

A Contractor's License: Who Needs One and Why

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When completing work for a contractor, one of the first questions to ask is whether each of the contractors involved has a valid Virginia contractor's license. The answer to this question not only is relevant to contract negotiations but also affects construction disputes for completed work. The answer to the licensure question can be quickly obtained by entering the names of the contractors in the search box on the Virginia Department of Professional and Occupational Regulation's (DPOR) website (<http://www.dpor.virginia.gov>).¹ This article examines the basic statutory requirements for licensure and the consequences of failing to comply with such requirements.

Who Needs a Contractor's License?

The licensure requirements for contractors flow from the following statutory provision: "No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter."² The *Code of Virginia* contains several narrow exceptions to the licensure requirements, including exceptions for governmental agencies that perform work with their own forces and persons who perform or supervise construction of no more than one primary residence owned by them and for their own use during any twenty-four month period.³ Likewise, licensed architects and engineers are excluded from the licensure requirements when they engage in contracting work or operate as owner-developers when bidding on or negotiating design-build contracts or performing services other than construction services under a design-build contract, as long as all construction services are rendered by a licensed contractor.⁴

What Type of License Is Needed?

There are three different classes of contractors, with the requirements for licensure varying

amongst the three classes.⁵ To determine whether a contractor is Class A, B, or C, the contractor should look at the cost of the contracts and projects for which he is doing work. The code defines a Class A contractor as one who performs or manages construction when the total value for a single contract or project is \$120,000 or greater, or when the total value of all work by the contractor within any twelve-month period is \$750,000 or greater.⁶ A Class B contractor performs or manages construction when the total value for a single contract or project is between \$7,500 and \$119,999, or when the total value of all work by the contractor within any twelve-month period is between \$150,000 and \$749,999.⁷ A Class C contractor performs or manages construction when the total value for a single contract or project is between \$1,001 and \$7,499, or when the total value of all work by the contractor within any twelve-month period is less than \$150,000.⁸

A recent decision by the Circuit Court of Fairfax County underscores the importance of applying for and obtaining the proper class license.⁹ In *Daniel Jones Remodeling LLC v. Chiu*, the plaintiff was a contractor seeking an additional \$62,355.42 from homeowners in connection with a partial remodeling job. Under the contract with the homeowners, the contractor was entitled to \$128,600 plus additional compensation for any extra labor or materials resulting from alterations or deviations. The circuit court dismissed the plaintiff's complaint because the contractor only had a Class B contractor's license but had entered into a contract with the homeowners for more than \$120,000.¹⁰

What Are the Requirements for Each Class?

For each of the licensure classes, the contractor must submit a written application and pay a fee established by the Board for Contractors (Board).¹¹ As part of the application process, the contractor must provide information for the previous five years regarding outstanding debts or judgments past due, outstanding tax obligation, defaults on bonds, and past or pending bankruptcies.¹² In addition, when the applicant is a firm, it must disclose whether any members of its

“responsible management”¹³ or any individuals for the firm have had a misdemeanor conviction within three years of the application or have had any felony convictions.¹⁴ For Class A and Class B applications, the contractor also must submit information regarding financial position.¹⁵

As part of the application process, applicants for Class A, B, and C licenses must name a qualified individual who is at least eighteen years old and is a full-time employee of the firm or is a member of the responsible management of the firm.¹⁶ Applicants for Class A and B licenses also must name a designated employee¹⁷ who is at least eighteen years old, is a full-time employee of the firm or is a member of the responsible management of the firm, and has passed a board-approved examination (or is exempted from such exam requirement).¹⁸

What Happens if a Contractor's License Lapses?

A contractor license issued in Virginia expires two years from the last day of the month in which the license was issued.¹⁹ In order to be eligible to renew its license, the contractor must continue to meet all of the requirements for that class of licensure.²⁰

Before a license expires, the DPOR mails a notice of renewal to the contractor at the last known address.²¹ Even if a contractor does not receive the notice from the DPOR, the contractor still is required to renew the license before it expires.²² The contractor must complete the renewal form and return the form and appropriate fee²³ to the DPOR within thirty days of the date when the license expires.²⁴

If the DPOR receives the form and the fee after the thirty-day period, then the contractor must follow the reinstatement procedure and pay the reinstatement fees.²⁵ A contractor is not eligible to have its contractor license reinstated if one year has passed from the expiration date of the license and instead must apply for a new license.²⁶ To the extent that a license is reinstated by the DPOR, the contractor is seen as having been continually licensed without any interruption.²⁷ If the board refuses to reinstate a license, the contractor can appeal that decision.²⁸

Does a Contractor Need a New License When Its Name Changes?

A contractor license is issued to a firm and is not transferrable.²⁹ If the legal entity holding the license is dissolved or altered, then the new business entity must obtain a new license.³⁰ For example, if a contractor is a corporation and that

corporation dissolves, then the new entity must apply for a new contractor license.³¹ Likewise, if the contractor is a sole proprietor and the sole proprietor dies, then the business must obtain a new contractor's license.³² If the contractor simply changes its name without altering the corporate structure, then the contractor must report the name change to the Board in writing within thirty days of the name change, and a license with the new name will be issued.³³

What Information Must Be Regularly Updated with the Board?

A contractor must report in writing to the Board the following changes within the following time periods:

- Address change — thirty days to report³⁴
- A change in the officers of a corporation, the managers of a LLC, or the officers or directors of an association — ninety days to report³⁵
- Change of designated employee — ninety days to report³⁶
- Change of qualified individual — forty-five days to report³⁷

On What Grounds Can the Board Deny or Revoke Licenses?

The *Code of Virginia* and the *Administrative Code* contain detailed lists of prohibited conduct by contractors.³⁸ The Board has the power to suspend, revoke, or deny renewal of a contractor's license if the contractor violates any of the statutes or regulations relevant to contractors.³⁹ Likewise, if a contractor is shown to have a “sub-

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stantial identity of interest” with a contractor whose license has been revoked or not renewed, the Board also can suspend, revoke, or deny a license.⁴⁰

What Are the Criminal Penalties for Contracting Without a License?

Undertaking work without a valid contractor's license or performing work without the proper class of license is prohibited and constitutes com-

mission of a Class 1 misdemeanor.⁴¹ In addition, a contractor is subject to a fine not to exceed five hundred dollars a day for each day in violation.⁴² While the case law is sparse, appellate-level decisions confirm that criminal charges are being brought against individuals who fail to comply with the licensure requirements.⁴³

What Are the Civil Ramifications for Contracting Without a License?

The Supreme Court of Virginia describes the purpose of the licensure statutes and regulations as “protect[ing] the public from inexperienced, unscrupulous, irresponsible, or incompetent contractors.”⁴⁴ To “effectuate this purpose,” Virginia courts have denied unregistered contractors the right to enforce contracts “as a penalty for failing to comply with the registration statutes” while permitting the innocent party to enforce the contract.⁴⁵ Likewise, a surety that guarantees the performance of an unlicensed contractor remains liable for damages for the unlicensed contractor’s breach of contract.⁴⁶

Through amendments to the statutory scheme, the legislature has sought “to strike a balance: to penalize those whose violations of the statutory scheme are knowing, but to excuse those who perform in good faith and whose violations are inadvertent.”⁴⁷ Section 54.1-1115(C) provides that no person can assert lack of licensure as a defense to a lawsuit “if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge that a license . . . was required . . . to perform the work for which he is seeking to recover payment.”⁴⁸ Likewise, a mechanic’s lien filed by an unlicensed contractor with actual knowledge of the licensing requirements can be held unenforceable and invalid.⁴⁹ Under the applicable statute and case law, the standard boils down to a determination of whether the unlicensed contractor had knowledge of the licensure requirements.

Conclusion

Careful compliance by contractors with the licensure statutes and regulations is critical based on the harsh consequences for engaging in contracting work without a valid license. Not only could a contractor be subject to criminal penalties, but it also may lose the right to enforce contract and lien rights. ■

Endnotes:

1 Searches can determine whether a contractor has a Virginia contractor license and to check the compliance history and any disciplinary actions for a contractor. Any person can file a complaint against a licensed contractor, and the Director shall investigate such complaints and take disciplinary action as needed. *Va. Code Ann.* § 54.1-1114.
 2 *Va. Code Ann.* § 54.1-1103(A). “Contracting work” is not defined by the *Code of Virginia*. Nevertheless, the term “contractor” is defined. *Id.* at § 54.1-1100; *see also Bowers Family Enters. LLC v. Davis Brothers Constr. Co. Inc.*, 55 Va. Cir. 11 (Richmond 2001)

(holding that Bowers would have been acting as a contractor, not a construction manager, and accordingly would have needed a license).
 3 *Va. Code Ann.* § 54.1-1101. Section 1101 contains additional categories of entities and persons to which the licensure requirements do not apply.
 4 *Id.* at § 54.1-1103(D).
 5 The applicable regulations also define the different types of contractors, including those that provide specialty services. 18 *Va. Admin. Code* (VAC) 50-22-20, 50-22-21.
 6 *Va. Code Ann.* § 54.1-1100.
 7 *Id.*
 8 *Id.*
 9 *Daniel Jones Remodeling LLC v. Chiu*, No. CL-2007-14511 (Fairfax County Apr. 24, 2008) (*Va. Lawyers Weekly* No. 008-8-126).
 10 *Id.* at n.2.
 11 *Va. Code Ann.* §§ 54.1-1106, 54.1-1108, 54.1-1108.2. The fee schedule for licenses and exams is set forth in 18 VAC 50-22-100.
 12 18 VAC 50-22-40(C), 50-22-50(E), 50-22-60(E).
 13 18 VAC 50-22-10 lists the individuals included in “responsible management.”
 14 *Id.* at 50-22-40(E), 50-22-50(G), 50-22-60(G).
 15 *Id.* at 50-22-50(D), 50-22-60(D).
 16 *Id.* at 50-22-40(B), 50-22-50(C), 50-22-60(C). The minimum number of years of experience varies between the three classes: Class C is two years; Class B is three years; and Class A is five years.
 17 *Id.* at 50-22-50(B), 50-22-60(B).
 18 *Va. Code Ann.* § 54.1-1108.1.
 19 18 VAC 50-22-110; *see also Va. Code Ann.* § 54.1-1109.
 20 18 VAC 50-22-130(B).
 21 *Id.* at 50-22-120.
 22 *Id.*
 23 *Id.* at 50-22-140.
 24 *Id.* at 50-22-130(A).
 25 *Id.* at 50-22-130(A), 50-22-160. The reinstatement fees are set forth in 18 VAC 50-22-170.
 26 *Id.* at 50-22-170.
 27 *Id.* at 50-22-180(A)-(B).
 28 *Id.* at 50-22-190.
 29 *Id.* at 50-22-210.
 30 *Id.*
 31 *Id.*
 32 *Id.*
 33 *Id.* at 50-22-230(A).
 34 *Id.* at 50-22-230(B).
 35 *Id.* at 50-22-220(A).
 36 *Id.* at 50-22-220(B). The fee for this change is set forth in 18 VAC 50-22-250.
 37 *Id.* at 50-22-220(C). The fee for this change is set forth in 18 VAC 50-22-250.
 38 *Va. Code Ann.* § 54.1-1115; 18 VAC 50-22-260.
 39 *Va. Code Ann.* § 54.1-1110.
 40 *Id.*
 41 *Va. Code Ann.* § 54.1-1115.
 42 *Id.*
 43 *See, e.g., Hale v. Commonwealth of Virginia*, No. 2023-98-4, 2000 WL 29989 (*Va. Ct. App.* Jan. 18, 2000) (appealing conviction for contracting without a state contractor license); *Sams v. Commonwealth of Virginia*, No. 1007-96-2, 1997 WL 147445 (*Va.*

- Ct. App. April 1, 1997) (appealing conviction of two counts of unlawfully and feloniously practicing a profession or occupation without first obtaining a valid license or certificate); *see also McCary v. Commonwealth of Virginia*, 42 Va. App. 119, 128, 590 S.E.2d 110, 115 (Va. Ct. App. 2003) (“McCary’s failure to obtain a license is probative of his fraudulent intent”).
- 44 *F.S. Bowen Elec. Co. Inc. v. Foley*, 194 Va. 92, 96, 72 S.E.2d 388, 391 (1952); *see also Bacigalupo v. Fleming*, 199 Va. 827, 832, 102 S.E.2d 321, 324 (1958).
- 45 *Sutton Co. Inc. v. Wise Contracting Co. Inc.*, 197 Va. 705, 709-10, 90 S.E.2d 805, 808 (1956); *Cohen v. Mayflower Corp.*, 196 Va. 1153, 1162-63, 86 S.E.2d 860, 865 (1955).
- 46 *Cohen*, 196 Va. at 1163, 86 S.E.2d at 865-66.
- 47 *J.W. Woolard Mech. & Plumbing Inc. v. Jones Dev. Corp.*, 235 Va. 333, 339, 367 S.E.2d 501, 504 (1988); *D&S Elec. Inc. v. RC Elec.*, CL07-1314 (Norfolk Dec. 13, 2007).
- 48 *See, e.g., All Am. Contractors Inc. v. Betonti*, 53 Va. Cir. 24 (Fairfax County 2000) (holding that parties failed to establish lack of actual knowledge of licensure requirements); *Dodson Roofing Co. v. Johnson*, 32 Va. Cir. 400 (Richmond 1994) (holding that contractor was innocently unaware of substantive requirements of contractors’ statutes, and therefore his lack of licensure cannot be used as a defense); *see also In re Anderson*, 349 B.R. 448, 461 (E.D. Va. 2006) (applying safe harbor provision to appellees as there was no persuasive evidence that either acted in bad faith and with actual knowledge of licensure requirements).
- 49 *Lower v. Cranch*, 32 Va. Cir. 110 (Loudoun County 1993) (holding that if subcontractor had actual knowledge that contractor was not licensed, such knowledge would bar recovery on subcontractor’s mechanic’s lien); *see also Butler v. Creative Design Builders Inc.*, 24 Va. Cir. 362 (Louisa County 1991) (to the extent that an owner could assert a lack of licensure defense against the general contractor, then owner also can assert that defense against subcontractor’s lien).