

I.

INTRODUCTION

This chapter merely explains how this book is written and what it covers. However, you should understand that some of the information given in the book may reflect older cases that may no longer be law since this book went to print.

This book is about the business of contracting in California. It does not tell you how to lay tile or follow plans and specifications. The book discusses the rules and regulations governing contractors and how the industry is regulated and controlled. This book also covers how contractors can protect themselves and explains the Contractors' License Law along with the disciplinary process utilized by the Contractors' State License Board to regulate the construction industry. Additionally, the book talks about how contractors can protect themselves financially by utilizing Mechanic's Liens, Stop Notices, and Bond Rights as well as California laws requiring prompt payment of bills. All references in this book, unless otherwise noted, are solely to California law.

This book is a compilation from a number of other sources. We had previously published a book called California Contractors' Law. That entire book is incorporated herein. Previously, the author had included written portions of the Contractors' License Law for attorneys to utilize as a guide. That is also included in this book.

We tried to include most everything that a contractor needs to know with respect to the business of construction other than taxes, insurance and the craft of the construction. Those subjects are too voluminous to be discussed here. The chapter titled "What's New" discusses some of the more timely matters that concern contractors.

Sam Abdulaziz has been representing contractors for many years and has been following the Contractors' State License Board and its evolution since 1972. Sam's knowledge, along with Abdulaziz, Grossbart & Rudman's knowledge of how the Contractors' Board operates, has been part of the reason this book is possible.

Construction attorneys are also used to doing things differently than other attorneys. The construction process is very different than any other area of law. As an example, in some ways it is sometimes as complex to do a residential remodel, as it is to build a high-rise. Of course, a high-rise requires greater management because there are so many more people working on the project. However, from a technical or a customer relations standpoint, one may be as tough as the other.

By the same token, construction dispute resolution and litigation is also a very different process. **Construction attorneys are used to working with very short deadlines.** As an example, the time to file suit on a personal injury claim was one year from the date of the injury (now two years from the date of the injury). The time to file suit on the breach of a written contract is four years from the date of breach. The time to file suit to foreclose on a Mechanic's Lien is only 90 days from the date the lien is recorded; in some instances less. You must usually serve a Preliminary 20-Day Notice in order to have the right to record a Mechanic's Lien.

Further, the people involved in the construction process are very different than the typical corporate executive. Many times the contractors are small family run companies or companies with very few employees.

Because of all of this, choosing an attorney to handle your construction dispute is very important. You must be sure that the attorney is one who has handled construction disputes in the past. One who is used to the quick turnaround in filing documents and lawsuits and defending them. Probably the best way to find a construction attorney is to talk to other contractors who have been happy with the firm who represented them. You may also turn to your construction trade association for a referral.

With respect to construction contracts, many attorneys write very good and lengthy contracts. However, if they are not familiar with the Contractors' License Law, the Mechanic's Lien procedures, and construction requirements, they may not do a good job on a construction contract. Contractors are required by law to include many items in their contract that a non-construction related attorney would not know of. These things are not taught in law school. Further, the construction process itself requires certain language to be placed in a specific manner in a contract that another attorney may not be aware of.

Make sure that you hire a knowledgeable construction attorney. You need a construction attorney to make sure your contract forms are correct and meet all statutory requirements, to advise you as you work, and to assist and advise you in the event of a dispute.

II.

WHAT'S NEW?

This chapter is intended to discuss some of the more timely matters that concern contractors. It is basically a brief recap of changes that have occurred over the previous year, as well as changes affecting the upcoming year.

A. Important Changes to the Law Effective January 1, 2012

Although these items are discussed later in this chapter in the section titled "Legislation" we felt it important to point out a few key changes to the laws because of new legislation.

1. Notice of Mechanics Lien

The Mechanic's Lien has a required notice per *Civil Code* section 3084 called "Notice of Mechanics Lien" that went into effect last year. Effective January 1, 2012, the new language on the notice as required by AB 456 is to read in at least 10 point boldface type as follows:

NOTICE OF MECHANICS LIEN

ATTENTION!

Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

The party identified in the mechanics lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanics lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanics lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

In addition to the above language, there have been slight changes on the proof of service affidavit with respect to whom is served. Currently, it is necessary to indicate "the person" that is being served. Effective January 1, 2012, the affidavit should indicate "the owner or reputed owner" that is being served. These are minimal changes but important to comply with.

2. Information about the Contractors' State License Board (CSLB)

SB 944 adds one word to the Notice required by *Business and Professions Code* section 7030(b), "Information about the Contractors' State License Board (CSLB)." The use of the word "Internet" is added in the contact information for the CSLB. The full notice is as follows:

Information about the Contractors' State License Board (CSLB):

CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

Visit CSLB's Internet Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826.

3. Progress Payments

SB 293 changes the time within which a contractor has to pay a subcontractor (or a subcontractor pay a subcontractor) progress payments from ten (10) days to seven (7) days after receipt of each progress payment unless otherwise agreed to in writing on all private works and on certain public works.

4. Retention

SB 293 also limits retention between the public entity and an original contractor to five percent (5%) of the contract price, except in instances where the public entity has specifically made a finding that was noticed prior to putting the project out for bid that the project is substantially complex and therefore requires a higher retention amount than the five percent (5%).

As between the prime contractor and its subcontractors, the new law limits that right of the contractor to withhold more retention from its subcontractor than is withheld by the owner of the project. This is not true if prior to the bid time, the contractor has notified potential subcontractors that bonds are required from the subcontractors and the subcontractor is unable or refuses to furnish the contractor with a performance and payment bond issued by an admitted surety. In that instance, the limitation on retention does not apply.

5. Independent Contractor

SB 459 amends the *Labor Code* with respect to independent contractors. The penalties and potential disciplinary action against a contractor for purposefully misclassifying an employee as an independent contractor can now have fines from \$5,000 to \$15,000 per violation for a first offense.

An employer who has engaged in a pattern of these violations can be subject to penalties between \$10,000 and \$25,000 per each violation, in addition to other penalties or fines permitted by law.

The CSLB is also required to initiate a disciplinary action against the contractor, who is also disbarred from bidding projects based on violations of the Labor Law.

Contractors need to make sure that their independent contractors really can be classified as independent contractors.

B. Important Changes to the Law Effective July 1, 2012

SB 293 – Bond Claim

As you may or may not be aware, if a Preliminary Notice is required to be given on either public or private works by a subcontractor or material supplier but they did not give that notice, they still have a second chance to enforce their claim. This second chance allows the subcontractor or material supplier to enforce their claim by giving written notice to the surety and the bond principal within 15 days after recordation of a notice of completion. If there has been no notice of completion, the time within which the written notice can be given is extended to 75 days after completion of the work of improvement.

SB 293 virtually eliminates this second chance bond claim by listing circumstances that shall not apply. The following circumstances go into effect July 1, 2012:

- a. All progress payments, except for those disputed in good faith, have been made to a subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services.
- b. The subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services has been terminated from the project pursuant to the contract, and all progress payments, except those disputed in good faith, have been made as of the termination date.

To put it another way, if a supplier or sub-subcontractor provided material to someone who was paid by the prime contractor, then the bond claim cannot be made unless the Preliminary Notice or Preliminary Bond Notice was given (which requires the notice to be given within 20 days of providing the labor and materials for which the claim is made).

Mechanic's Lien, Stop Notice and Payment Bond Changes

As we have been reporting in our books for the last few years, the California Law Revision Commission and the Legislature have been working to revamp the entire Mechanic's Lien, Stop Notice and Payment Bond scheme as set forth in California statutes. In the 2010 Legislative session, the Legislature enacted, and the Governor signed into law, SB 189. Then SB 190 was enacted in 2011, which "cleaned-up" SB 189. The statutes renumber and recast every statute pertaining to Mechanic's Liens, Stop Notices, and Payment Bonds, among other statutes relating to recovery by contractors. There are some minimal changes besides the numbering that will also be discussed in this chapter. However, none of these changes become effective until July 1, 2012.

Please remember that although this law is not in effect until July 1, 2012, there is no grace period on compliance.

To find the full text of this legislation, please visit our website at www.agrlaw.com and click on "Have You Heard?" You will find SB 189, SB 190, and other valuable tools.

Statutory Reference Changes

We have tried our best to make sure that no matter when you read this book this year, you will get the information that is currently applicable. You will note that wherever there are references in this book to specific statutes that pertain to the enforcement of Mechanic's Liens, Stop Notices and Payment Bonds it is followed by another statutory reference with the "new" code section as well as a reference to SB 189, which becomes effective July 1, 2012.

To help you with the *Civil Code* section changes, please see Appendix H for a chart of the *Civil Code* sections as they were numbered prior to July 1, 2012, as well as after July 1, 2012. For example, the information contained in *Civil Code* section 3081.1 will be contained in *Civil Code* sections 8014 and 8300 after July 1, 2012.

Changes

Although SB 189 was said to make no substantive changes in the law, there are some changes that deal with more than the renumbering of the *Civil Code* section. These changes are not substantive as far as how Mechanic's Lien, Stop Notice and Payment Bonds are handled but are very important to be carried out starting July 1, 2012, on all of the forms and processes that they affect. Remember, there is no grace period on compliance. Some of the changes brought about by SB 189 and SB 190 are as follows:

1. Definitions

SB 189 revises some common terms and form names in the construction industry.

a. Material supplier

Prior to July 1, 2012, the person who provided material or supplies to be used or consumed on a work of improvement was known as a "materialman." Starting July 1, 2012, the correct term will be "material supplier."

b. Design professional

Prior to July 1, 2012, a licensed landscape architect was not considered a design professional. Starting July 1, 2012, a licensed landscape architect is considered a design professional.

c. Direct contractor

Prior to July 1, 2012, the definition of an "original contractor" was any contractor who has a direct contractual relationship with the owner. Starting July 1, 2012, the "original contractor" will be known as a "direct contractor" and the definition is broadened to indicate that this direct contractor provides for all or part of a work of improvement.

Please note that the common industry reference to refer to the contractor that has a direct contractual relationship with the owner is a "prime contractor" and it is doubtful that the industry will quickly change the terminology that is used.

Throughout this book, we refer to a prime contractor, original contractor or direct contractor. In each instance we are referring to the contractor with the direct contractual relationship with the owner.

d. Direct contract

Prior to July 1, 2012, an agreement between an owner and any original contractor providing for the work of improvement, or any part thereof, was defined to be a “contract.” Starting July 1, 2012, the term is changed to “direct contract.”

e. Contract

As explained above, the definition of “contract” prior to July 1, 2012 changes, and the definition of “contract” starting July 1, 2012, will mean an agreement that provides for all or part of a work of improvement; but does not get into specifics regarding the contractor.

f. Preliminary Notice

Prior to July 1, 2012, the written notice given by a claimant within twenty (20) days of first furnishing labor or materials, which is meant to notify the owner(s), lender(s) or other contractor(s) of the right to enforce a Mechanic’s Lien or Stop Notice, was previously referred to as a “Preliminary 20-Day Notice.” Starting July 1, 2012, it will simply be referred to as a “Preliminary Notice.”

g. Stop Payment Notice

Prior to July 1, 2012, the lien on funds to secure payment for a work of improvement is called a “Stop Notice.” Starting July 1, 2012, this term has been changed to a “Stop Payment Notice.” This was done to clear up any confusion between a Stop Payment Notice and a Stop Work Notice.

2. Preliminary Notice

SB 189 makes some changes to the Preliminary Notice as follows:

a. Notice to Property Owner

The Notice To Property Owner on the private works Preliminary Notice has been re-written and is effective July 1, 2012. The new notice will be in boldface type as follows:

NOTICE TO PROPERTY OWNER

EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

b. Direct Contractor

Starting July 1, 2012, the term direct contractor should be used to describe the original or prime contractor on the Preliminary Notice.

c. Civil Code sections

Starting July 1, 2012, references to Civil Code section 3097 on the Preliminary Notice for private works should reference the new Civil Code sections 8034, 8102, 8116 and 8200 et seq.

Starting July 1, 2012, references to Civil Code section 3098 on the Preliminary Notice for public works should reference the new Civil Code sections 8034 and 9300 et seq.

d. Attachment "A" to California Preliminary Notice

Prior to July 1, 2012, Civil Code section 3097 requires a contractor who employs a laborer, but fails to pay that laborer, to include on the Preliminary Notice the identity and address of any laborer and any express trust fund to whom employer payments are due. Our office has included this as an optional attachment to the private works Preliminary Notice. Starting July 1, 2012, reference to Civil Code section 3097 will need to be changed to reference Civil Code section 8202(b) on this Attachment "A" to the Preliminary Notice for private works.

3. Home Improvement Contract Statement Regarding Release

Home Improvement Contracts require a statement that roughly states that upon satisfactory payment being made, a full and unconditional release from a claim is to be given upon payment. Note that this language is not required to be word for word, but if it refers to the *Civil Code* section, prior to July 1, 2012, it should refer to *Civil Code* section 3114 and starting July 1, 2012, it should refer to *Civil Code* section 8410.

4. Lien Releases and Waiver of Lien Rights

SB 189 changes the *Civil Code* section that discusses waiver and lien releases from *Civil Code* section 3262 (which is still accurate before July 1, 2012) to *Civil Code* sections 8122-8138 (effective July 1, 2012).

The waiver and lien releases have also been re-written, including slight changes to the names of the forms as well, in SB 189 which is effective July 1, 2012. Please note that the Legislature does not require the waiver and releases to be exactly word for word, but we recommend that they be. The statute indicates that “the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form.” We believe it is better to be safe rather than risk the waivers and releases being unenforceable and use the exact same language provided in the statute. We provide below the language **exactly** as it appears in the statute:

a. Conditional Waiver and Release on Progress Payment

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF **PAYMENT**. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$ _____

(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

b. Unconditional Waiver and Release on Progress Payment

**UNCONDITIONAL WAIVER AND RELEASE
ON PROGRESS PAYMENT**

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ _____

Exceptions

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

c. Conditional Waiver and Release on Final Payment

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

d. Unconditional Waiver and Release on Final Payment

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect the following:

Disputed claims for extras in the amount of: \$_____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

5. Notice of Completion

- a. Prior to July 1, 2012, the “Notice of Completion” can be recorded by an owner on or within 10 days after the date of completion of a work of improvement. Effective July 1, 2012, an owner will have 15 days to record the “Notice of Completion.”
- b. If the Notice of Completion contains an erroneous statement of the date of completion prior to July 1, 2012, it does not affect the effectiveness of the Notice of Completion if the true date of completion is 10 days or less before the date of recordation of the Notice of Completion. Effective July 1, 2012, this will be changed to the true date of completion being 15 days or less before the date of recordation of the notice.
- c. Prior to July 1, 2012, a public entity may record a Notice of Completion on or within 10 days after the date of completion of a work of improvement. Effective July 1, 2012, the public entity will have 15 days after the date of completion within which to record the Notice of Completion.

6. Completion

Prior to July 1, 2012, *Civil Code* section 3086 includes that acceptance by the owner for a private work of improvement would constitute completion. Beginning July 1, 2012, *Civil Code* section 8180 no longer recognizes acceptance by the owner as an event that constitutes completion. However, if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance. Further, *Civil Code* section 9200 indicates that completion on works of improvement in the public works realm still occurs upon acceptance of the work of improvement by the public entity.

7. Notice of Extension of Credit

Prior to July 1, 2012, the Notice of Extension of Credit refers to *Civil Code* section 3144. Effective July 1, 2012, the Notice of Extension of Credit refers to *Civil Code* section 8460.

Please note that the statute that describes the Notice of Extension of Credit was not clear as to who must execute the Notice of Extension of Credit. At least one prominent construction commentator was of the opinion that a contractor could unilaterally extend credit by recording the notice. However, effective July 1, 2012, when the revised *Civil Code*, enacted by SB 189 goes into effect, *Civil Code* section 8460 provides explicitly that both the contractor and owner must sign the Notice of Extension of Credit. This makes perfect sense – how can one extend credit without agreeing to it? The Notice of Extension of Credit must specify exactly how much additional time to file suit to foreclose is being granted, and all of the signatures of the owner and contractor must be notarized before recording the document.

While currently the Notice of Extension of Credit must be recorded prior to the expiration of the Mechanic’s Lien, the new statute also gives a little bit more leeway. Once *Civil Code* section 8460 is effective, a Notice of Extension of Credit must either be filed within 90 days of the recording of the original Mechanic’s Lien (when that lien would expire), or if recorded later than that time, it must be recorded before any purchaser or encumbrancer for value acquires rights (i.e., the property is transferred or sold, or a loan is recorded against the property).

8. Mechanics Lien Warning

SB 189 originally made some grammatical changes and added a line of text to the Mechanics Lien Warning that is required on Home Improvement Contracts as well as on New Residential contracts. Once SB 190 passed, the additional line of text on the Mechanics Lien Warning required on Home Improvement Contracts was deleted but it remains for the New Residential contracts. If you do both home improvement and new residential, please be cautious which Mechanics Lien Warning you use to ensure that you are in compliance. The new notices required to be used July 1, 2012, taken directly from the statutes, are as follows:

a. Home Improvement Contract Mechanics Lien Warning:

MECHANICS LIEN WARNING:

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics lien on your property. A mechanics lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a 'Preliminary Notice.' This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Internet Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.

- b. New Residential Contract Mechanics Lien Warning:

MECHANICS LIEN WARNING:

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics lien on your property. A mechanics lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a 'Preliminary Notice.' This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or other persons you contract with directly or from laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.

9. Home Improvement Contract Statement Regarding Down Payments

Prior to July 1, 2012, the heading for a "Down Payment" is two words and so is the text in the 12-point boldface all capitalized language that follows the heading. Effective July 1, 2012, SB 189 makes each instance of "Downpayment" one word.

10. Cancellation Notices

Both the Three-Day Right to Cancel and the Seven-Day Right to Cancel that are to be a part of the Home Improvement Contract has been slightly altered. Following are the required notices in their entirety which are effective July 1, 2012:

- a. Three-Day Right to Cancel – Please note that this notice is at least 12 point boldface type, in immediate proximity to the space reserved for the owner's signature, and is to be acknowledged by the owner by signing and dating the form.

Three-Day Right to Cancel

You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received them, goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.

b. Seven-Day Right to Cancel – Please note that this notice is at least 12 point boldface type, in immediate proximity to the space reserved for the owner's signature, and is to be acknowledged by the owner by signing and dating the form.

Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received them, goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.

Please note that both of these notices may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: "The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a 'Notice of the Three-Day Right to Cancel.'" However, this is not new.

11. Progress Payments from Public Utilities

Prior to July 1, 2012, the direct contractor is required to pay the subcontractor the amount allowed the direct contractor on account of the work performed by the subcontractor to the extent of the subcontractor's interest in the work within 15 days of a progress payment from the public utility. Because of SB 189, beginning July 1, 2012, the direct contractor will now have 21 days within which to pay the subcontractor on a project performed for a public utility.

12. Notice of Time to Enforce Payment of Claim

Prior to July 1, 2012, a public entity shall give notice to a claimant that has given a stop payment notice of the time within which an action to enforce payment of the claim stated in the Stop Payment Notice must be commenced if the claimant paid the public entity two dollars (\$2) at the time of giving the Stop Payment Notice. Beginning July 1, 2012, this monetary figure that must be paid to the public entity will become ten dollars (\$10).

C. Limited Liability Companies Can Now Hold Contractor's License

With the passage of SB 392, the CSLB became authorized to issue a contractor's license to a limited liability company. This was to be accomplished no later than January 1, 2012, giving the CSLB time to prepare the applications as well as necessary programming.

LLC licensees will be qualified by responsible managing officers, responsible managing members, responsible managing managers, or responsible managing employees. All officers, members, managers, or directors of the LLC have to be listed as personnel of record on the applications.

LLC's are also required to have a surety bond of \$100,000 in addition to the \$12,500 contractor bond for the benefit of any employee or worker damaged by the LLC's failure to pay wages, interest on wages, or fringe benefits, as well as other contributions. They also have to carry an aggregate limit of \$1 million liability insurance policy when five or fewer persons are listed as personnel, with an additional \$100,000 required for each additional member of their personnel, not to exceed \$5 million.

LLC's also need specific general liability insurance on its Home Improvement and Service & Repair contracts.

In addition the Secretary of State has their own set of requirements for the business names of an LLC business. For example, the name must end with "Limited Liability Company" or some abbreviation of these words that the Secretary of State has agreed with.

D. Referral Fee Payment Restrictions

As reported last year, the issue of whether inducements or referral fees between contractors are acceptable has been a subject of some debate. The CSLB had decided that Business and Professions Code section 7157(d) indicated that these inducements or referral fees were **not** acceptable. The CSLB was even planning on taking disciplinary action against violators as well as working on a proposal to clear up the confusion. Unfortunately, it is a very complicated topic and the legislation was put on hold soon after the 2011 New Year but the CSLB did go forward with stings to target violators.

During 2011, the CSLB has discovered that some members of the plumbing industry have stopped calling it referral fees and instead call it the "Plumber Referral Program." It also became apparent that the practice of paying referral fees is actually prevalent in other construction trades as well. Because it is so widespread, the concern is that they will not be able to actually have effective enforcement.

There is now a new legislative concept being discussed which will clean up the language of Business and Professions Code section 7157 by actually allowing the payment of referral fees up to a maximum dollar amount of \$500. Other ideas are that it would be mandatory that the payment of this referral fee be disclosed on the Home Improvement Contract so that consumers are aware that the price they are paying includes an amount up to \$500 being paid to the other contractor(s).

We will keep you posted on how this proposed legislation proceeds. In the meantime, remember that the CSLB says that referral fees are illegal and they are currently disciplining violators.

E. The Contractors' State License Board

A member of Abdulaziz, Grossbart & Rudman typically goes to all Contractors' State License Board meetings. Sam Abdulaziz has been following the meetings for more years than he will admit. Indeed, many of the Contractors' State License Board members seek his aid and advice, as well as the aid and advice of other members of the firm.

Under the leadership of Registrar Steve Sands, the Contractor's Board has instituted a number of new and more efficient ways to do business. Unfortunately, the CSLB has had to reduce its staff significantly as a result of the present financial conditions of the country, particularly California, which makes it harder to see how efficient the CSLB is running. In addition to the budget crunch, staff vacancies - including retirements - new laws which require more man hours and the Governor's Executive Order, which prevents new hires, the CSLB may soon be unable to keep up with the workload.

The Board operates through committees and meets regularly. Currently, all 15 board member positions are filled.

License Applications

The number of license applications that the CSLB has received per month in 2011 is significantly lower than they have been in over a decade. Not as many contractors are applying for a license. The industry is seeing more and more unlicensed contractors because of the economy, and the low number of applications is a direct result of the economy as well.

Fee Increases

Effective July 1, 2011, the application and licensure fees were increased to their statutory limit. For example, the Application for Original Contractor License went up \$50 to \$300; the Home Improvement Salesperson Registration Fee went up \$25 to \$75. Many other fees also increased, some twenty percent (20%) and some fifty percent (50%). For a full list of the CSLB fees as they are now, please visit the CSLB website at <http://www.cslb.ca.gov/GeneralInformation/Library/fees.asp>.

Get the News

Don't forget that you should sign up by email on the CSLB's website for Industry Bulletins, Newsletters, Press Releases and Consumer Alerts, Public Meeting Notices and Agendas at <https://www2.cslb.ca.gov/OnlineServices/MailList/MailSignup.aspx>. The information that is sent out is invaluable to those in the industry. Although the CSLB is part of the Consumer Protection Agency, they are responsible for educating contractors as well. So take advantage of that! If you decide you are no longer interested in a particular topic, you can then unsubscribe.

You can also visit the CSLB's Facebook or Twitter pages to stay abreast of what is going on in the industry.

SWIFT

The Statewide Investigative Fraud Team continues to hold sweeps in various counties and continues to partner with EDD, DLSE and DOSH. They have been instrumental in bringing down numerous unlicensed or otherwise illegal contractors over the past year.

Senior Scam Stoppers

The Senior Scam Stopper Seminars have been offered throughout the state for years. They provide great information about construction-related scams and how seniors can protect themselves when hiring contractors. Because of the Governor's Executive Order B-06-11, travel restrictions have been put in place for non-critical activities. This includes the Senior Scam Stopper Seminars. The CSLB is going to continue to schedule the seminars and then request travel exemptions in order to give the presentations.

Reality TV

As of August 2011, a reality TV show concept involving the CSLB's enforcement efforts has been in the process of being "shopped" around. It looks as if Tru TV is showing an interest in this concept.

Licensure for Solar/Alternative Energy

California has had a sudden increase in the solar/alternative energy arena. There is a joint effort of the California Public Utilities Commission and the California Energy Commission called Go Solar California! Their goal is to encourage Californians to install 3,000 megawatts of solar energy systems on homes and businesses by the end of 2016, making renewable energy an everyday reality. Because of these initiatives, many licensees have become more active in solar energy projects. Technology is changing at a rapid pace and the CSLB's existing classification structure is crossing classification lines. Currently, CSLB laws and regulations restrict the contracting for and performance of solar projects to specific classifications (A, B, C-4, C-10; C-36, C-46 and C-53). The CSLB does not want to be an obstacle to the industry with the fast changing technologies, but their first concern is public protection and the CSLB needs to ensure contractors are qualified to undertake projects involving solar. Part of their 2011-2012 Strategic Plan Objectives include exploring licensure for solar/alternative energy contractors.

Summary

Please note that information about what is going on with the CSLB is quite extensive and this was just meant to be a highlight of some of the more pertinent items. Please visit their website at www.cslb.ca.gov for additional information.

F. Federal Lead-Paint Regulations

The Lead-Based Paint Renovation, Repair and Painting Program (RRP) is a federally regulated program that applies to residential homes, apartments and child-occupied facilities that were built before 1978. If you are going to do any work that will disturb the painted surfaces in these buildings you need to make sure that you comply with the RRP. As of December 31, 2010, EPA inspectors were responding to leads, conducting inspections, and handing out fines from \$5,000 up to \$37,500 per day, per location of violation(s).

The law requires "lead paint safety certification" for anyone who does remodeling or demolition, thereby *disturbing* the paint in pre-1978 homes, apartments, schools or childcare facilities as well as various notice requirements. It is not just painters that this law applies to. Plumbers, carpenters, electricians, even general contractors must have the certification.

To become certified, one individual of the firm must complete an eight-hour initial renovator training course given by an accredited training provider and then the firm must apply (the cost is \$300 and valid for five years) with the EPA to perform renovations or dust sampling at www.epa.gov/getleadsafe or call 1-800-424-LEAD (5323).

G. Contract For Required Upgrades Before You Start The Work

One of our larger home improvement contractors recently informed us that they are having trouble getting their permits approved for final inspection on a project in one room. The home did not have updated carbon monoxide protectors (which are now recently required in many jurisdictions), smoke detectors, and GFI outlets. The other rooms also did not contain these. I know many contracts have provisions which provide that the contractor is not required to perform work required by existing code

violations. It may be a good idea to negotiate up-front the price for you to perform this additional work, so that if you have to perform the work, you do not get into an argument with the homeowner. Obviously, whether you have to install an electric or battery operated detector, or the number of detectors or outlets, vary from home to home, or based upon the requirements of the city. Thus, you might include in your description of the work, a per unit price for each item that could come up in your business, installed. Then you would only need to prove how many were installed, and the owner would be obligated to pay you for that work.

H. Important New Cases Affecting Contractors

In the past year, there have been a few cases affecting license necessity, licensure and proper license classification, as well as contracting out of name style not being the same as being unlicensed. The following cases are worth mentioning because of the decisions made at the Court of Appeal level which can be used as case law in future lawsuits.

License Necessity

There was a case that was heard before the Court of Appeal in the past year where the Court of Appeal specifically referred to the *MW Erectors* case, which basically talks about how a person must be licensed during the entire time it performed the work in order to get paid. However, it also held that a contract with an unlicensed contractor was not automatically void, it just bars suit to collect compensation for unlicensed work.

The case that was decided recently was *Templo Calvario Spanish Assembly of God v. Gardner Construction Corporation, et al.* In this case, the owner of the property was a church. The church, along with the unlicensed contractor in this case, submitted their dispute to binding arbitration. When the trial court found in favor of the church and the church went to confirm the award, the unlicensed contractor argued that the contract should be void since it was unlicensed during the time of the construction; if void, the arbitration award could not be enforced. The trial court, who was following older case law, agreed with the unlicensed contractor. The Court of Appeal reversed this decision as stated above by specifically referring to the *MW Erectors* case.

Licensure and Proper License Classification

Another important decision this year dealt with the proper license classification of a subcontractor. In the case of *Pacific Caisson & Shoring, Inc. v. Bernards Bros., Inc.*, the County had contracted with Bernards Bros. and had specified that the work must be performed by a C-12 contractor. Bernards Bros. had instead entered into a contract with a subcontractor (Pacific Caisson), who held an “A” license.

The main issue for the Court of Appeal was whether someone with an “A” general engineering contractor’s license could subcontract to do the work that is usually performed by a C-12 earthwork and paving contractor’s license. The Court of Appeal held that an “A” license can perform the specific work, and substantially more, and that the C-12 work was fully encompassed within the requirements of an “A” license.

Another decision the Court of Appeal made on this case was that the requirements of the County as to the specific type of license to perform the work was between the County and the general contractor (Bernard Bros.) and did not have a direct bearing on the subcontractor’s right to collect. There were other issues discussed as well, but these were worth mentioning for contractors to take note of.

Contracting Out of Name Style Not Being the Same as Being Unlicensed

We are always telling contractors to make sure that the name they are doing business under is the same as what is listed on the CSLB's website. In *Ball v. Steadfast-BLK*, which was recently decided, this issue was discussed. The Court of Appeal reversed the trial court's decision on a dismissal of claims by a plumbing contractor who did business under a name different than what was registered on the Contractors' Board's website. The defendants had argued that the contractor was unlicensed because he did not register his fictitious name in the form that he used with the Contractor's Board. The Court of Appeal reversed the decision and found that the contractor was licensed, even though there were potential disciplinary violations for operating out of name style, because the individual did hold a license, just used a different name. We still feel you need to be very careful with the name style you use. This case was different than a corporation who never held a license trying to collect, or a corporation trying to use the license of one of its officers to support its claims. Those are separate entities under the law where the sole ownership is just one entity, and the individual license holder was licensed.

I. Taxes

Although we make it a point not to discuss taxes throughout this book, they warrant mentioning again this year. You should contact a tax attorney and/or accountant regarding any tax issues.

Sales and Use Tax

The California Statewide Sales and Use Tax Rate decreased from 8.25% to 7.25% as of July 1, 2011. However, many county, local and district taxes have gone up effective October 1, 2011. To see what the tax rate is for your area, visit the California State Board of Equalization's website at www.boe.ca.gov. Given the current economic condition of the state, would it surprise anyone to find out that California's Statewide rate would increase again?

J. Legislation

The following are some condensed summaries of a few pieces of legislation that may be of interest to those in the construction industry. They are not intended to be all-inclusive. They are just the highlights.

Chaptered Bills

Chaptered bills are bills that have passed through the Legislature as well as the Governor and are now laws. Following are some new laws of interest:

AB 22 (Mendoza) Employment: credit reports

This law details the types of positions for which employers can obtain credit reports of their prospective employees.

AB 228 (Fuentes) State Compensation Insurance Fund: out-of-state risks

The State Compensation Insurance Fund now has authorization so that the fund would be authorized to insure a qualified employer whose principal place of business is in California against the employer's liability for workers' compensation benefits if the fund insured the employees who work within California. The law also prohibits the fund from initiating paid advertising or soliciting sponsorship of advertising campaigns to market or promote to prospective insureds the ability to insure qualified employers under the law of any other state and would make specified provisions inoperative on December 31, 2016.

AB 316 (Carter) Grand theft: copper materials

This law makes anyone who steals copper materials that exceed \$950.00 guilty of grand theft, since metal theft is one of the fastest growing crimes. Grand theft shall be punishable by a fine not exceeding \$2,500, imprisonment in a county jail not exceeding one year, or both the fine and imprisonment, or by imprisonment in a county jail or the state prison not exceeding 16 months, or two or three years and a fine not exceeding \$10,000.

AB 335 (Solorio) Workers' Compensation: notices

The workers' compensation system now requires that the administrative director needs to prescribe reasonable rules and regulations for serving certain notices on an employee. It also requires the administrative director to make fully accessible on the Department's Internet website, and make available at district offices informational material written in plain language that describes the overall workers' compensation claims process. It requires each notice to be written in plain language and to reference the informational material to enable employees to understand the context of the notices as well as modify provisions required to be in, and procedures for, specified notices, and would delete a requirement for notice by certified mail, and would make conforming changes.

AB 361 (Huffman) Benefit corporation

This law authorizes and regulates the formation and governance of a new form of corporate entity known as a benefit corporation. It will also permit an existing corporation to become a benefit corporation by amendment to its articles of incorporation.

This law defines "benefit corporation" to mean a corporation that has been organized under the General Corporation Law and has elected to become subject to the provisions of the bill. A benefit corporation may be formed for the purpose of creating general public benefit, defined as a material positive impact on society and the environment and may identify one or more specific public benefits as an additional purpose of the corporation.

AB 397 (Monning) Workers' compensation insurance: contractors

This law requires, at the time of renewal, an active contractor licensee with an exemption for workers' compensation insurance on file with the Contractors' State License Board to either recertify the licensee's exemption or to provide a current and valid Certificate of Workers' Compensation Insurance or Certificate of Self-Insurance. This was a CSLB sponsored act.

AB 456 (Wagner) Mechanic's Liens

This law makes slight changes to the required "Notice of Mechanics Lien," which is now part of all Mechanic's Liens. It is "clean-up" language to last year's AB 457.

It also changes the language of the statute that refers to the affidavit on the Mechanic's Lien itself. Rather than indicating that the name of the "person or persons" who should be served, it indicates that the name of the "owner or reputed owners" served be served. It also clarifies the reference to the manner in which the lien is to be served.

AB 514 (Hernandez) Public works: prevailing wage: hauling refuse

This law changes the definition of what hauling of refuse is as it pertains to public works thereby requiring that prevailing wages be paid for the hauling of refuse on public works projects.

AB 551 (Campos) Public contracts: prevailing wage requirements

This law increases the maximum penalty for noncompliance of prevailing rate of per diem wages paid to workers employed on a public work to \$200 for each day as well as the penalty for good faith mistakes to no less than \$40 for each calendar day. It also increases the penalty assessed to contractors and subcontractors with prior violations from \$20 to \$80, and from \$30 to \$120 for willful violations.

It also increases the penalty for noncompliance for each contractor and subcontractor performing work on a public work to keep accurate payroll records regarding its employees to \$100 for each calendar day for each worker.

In addition, this law makes a contractor or subcontractor on a public works project that is found to have committed two or more separate willful violations within a three-year period ineligible for a period of up to three years to either bid on or be awarded a contract or perform work as a subcontractor of a public works project. Requires that whenever a contractor or subcontractor performs work on a public works project and has failed to provide a timely response to a request by the Division of Apprenticeship Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records that it will be subject to debarment if the certified payroll records are not produced within 30 days after receipt of the written notice, and would make the contractor or subcontractor ineligible to bid on or be awarded a contract or perform work as a subcontractor on a public works project for a period of not less than one year and no more than three years.

The Labor Commissioner is to publish and distribute a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project on the commissioner's website, to notify the Contractors' State License Board when the list is updated, and to at least annually notify awarding bodies of the availability of the list of debarred contractors, as specified.

AB 560 (Gorell) Professional limited liability partnerships

This law extends the operation of the provision which allows professional limited liability partnerships to practice architecture until January 1, 2019.

AB 587 (Gordon) Public works: volunteers

This law repeals the sections of *Labor Code* section 1720.4 which pertains to work performed by volunteers, volunteer coordinators or members of the California Conservation Corps. It also makes technical non-substantive changes to the language in the statutes.

AB 720 (Hall) Public contracts: uniform construction cost accounting provisions: alternative procedures

This law will allow limited use of alternate procedures governing county highway contracts for the board of supervisors and county road commissioners, rather than being allowed no alternative procedures. This law increases the amount from \$30,000 to \$45,000 for public projects that are to be performed by employees of a public agency. It also increases from \$125,000 to \$175,000 the cap amount on public projects that are to be contracted by informal procedures.

AB 878 (Berryhill) Contractors: workers' compensation insurance

Requires a workers' compensation insurer to report to the Registrar of Contractors a licensee whose workers' compensation policy is canceled by the insurer if the insurer has completed a premium audit or investigation, or if a material misrepresentation has been made by the insured that results in financial harm to the insurer. It also provides that information is not subject to the Public Records Act and provides a cause for disciplinary action against the licensee for workers' compensation insurance law violations. This was sponsored by the CSLB.

AB 900 (Buchanan) Jobs and Economic Improvement Through Environmental Leadership Act of 2011

This law permits an expedited project approval process under the California Environmental Quality Act (CEQA) through January, 2015 for certain projects. Prevailing wages must be paid to be eligible.

AB 943 (Williams) Public contracts: California Uniform Construction Cost Accounting Commission: local contracts: alternative procedures

This law relates to the membership and terms of the State Uniform Construction Cost Accounting Commission by increasing the chairperson's term to two years and extending the time to fill vacancies to 90 days. It also amends existing law that governs public contracts and establishes the procedures that public agencies are to follow when performing public works projects and authorizes a public agency governing board to adopt a resolution to award the contract with a specified monetary threshold, to the lowest responsible bidder when all bids exceed a specified amount. This law increases those related monetary thresholds.

AB 1091 (Morrell) Contractors

This law amends the Contractors' State License Law that authorizes the Registrar of the Contractors' State License Board to accept petitions from licensees disputing matters related to disassociation. It revises and recasts those provisions by specifying that the notification be provided within 90 days after the date of disassociation, and to accept a petition for one extension to replace the qualifier under limited circumstances. The law imposes specified requirements related to that submittal. This was a bill sponsored by the CSLB.

AB 1307 (Skinner) State Board of Equalization: administration: collections

This law authorizes the Registrar of the Contractors' State License Board to refuse to issue, reinstate, reactivate, or renew a license as well as suspend a license for the licensee's failure to resolve outstanding final liabilities to not only the CSLB, the Department of Industrial Relations, and the Employment Development Department, but to the State Board of Equalization as well. It goes on further to state that if the licensee has an installment payment agreement with the State Board of Equalization and is in compliance with that agreement they will be exempt.

It also relates to seller's permit denial, offers in compromise, and to EDD record sharing.

AB 1330 (Furutani) Graduation requirements: career technical education

This law allows the California High School Requirements for graduation that include but are not limited to completing a course in visual or performing arts or foreign language, to be amended beginning the 2012-2013 academic school year. The amendment allows a course in career technical education as an alternative to the visual or performing arts or foreign language requirement.

AB 1346 (Atkins) Division of Apprenticeship Standards: certification of electricians

This law requires individuals desiring to be certified electricians to submit an application for certification and examination that includes an employment history report from the Social Security Administration.

AB 1396 (Committee on Labor and Employment) Employment contract requirements

This requires all employers who have commission pay arrangements to put those arrangements into a signed written contract. The written contract must set forth the method by which the commissions will be computed and paid. If the contract expires, the terms of the contract will still be in effect if a dispute shall arise.

AB 1424 (Perea) Franchise Tax Board: delinquent tax debt

This law requires the State Board of Equalization and Franchise Tax Board, to provide a list of the 500 largest tax delinquencies. Requires additional information on the list. Relates to compliance with delinquency agreements. It allows professional licensing agencies, except the DMV, to suspend or refuse to issue a license if a person's name is listed and prioritizes collection of debts. It also allows motor carrier permit suspension, and the collection of federal and other state's income related taxes and sales and use taxes.

SB 56 (Corbett) Apprenticeship Oversight

The law requires the Division of Apprenticeship Standards in the Department of Industrial Relations to audit a new or newly expanded building and construction trades apprenticeship program one year after its approval for creation or expansion, and requires the division to immediately conduct an investigation of an apprenticeship program of this type to determine whether an audit is necessary if the division finds evidence that the program has purposely misstated information provided to the division. In addition, it requires the division to schedule an audit of a program of this type within three months if the program has been the subject of two or more meritorious apprentice complaints within a five-year period or if the program's annual apprentice completion rate is below fifty percent (50%) of the average completion rate for the applicable trade.

This law also prescribes various other requirements not discussed here.

SB 117 (Kehoe) Public Contracts: Prohibitions: Discrimination based on gender or sexual orientation

This law changes *Public Contract Code* section 10295.3 which states that no state agency may enter into any contract for the acquisition of goods or services in the amount of \$100,000 or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between employees and adds with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

SB 136 (Yee) Public contracts: prevailing wages

This law expands the definition of "public works," for the purposes of provisions relating to the prevailing rate of per diem wages, to also include any construction, alteration, demolition, installation, or repair work done under private contract that satisfies specified conditions related to energy, as laid out in *Labor Code* section 1720.6.

SB 190 (Lowenthal) Mechanic's Liens

This law makes technical changes to the Mechanic's Lien overhaul legislation that was passed last year as SB 189 which takes effect on July 1, 2012. Basically, it just corrected a few minor errors within SB 189.

SB 201 (DeSaulnier) Flexible purpose corporations

This law enacts the Corporate Flexibility Act of 2011 and authorizes and regulates the formation and operation of a new form of corporate entity known as a flexible purpose corporation.

SB 221 (Simitian) Small claims court: jurisdiction

This law increases the jurisdiction of the small claims court to \$10,000, except as specified. It also makes a technical change by deleting a duplicate code section that contains identical provisions.

SB 222 (Evans) Maternity Services

This bill, commencing July 1, 2012, requires every individual health insurance policy to provide coverage for maternity services for all insureds covered under the policy.

SB 292 (Padilla) California Environmental Quality Act: administrative and judicial review procedures: City of Los Angeles: stadium

This will establish specified administrative and judicial review procedures for the administrative and judicial review of the environmental impact report and approvals granted for a project related to the development of a specified stadium in the City of Los Angeles. The lead agency and applicant will need to implement specified measures to minimize traffic congestion and air quality impacts that may result from spectators driving to the stadium.

SB 293 (Padilla) Payment bonds: laborers

The Legislature gave a "win" to prime contractors performing public works, as well as the public works sureties issuing payment bonds, by eliminating the "second bite of the apple" Bond Notice that has been available for several years for bond claimants who should have served a Preliminary Bond Notice but did not. To be clear, persons who are not in direct contract with the general contractor on a public works project are required to serve a Preliminary Bond Notice, which is similar to the Preliminary Notice that is required on private works. On private works, persons not in privity with the owner must serve the owner, contractor and lender with a Preliminary Notice.

However, for many years, there has been an exception that has allowed a later notice to the bond company to be served up until shortly after the project has been deemed completed or accepted, which will excuse the earlier failure to serve a Preliminary Notice or Preliminary Bond Notice and would allow the claimant to go forward on a bond claim. Prime contractors have claimed that they have been prejudiced and harmed by this second chance to make a claim when sub-subcontractors or material suppliers to subcontractors come out of the woodwork with claims even after the subcontractor has been paid.

This new law eliminates the ability to make a bond claim based upon the second type of Bond Notice if the prime contractor has paid the subcontractor to whom the claimant provided material or services, all progress payment except those disputed in good faith, or where the subcontractor who had a direct contractual relationship with the general contractor to whom the claimant provided its materials and services was terminated from the project pursuant to the contract and all progress

payments, except those disputed in good faith, were made as of the termination date. To put it another way, if a supplier or sub-subcontractor provided material to someone who was paid by the prime contractor, then the bond claim cannot be made unless the Preliminary Notice or Preliminary Bond Notice was given (which requires the notice to be given within 20 days of the provision of the labor and materials for which the claim is made).

This law also shortens the time for a prime contractor to pay its subcontractors from ten (10) to seven (7) days on all private works and on certain public works.

Also amended is *Public Contract Code* section 7201, which limits retention between the public entity and an original contractor to five percent (5%) of the contract price, except in instances where the public entity has specifically made a finding that was noticed prior to putting the project out for bid that the project is substantially complex and therefore requires a higher retention amount than the five percent (5%).

As between the prime contractor and its subcontractors, the new law limits that right of the contractor to withhold more retention from its subcontractor than is withheld by the owner of the project, unless prior to the bid time, the contractor has notified potential subcontractors that bonds are required from the subcontractor and the subcontractor is unable to refuse to furnish the contractor with a performance and payment bond issued by an admitted surety. In that instance, the limitation on retention does not apply.

SB 299 (Evans) Employment: pregnancy or childbirth leave

This requires all employers with five or more employees to maintain and pay for group health coverage for eligible female employees that take Pregnancy Disability Leave up to four months in a 12-month period. The benefits are at the same level and conditions as if the employee continued to work during the leave period.

SB 341 (Lowenthal) Vehicles: construction vehicles: backup alarms

This law requires that a construction vehicle with a gross vehicle weight rating in excess of 14,000 pounds that operates at or transports any construction or industrial material to and from a mine or construction site, or both, be equipped with an automatic backup audible alarm. This alarm needs to sound on backing as well as be capable of emitting sound audible under normal conditions from a distance of not less than 200 feet. It will also have a state-mandated local program associated with it.

SB 424 (Rubio) Mechanic's Liens: design professionals.

This law enables a design professional lien to be converted to a Mechanic's Lien if the design professional lien expires and remains partially or fully unpaid. The converted lien is recorded and enforced as a Mechanic's Lien, except the design professional is not required to provide a Preliminary Notice to enforce the Mechanic's Lien and is done within 30 days of the design professional lien expiring.

SB 454 (Pavley) Energy efficiency standards

This law authorizes the State Energy Resources Conservation and Development Commission to establish an administrative enforcement process. It provides for civil penalties for violations of energy efficiency standards. It also requires those penalties to be deposited in the Appliance Efficiency Enforcement Subaccount. It prohibits public utility rebates or incentives unless the recipient certifies the improvement or installation has complied with permitting requirements and applicable licensing requirements.

SB 459 (Corbett) Employment: independent contractors

This new law amends and adds provisions to the *Labor Code* which increases the penalties, including potential disciplinary action against a contractor, for violating the *Labor Code* provisions by purposefully misclassifying an employee as an independent contractor, which is said to frequently happen in the industry by contractors who want to avoid paying taxes or workers' compensation expenses for the employee. The penalties on first offenses can range from \$5,000 to \$15,000 per violation, but an employer who has engaged in a pattern of these violations can be subject to penalties between \$10,000 and \$25,000 per each violation, in addition to other penalties or fines permitted by law. This law also requires the CSLB to initiate a disciplinary action against the contractor, who is disbarred from bidding projects based on violations of the Labor Law.

SB 474 (Evans) Commercial construction contracts: indemnity

This modifies *Civil Code* section 2782 and prohibits a public entity from enforcing a clause in a contract that would require a contractor or subcontractor to indemnify the public entity from its own active negligence. The new modifications also prohibit an owner of a construction project, other than a Home Improvement Contract, from enforcing a clause which would require a contractor to indemnify an owner for its own active negligence, including that of its employees.

The changes in SB 474 do not modify other provisions of *Civil Code* section 2782, which allow for indemnity provisions that require the subcontractor to defend the contractor or builder, even though the ultimate liability may be limited to the actual harm caused by that contractor or subcontractor. Put another way, this provision continues the enforcement of indemnity provisions that shift the defense costs to the contractor, subcontractor, or others involved in the construction contract.

This right to defend is so significant that the Legislature has now added *Civil Code* section 2782.05, which will apply to construction contracts entered into after January 1, 2013, which at first glance also appears to limit the obligation to indemnify, in many circumstances, but then reinforces the obligation to defend claims, with the added bonus that if the contractor or subcontractor fails to indemnify for the claims, not only will they be liable for the sum of money that it cost to defend the claims, but now, there is a statutory right to Prompt Pay penalties for failing to pay for the cost of defense. This new provision is contradictory in some cases and it is yet to be determined how it will affect or change construction contracts.

SB 541 (Price) State license regulatory boards: expert consultants

This law authorizes the Boards of the Department of Consumer Affairs, the State Board Chiropractic Examiners and the Osteopathic Medical Board to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts, to provide enforcement and examination assistance. It also requires each board to establish policies and procedures for the selection and use of these consultants.

SB 543 (Price) Business and professions: regulatory boards

This law makes the fingerprinting requirement applicable to the Board for Professional Engineers, Land Surveyors, and Geologists. This law also authorizes the Department of Finance to augment the budgets of those boards, bureaus, commissions, committees, programs, and divisions of the Department of Consumer Affairs for expenditure of moneys that are not General Fund to pay BreEZe project costs, as specified, thereby making an appropriation.

This law authorizes augmentation of the budgets of certain divisions of the Department of Consumer Affairs to pay certain project costs. It extends provisions concerning certain boards, including the Contractors' State License Board, and makes changes concerning accounting licensees, an architect intern development program, professional fiduciary licensure, structural engineers, and geologist registration. The CSLB's sunset date is extended four years, which means that the CSLB will continue to operate until at least January 1, 2016.

SB 835 (Wolk) Public contracts: University of California: pilot program: best value procedures

This law expands the current Best Value Construction Contract Pilot Program from just the University of California campus located in San Francisco to apply to all campuses, including medical centers, for projects over \$1,000,000 and requires the Regents of the University of California to adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders to ensure that best value selections by the university are conducted in a fair and impartial manner as well as submit a report on the pilot program before January 1, 2016.

SB 909 (LaMalfa) Treated wood waste: disposal

This legislation is important to the producers, workers, and users of treated wood as it seeks to permanently establish the statutory requirement for management of treated wood waste, which is identified as a state hazardous waste, but is not subject to federal regulation as a hazardous waste.

SB 922 (Steinberg) Public contracts: public entities: project labor agreements

This law authorizes a public entity to use, enter into, or require contractors to enter into, a project labor agreement for a construction project, if the agreement includes specified taxpayer protection provisions. This authorizes the members of the governing board of a local public entity to choose by majority vote whether to use, enter into, or require contractors to enter into a project labor agreement for a specific project or projects awarded by that entity and whether to allocate funding to a specific project covered by such an agreement. This prohibits a charter provision, initiative, or ordinance from preventing the governing board of a local public entity, other than a charter city, from exercising this authority on a project-specific basis. This also provides that if a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a project labor agreement for a project to be awarded by the city, or prohibits the governing board from considering whether to allocate funds to a city-funded project covered by such an agreement, then state funding or financial assistance may not be used to support that project, as specified.

SB 944 (Committee on Business, Professions and Economic Development) Business and Professions

This law relates to contractors with respect to advertising displays on business motor vehicles for C-36 plumbing, C-45 sign, and C-57 well-drilling contractors needing to include the name, permanent business address, and the license number in text not less than one and one-half inch high.

With respect to public works, the contracts of the public entities are now required to have a declaration under penalty of perjury for the bidders to execute and submit with their bids. They will no longer be required to have a Notary notarize the current affidavit.

This new law also makes changes to the Board for Professional Engineers, Land Surveyors, and Geologists, adding geologists to their title as well as adding information as to how the Board is organized.

Some Bills That Were Vetoed

The following are some bills of interest that the Governor did not sign. These did not become law, but we thought it was of interest to know what is going on in the Legislature. The following are just a few of the vetoed bills:

AB 135 (Hagman) State Air Resources Board: membership: small business owner

This bill would have required that one member of the governing board of the California Air Resources Board (CARB) be an owner of a small business, as defined, within the past five years. The Governor felt that whether the Air Board should have one member, as provided in this bill, or four, is best left to the discretion of the Governor and he vetoed the bill.

AB 172 (Eng) State agencies: information: Internet website

This bill would have required the California Technology Agency to create and maintain a Reporting Transparency in Government Internet website that would have required state agencies to post specified audits to that Internet website for a period of three years, and would have required the Department of General Services, the California Technology Agency, and other state agencies to post specified summary data regarding contracts awarded by the state to that Internet website, for the length of the contract.

AB 211 (Cedillo) Workers' compensation: permanent disability benefits

This bill would have provided, for injuries that caused permanent partial disability for a supplemental job displacement benefit in the form of a voucher for up to \$6,000 to cover various reeducation and skill enhancement expenses which would have expired two years after the date the voucher was furnished to the employee or five years after the date of injury, whichever was later. The bill would have exempted employers who made an offer of reemployment or continued employment from providing vouchers.

AB 274 (Garrick) Unemployment insurance benefits: claims: right to respond

This bill was meant to have the Employment Development Department direct employers to a guide on the EDD's website when an unemployment claim was filed. The Governor vetoed the bill because he felt that the guide employers were being directed to would just cause confusion.

AB 325 (Lowenthal) Employee's right to bereavement leave

Existing law provides employees with the right to take time off work without discharge or discrimination for a number of reasons.

This bill would have prohibited an employer from refusing to grant a request by any employee to take up to three days of bereavement leave or to interfere with or restrain an employee from doing so. This bill would have authorized an employee who had been discharged, disciplined, or discriminated against for exercising his or her right to bereavement leave to bring a civil action against his or her employer for reinstatement, specified damages, and attorney's fees. The provisions of the bill would not apply to an employee who is covered by a valid collective bargaining agreement that provides for bereavement leave and other specified working conditions.

AB 559 (Swanson) Civil actions: costs

This bill would have reversed a California Supreme Court decision allowing judges, in cases filed under the Fair Employment and Housing Act, to deny the recovery of lawyer fees to parties who fail to use established procedures that reduce litigation costs. The Governor vetoed this bill because he thought the Supreme Court had it right, that judges are in the best position to decide whether to award or deny fees in these instances.

AB 947 (Solorio) Workers' compensation: temporary disability payment

This bill would have further defined temporary disability under workers' compensation.

AB 1155 (Alejo) Workers' compensation

This bill would have made sure that the workers' compensation percentage did not take into account race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics.

Legislative Bills That Never Even Made It To The Governor

We thought it would be interesting to show some bills that never made it to the Governor's desk. These are bills that did not make it out of one of the houses (either the Senate or the Assembly). The following is a list of such bills:

AB 10 (Alejo) Minimum wage: annual adjustment

This bill proposed that the minimum wage be increased to \$8.50 per hour as of January 1, 2012. It also proposed that the minimum wage automatically be adjusted each year according to a specific formula in order to maintain employee purchasing power.

AB 20 (Halderman) Construction defect actions: attorneys

This bill would have required an attorney who solicits or consults with a client or potential client for purposes of filing a residential construction defect action to provide certain written information to the client, including a description of a seller's duty to disclose certain facts concerning real property, as specified. The bill would have also specified that a failure to comply with this requirement would have constituted cause for professional discipline

AB 249 (Berryhill) Contractors

This is actually considered a two-year bill according to the CSLB. In other words, we will see it again next year. It relates to the damages recoverable for residential property construction or improvements by an unlicensed contractor. It would authorize a person who utilizes the services of a contractor for the construction or improvement of property other than specified residential property to bring an action to recover funds paid to the contractor for performance of any act or contract during the time the contractor was not licensed. It would also authorize a licensed contractor who performed a portion of such work to also bring an action.

AB 338 (Wagner) Regulations: legislative validation: effective date.

This would have required the Office of Administrative Law to submit to the Legislature for review, a copy of each disapproved regulation where the basis for that disapproval was a determination that the agency exceeded its statutory authority in adopting the regulation. It would also have required that a regulation become effective on the 90th day after it is filed with the Secretary of State, unless prescribed conditions occur.

AB 400 (Ma) Employment: paid sick days

This bill would have required that all employers provide sick leave for their employees. It also would have regulated that all employees receive a minimum of one hour of sick leave for every 30 hours worked. Sick leave would have been allowed to be used for care of family members or leave for domestic violence or sexual assault as well. It would not have affected those employees that are governed by collective bargaining agreements, including those in the construction sector.

AB 457 (Wagner) Public works contracts: relief for bidders

This is another two-year bill. It would have entitled a bidder who successfully challenges the award of a contract determined to be invalid due to errors or omissions of the public entity to recover costs and attorney's fees incurred in pursuing the challenge and would have allowed attorney's fees and costs to be awarded to the public entity under specified circumstances.

AB 465 (Berryhill) Gardening or landscape maintenance services: regulation

This is another two-year bill according to the CSLB. In other words, we will see it again next year. This bill provides for the regulation of gardening or landscape maintenance services. It would require a local jurisdiction to obtain from an applicant for issuance or renewal of a business license who provides gardening or landscape maintenance services, documentation that he or she has workers' compensation coverage, proof of current licensure as a contractor, and a signed acknowledgement of the consequences of performing the duties of a contractor without a license. It would also provide a civil penalty for fraudulent application.

AB 569 (Berryhill) Business licensing: Business Master License Center

This bill would have created the Business Master License Center, which would have had prescribed duties, including developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information, as well as issuing and renewing master licenses. It would have permitted the Governor to appoint a 3rd-party facilitator from the business community to provide oversight.

AB 780 (Calderon) Public contracts: fixed price contracts: sales and use tax changes: transactions and use taxes

This has become a two-year bill. It provides, in part, for a fixed price contract between a public entity and a contractor, wherein the contractor is entitled to an increase in payment for a change in the contract price that is attributable to an increase in the taxes under the Sales and Use Tax Law.

SB 865 (McLeod) Contractors: expertise: legal representation

Although this was CSLB sponsored, it never even made it to the Governor. It would have required the Contractors' State License Board to provide for representation to any professional who provides expertise to the Board in the evaluation of the conduct of a licensee, registrant, or applicant when, as a result of providing the expertise, the professional is named as a defendant in a civil action.

SB 886 (Corbett) Sprinkler fitters: licensing

This is another two-year bill with the CSLB. It would enact a comprehensive program for the certification and regulation of sprinkler fitters by the State Fire Marshal. It would prohibit a person from performing work on any fire suppression system, unless he or she possessed a valid sprinkler fitter certificate issued by the State Fire Marshal.

AB 958 (Berryhill) Regulatory Boards: limitation periods

According to the CSLB, this is another two-year bill. It would impose a specified limitation period on licensure and regulation boards to file disciplinary action accusations against licensees for violations for all boards within the Department of Consumer Affairs.