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Assembly Bill 1793 Broadens Substantial Compliance Exception to Contractor's Licensing Law

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Contractors, developers, and sureties in California should take note of a new law that changes the requirements for a contractor to claim substantial compliance where its contractor's license has lapsed. Assembly Bill (AB) 1793—signed into law on August 30, 2016—changes the application of the doctrine of substantial compliance to Business and Professions Code Section 7031. Section 7031 bars an unlicensed contractor from suing for unpaid fees and/or requires the unlicensed contractor to return all monies paid to it, regardless of the quality or value of the work performed. Despite this strict licensing requirement, a contractor who can show substantial compliance with the licensing laws can avoid the harsh results of Section 7031. AB 1793 broadens that exception. Prior to AB 1793's enactment, a contractor whose license lapsed could avoid the application of Section 7031 and recover unpaid fees if the contractor could show: (1) the contractor was licensed prior to the performance of the contract; (2) it acted reasonably and in good faith to maintain the license; (3) the contractor did not know or reasonably should not have known it was not licensed when it performed the contract work; and (4) the contractor acted promptly and in good faith to reinstate the license once it learned the license had lapsed. AB 1793 eliminates requirement (3) – the lack of knowledge requirement entirely – and modifies requirement (4) to mandate the contractor act promptly and in good faith to remedy the failure to comply with the licensing requirements once they learn of the failure.

AB 1793 therefore softens rather than significantly changes the requirements for substantial compliance under Section 7031. As before, a contractor must have been previously licensed, acted in good faith to maintain its license, and promptly remedied the lapse in the license. AB 1793 does, however, signal to the courts that the California Legislature does not intend for Section 7031 to penalize a contractor for an unintentional lapse of its license. To that end, the legislative history of AB 1793 makes clear that substantial compliance is to be interpreted broadly with an eye to avoiding harsh disgorgement penalties for contractors and windfalls for owners and general contractors.

Despite the softening of the substantial compliance doctrine provided by AB 1793, the best practice is for contractors to make every effort to maintain the appropriate license for the work they perform and routinely check on the [Contractors State License Board website](#), that

their license is in good standing. If there is any indication of any problem with the license or any communication from the Board , the contractor should immediately remedy the issue.

If you have questions on how this new law will affect you, or any other legal issues that need attention, please contact the Rogers Joseph O'Donnell attorney with whom you regularly work or any member of our [Construction Law Practice Group](#).

The content of this article is intended to provide a general guide to the subject matter and is not a substitute for legal advice.