover compensation for work on a contract unless he or she was licensed at all times while performing the work.

- In either case, it does not matter whether the unlicensed contractor did a good job. A recent court case[1] stated (B&P 7031) strictly prohibits any person from suing to recover compensation for any work he or she did while unlicensed, where such work requires licensure, anytime in performing the work. Furthermore, it is a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license (B&P 7028).

- The law was created to protect the public from dishonest, incompetent and irresponsible contractors performing services without a license.

AN EXAMPLE:
Let's say you hire a contractor to build a patio. The entire contract price is $10,000. You pay $5,000 in advance. That initial payment is split: $2,500 for materials and $2,500 for labor. The contractor finishes the job and requests the final payment. If the contractor does not have a license he or she is not entitled to be paid any money. You may even sue the contractor for the first payment of $5,000.

FIRST, DETERMINE WHETHER OR NOT THE WORK REQUIRED A LICENSE
The Contractor State License Law[2] generally only applies to:

- An individual who is doing physical work that alters or adds to a structure, and becomes a part of the real estate.
- The work must have a contract price of $500 or more unless the person advertises as a contractor (B&P 7048).

SECOND, DETERMINE WHETHER OR NOT THE CONTRACTOR HAS A LICENSE
The easiest way to find out whether or not the contractor has a license is to conduct a search by going to the Contractors State License Board's website www.cslb.ca.gov or calling them at 1-800-321-2752.

A contractors license may be automatically suspended by operation of section (B&P 7125.2)* for failure to obtain and maintain worker's compensation insurance.

An *example* would be a contractor who underreported his payroll and, thus did not obtain workers' compensations insurance, furthermore the license would be suspended before, during, and after he performs the work.

*B&P Section 7125.2 states the following: “The failure of a licensee to obtain or maintain workers' compensation insurance coverage, if required under this chapter, shall result in the automatic suspension of the license by operation of law in accordance with the provisions of this section, but this suspension shall no affect, alter, or limit the status of the licensee as an employer for purposes of Section 3716 of the Labor Code.”

FILING A SMALL CLAIMS ACTION AGAINST AN UNLICENSED CONTRACTOR

- Individuals may file a claim in Small Claims court for up to $7500.
- Corporations or other business entities may sue for up to $5,000.

- You may consider naming both the business and the contractor, on the same claim, if he or she performed bad work.
- It is the contractor’s responsibility to prove that they held a valid license at all times while performing work.

Note: It used to be that an unlicensed contractor could still receive payment if they did the work well even though they did not have a license. This is **no longer** available anymore to contractors who were not licensed before signing or working under the contract. Now unlicensed contractors bear the risk of non-payment solely on their own shoulders. The courts will not enforce agreements between property owners and unlicensed contractors involving work performed while the contractor was unlicensed.

The exception:
A contractor whose license has expired has a 90-day grace period to renew the license if he or she can show that the failure to renew occurred because of circumstances beyond their control (B&P 7141.5).

DAMAGES & PENALTIES

Bad Work
In certain situations where you are suing a contractor for work they performed while unlicensed and they did a bad job, you may sue for up to three times the damages. The lawsuit must take place in civil court, and the treble damages may not exceed $10,000. (See CCP 1029.8).

Fraud, False Statements & Misrepresentations
If the contractor told you that he had a license when he actually did not have a license, be sure to include the word “fraud” in your claim. When a property owner is induced to contract for work of improvement in reliance on *false* or *fraudulent representations* or *false statements* knowingly made by a contractor, the property owner may sue and recover a penalty of $500 plus reasonable attorney fees in addition to damages (B&P 7160).

SECURING YOUR JUDGMENT
When you receive your judgment make sure it contains the word “fraud.” This will prevent the defendant from discharging the debt owed to you in bankruptcy.

MORE INFORMATION

- If you have more questions please contact an attorney or your local Small Claims Court Advisor.
- You may also report unlicensed activity to the CSLB: www.cslb.ca.gov/forms/hotleadref.pdf

1) MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co. (2005) 36 Cal.4th 412.
2) Business and Professions Code sections 7000-7173.

Produced by the Small Claims Court Advisory Program of the Legal Aid Society of Orange County
Website: www.legal-aid.com

For more information or assistance you can contact:
Legal Aid Society of Orange County
2101 N. Tustin Ave.
Santa Ana, CA 92705
Phone: (714) 571-5277
www.ocsmallclaims.com

California Code of Civil Procedure:
www.leginfo.ca.gov/calaw.html

Revised 4/10

Residential Rental Security Deposits

WHAT IS A SECURITY DEPOSIT?

Payments collected in advance by the landlord from the tenant to protect them against non-payment of rent or property damage, (whether it is *last month's rent*, *security*, *cleaning*, etc.), is considered to be a form of security deposit subject to these regulations. (Civil Code 1950.5(b)).

HOW MUCH IS TOO MUCH?

- *Unfurnished rental unit* - The security deposit cannot be more than two month's rent.
- *Furnished rental unit* - The security deposit cannot be more than three month's rent.

(Civil Code 1950.5(c))

HOW DEPOSIT SHOULD BE HANDLED

After moving out, a tenant must receive from the landlord within three weeks either a return of the entire rental deposit or an itemized statement of deductions and the balance of the deposit.

- If the tenant believes the deductions are improper, then he should write to the landlord and keep a copy of the letter. This step is meant to show that the tenant attempted to settle the dispute with the landlord before going to court (Code of Civil Procedure 116.320 (b)(3))
- If the disagreement is not settled, the tenant can file a suit (SC-100) in small claims court for the deposit plus statutory damages of up to twice the amount of the security, in addition to actual damages. These damages may be rewarded if the judge believes that the landlord acted in bad faith (Civil Code 1950.5(l)).

WHO SHOULD BE NAMED ON THE CLAIM?

If an individual or business owns the unit, name that individual or business in your claim. You may also consider naming the management company as an additional defendant if you think you have a claim against it as well.

-You can check the County Recorder's Office to determine who owns the property

-For larger apartment complexes, contact City Hall and see who holds the business license

WHERE TO SERVE YOUR CLAIM

In the event an owner, successor owner, manager, or agent fails to comply with the requirements of this chapter, service of process by a tenant with respect to a dispute arising out of the tenancy may be made by registered or certified mail sent to the address at which rent is paid, in which case the provisions of Section 1013 of the Code of Civil Procedure shall apply. (Civil Code 1962.7)

LANDLORD'S RESPONSIBILITIES

On Rental Agreement:

Under CC.1962(a), any owner of a dwelling structure specified in Section 1961 or a party signing a rental agreement or lease on behalf of the owner shall do all of the following:
(1) Disclose therein the name, telephone number, and usual street address at which personal service may be effected of each person who is

(A) Authorized to manage the premises.

(B) An owner of the premises or a person who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

(2) Disclose therein the name, telephone number, and address of the person or entity to whom rent payments shall be made.
(3) Disclose therein the form or forms in which rent payments are to be made.
(4) Provide a copy of the rental agreement or lease to the tenant within 15 days of its execution by the tenant. Once each calendar year thereafter, upon request by the tenant, the owner or owner's agent shall provide an additional copy to the tenant within 15 days. If the owner or owner's agent does not possess the rental agreement or lease or a copy of it, the owner or owner's agent shall instead furnish the tenant with a written statement stating that fact and containing the information required by paragraphs (1), (2), (3), of subdivision (a).

Withholding the Security Deposit:
The landlord must prove the amounts deducted from the security deposit were necessary and reasonable. He must also take the following steps for the withholding to be considered proper:

1. Within three weeks of moving out and turning in the keys, the landlord must send a full refund of the security deposit or an itemized statement that lists reasons and amounts of any deductions from the deposit, with a refund of any amounts not deducted.
2. The landlord may withhold from the security deposit only those amounts that are reasonably necessary including: unpaid rent, repair of damages other than normal wear and tear, and for cleaning the rental unit (CC 1950.5(b)).

   NOTE: The tenant must have the chance to fix the problems to get the deposit back. A landlord cannot require, in advance or routinely, that all tenants pay expenses such as professional cleaning, painting, or replacement of carpets or drapes. Such deductions can be allowed if they can be proven by the condition of the rental unit when the tenant moved in, and the amount of care taken during the tenancy.

   - For further information, you may contact the Fair Housing Council of Orange County at (714) 569-0823.
3. The landlord must provide a copy of the bill, invoice or receipt if a deduction is made (CC 1950.5 (g)(2)(C)).

*Note: *All security deposits must be refundable*.

On Rent and Damages:
Under (CC.1942) (a) If within a reasonable time after notice, written or oral, was given to the landlord or his agent of damages rendering the premises un-tenantable, and they neglect to fix the damages:

- The tenant may do the repairs himself if the cost of such repairs does not require the expenditure of more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due
  *NOTE: For the purpose of this section, if a tenant acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a rebuttable presumption affecting the burden of producing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice
- The tenant may vacate the premises and deduct the expenses of such repairs from the rent when due
- The tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. (This remedy shall not be available to the tenant more than twice in any 12-month period.)

For more information or assistance you can contact

Legal Aid Society of Orange County
2101 N. Tustin Ave.
Santa Ana, CA 92705
Phone (714) 571-5204
www. ocsmallclaims.com

California Code of Civil Procedure:
www.leginfo.ca.gov/calaw.html

Revised 04/10

Towing Company – How to Sue a Towing Company

My Car Was Towed, What Can I Do?

File a small claims case. Consider suing the tow company, the owner of the property where the vehicle was parked, and the property management all at the same time.

- Complete the "Plaintiff's Claim and Order to go to Small Claims Court." (Form SC 100).
- For help filling out the form, go to:

Legal Resolutions Center of the Legal Aid Society of Orange County (www.legalresolutions.com)

Who Can I Sue, For What, and For How Much?

You may sue the **owner or representative** of the parking lot from which your car was towed for:

- Failure to have the proper sign posted.
    - The owner must display in plain view at all entrances to the property a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency. Vehicle Code 22658 Section (a)(1)
    - The owner of the lot is liable for up to double the towing or storage charges if the proper sign is not posted. Vehicle Code 22658 Section (e)(1)
- Failure to state grounds for towing.
    - If the owner does not tell you the reason for having your car towed, he/she may be liable for up to double the towing or storage charges. Vehicle Code 22658 Section (f), Section (e)(1)(a)

You may sue the **towing company** that impounded your car for:

- Excessive Charges.
    - If you are charged a towing, service, or storage charge at an excessive rate, the owner of the towing company may be liable for up to four times the towing AND storage charges you received. Vehicle Code 22658 Section (j)
    - To find out whether the tow company has charged you an excessive fee, contact the police or sheriff in the city where the vehicle was towed.
- Removal without lot or land owner present AND current written authorization by the lot or land owner
    - The person who called the towing company to have your car removed must be present at the time of removal. Vehicle Code 22658 Section (l)(1)(A)
    - Written authorization must be provided at the time the car is removed. Blanket authorizations are not permissible unless the vehicle is blocking an entrance or exit or marked fire lane. Vehicle Code 22658 Section (l)(1)(A), Section (l)(1)(E)(i)

    - The towing company will be liable for up to four times the towing AND storage charges if the above requirements are not met. Vehicle Code 22658 Section (l)(5)
- Failure to accept Master or Visa Card
    - The towing company is required by law to accept valid credit cards as payment for towing and storage charges. Vehicle Code 22658 Section (k)(1)
    - If the company refuses to accept a valid credit card payment, it may be liable for up to four times the towing AND storage charges, with a maximum of $500. Vehicle Code 22658 Section (k)(4)

Towee Checklist – What Do I Need to Do?

- Take pictures of the sign(s) notifying drivers that their car may be subject to towing. Whether or not a sign is present, take pictures of the entrances and location of where the vehicle was parked.
- Obtain copies of the towing charges and storage charges you were forced to pay.
- Call your local city/county law enforcement and ask how much a towing company will charge to tow or store your vehicle upon their request. If the amount you paid is over this amount, the towing company may be liable for four times the amount of towing and storage charges you received.
- When you pick up your car, call the police or bring a witness with you.
- Ask the towing company for the name of the owner of the parking lot or the person who authorized the tow.
    - Ask if that person was there in person when your car was towed.
- Ask to see the authorization document this person signed and gave to the tow truck driver at the time your car was towed.
    - Ask for a copy of this document. A refusal will almost always mean they don't have it!
- Politely ask the owner or representative of the lot where your car was towed from if they were present at the time your car was towed away. You can bet they were home in bed and not present when your car was towed.

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Revised 4/10

Venue: Challenging Venue in Small Claims Court (CCP 116.370)

What is Venue?

Venue is the place of a cause of action and the jurisdiction where a case is heard. A case must be filed in the correct court location and venue. The appropriate venue must be one of the following:

- Where the Defendant lives or Defendant's business is located.
- Where the Plaintiff's property was damaged.
- Where the Plaintiff was injured.
- Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant ***or*** where the Defendant lived or did business when the Defendant made the contract[1]

How Do I Challenge Venue?

If you feel that the plaintiff has filed in the wrong court, or venue, you may be able to challenge that venue.

- Challenge venue by writing a letter to the court. Address the letter to the judge (Dear Judge, name not needed), explaining why the plaintiff's choice of venue was incorrect and send a copy of your letter to the other party. Make sure you include a notation in the letter that you mailed it to the other party.

You may also:

- Challenge venue by objecting to the venue at the hearing. If the judge decides that the plaintiff's choice of venue was proper, then the hearing will proceed. If the judge decides that the plaintiff's choice of venue was improper, the case may be transferred to the proper venue or dismissed without prejudice. If the case is dismissed, the plaintiff may then sue you in the proper venue.

NOTE: If you feel that it would be more convenient to have the hearing in the county selected by the plaintiff (because, for example, you live in a neighborhood county only five miles from the courthouse), you could appear at the hearing and waive (give up) your right to challenge venue.

Must I Appear at the Hearing?

If you have challenged venue by submitting a letter, you do not need to attend the hearing. If the judge believes the venue is proper and you are not present at the hearing, the judge cannot render a decision on the plaintiff's claim and must postpone

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[1] Other rarely used venue provisions

- Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if a claim is about an offer or contract for personal, family, or household goods, services or loans. (CCP § 395(b))
- Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (CC § 1812.10)
- Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (CC § 2984.4)

the hearing for 15 days. If the judge believes the venue is improper, then the case will either be transferred or dismissed without prejudice.

Here is the exact language in the statute:

> CCP 116.370 (c)(2) If the court determines that the action was commenced in the proper venue and court location, the court may hear the case if all parties are present. If the defendant challenged venue or court location and all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court's decision and the new hearing date, time, and place.

Even if you do not challenge venue, it is the judge's obligation to find that the location of the hearing is proper. Also, even if the location of the court selected by the plaintiff is correct the judge may, on rare occasion, transfer the case to another court that is more convenient for the parties and their witnesses (for example, you have many witnesses who must travel to the court from a distant location), the judge may order that the case be transferred to a court near that location. In evaluating transfer requests, the courts give greater weight to the convenience of those disputants who are individuals rather than those that are legal entities such as corporations, partnerships, and public entities.

SAMPLE LETTER:

John Smith (Your name and address)
123 Sunnyside Ave.
San Francisco, CA 90000
(510) 555-1234

(DATE)

Judge of the Superior Court
County of Orange
700 Civic Center Dr.
Santa Ana, CA 92701

Re: Improper Venue

Dear Judge,

I am the defendant in case number _____ and I wish to challenge the venue chosen by the plaintiff. The current venue is improper because_____
(for example: My business is located in San Francisco. The plaintiff called me in San Francisco and ordered three boxes of widgets. Those widgets were shipped from my

facility in San Francisco. The defendant sent payment to me in San Francisco yet, the defendant is suing me in Orange County). I believe the proper venue for this case is _____ (San Francisco because everything happened in San Francisco). Thank you for your consideration.

I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,

_____
John Smith

JS/

Copy: Joe Plaintiff, 123 Melrose Pl., Santa Ana, CA 92701
(You need to show to the Judge that you sent a copy of this letter to the other party.)

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Revised 4/10