

Filing a Small Claims Court Construction Claim

This pamphlet supplements the Department of Consumer Affairs publication, *Using the Small Claims Court*, and is intended to help you file a suit against a contractor in Small Claims Court when restitution is your intent.

Small Claims Court is a special court in which disputes are resolved inexpensively and quickly for claims that are limited to \$5,000 or less. The rules are simple, the proceedings are informal, and attorneys are not allowed. Details about fees, timelines, and procedures can be found in the Department of Consumer Affairs' publication, *Using the Small Claims Court*, which you may download at www.dca.ca.gov.

The Contractors State License Board (CSLB) investigates complaints against contractors; however, CSLB's mandate is to address violations of Contractor License Law. Proving these violations results in the CSLB taking disciplinary action against the license. Administrative disciplinary actions can range from issuing a citation to suspending or revoking the license.

On the other hand, Small Claims Court is the best option for consumers whose primary interest is restitution and whose claim is for damages of \$5,000 or less.

How to name the defendants

In order for the Small Claims Court judgment to be enforced, you must name the defendants (those who are being sued) correctly. You should name every person you believe is liable—individuals, businesses, and corporations—and let the court decide whether those you name are proper defendants and are legally responsible.

When suing a contractor, you should take the following steps:

1. Check on the CSLB Web site under "License Status Check" for the contractor's name and the license number. Note the business name, a DBA

(doing business as), if there is one, and any personnel listed for each license.

2. Identify the type of contractor's license your contractor holds. They can be:
 - *Sole Owner*—one person owns and is named on a license.
 - *Partnership*—more than one person owns and is named on a license.
 - *Corporation*—the contracting business has been incorporated by the Secretary of State's office and there are officers named on the license.
 - *Joint Venture*—two licensed entities (sole owner, partnership, or corporation) get together to work on projects and those named on each entity are also named on the joint venture.
3. Based on the type of license the defendant holds, here are the persons you should name:
 - *Sole Owner*—name the owner and a qualifier, if there is one, as defendants. A qualifier is an individual who is responsible for the licensed contractor's construction operations.
 - *Partnership*—name all of the partners and a qualifier, if there is one.
 - *Corporation*—name all of the corporate officers and a qualifier, if there is one.
 - *Joint Venture*—name all of the individuals and qualifiers listed for both companies in the joint venture.

How to name individuals and businesses

You can name individuals, and you can name businesses as defendants, but it is best to name them separately. For example, if you are suing a contractor who holds a sole owner license, write "Joe Contractor, individually, and doing business as Contractor's Construction." For a partnership, you may write "Joe Contractor and Jane Contractor, individually, and doing business as Contractor's Construction."

Others you can name as defendants

In addition to the owners, partners, officers, and qualifiers on a license, you can name other individuals who were associated with the project when your damage occurred. For example, you can name those

who are no longer part of the business, home improvement salespersons, or construction site supervisors.

Naming the surety company as a defendant

You can also name the surety company that carries the contractor's license bond. Some surety companies won't pay the judgment unless they are named as a defendant. Check the CSLB Web site to be sure you name the surety company that carried the bond at the time damages occurred. Claims against a surety company must be made within two years after the damage occurred.

If you are including the surety company in your claim, you must prove:

- You are one of the beneficiaries of the bond. If you are a homeowner, you must prove you are a homeowner contracting for home improvements made to your personal family residence;
- The damages you are claiming; and
- That the damages you are claiming arose out of violations of Contractors License Law.

Request that the court include in its order the specific Contractor's License Law code violations that the contractor committed.

The court can order the surety to pay up to \$4,000. (*Code of Civil Procedure Section 116.220(c)*). (Claims above \$5,000 must be filed in Superior Court.)

Naming the Registrar as a defendant

If the CSLB Web site says the Registrar holds a cash deposit, you *must* name the Registrar as a defendant in your Small Claims Court suit in order to be paid.

Notifying defendants

Each defendant you name must be properly notified of the lawsuit. For more information on naming and notifying defendants, see *Using the Small Claims Court* chapters "How Do You Name the Defendant?" and "How Do You Notify the Defendant?"

How CSLB's Judgment Unit can help you collect on the judgment

After you've prevailed in Small Claims Court and received a judgment against a contractor, collecting on that judgment may be problematic. In addition to using the methods described in *Using the Small Claims Court* booklet to collect on a judgment, you can use the services of CSLB's Judgment Unit. The unit cannot collect a judgment for you or force a contractor to pay, but it can suspend the contractor's license until the judgment has been satisfied. A contractor cannot legally work with a suspended license.

To notify the CSLB of an unpaid judgment send a copy of the judgment from the Small Claims Court to CSLB at: Contractors State License Board Judgment Unit, P.O. Box 26000, Sacramento, CA 95826.

The judgment **must** properly identify the contractor and be both *monetary* and *construction-related*.

The court will identify the contractor based on how you named the defendants, so be sure you do so properly by using the names listed on CSLB's Web site. If a defendant is improperly identified in a judgment, you can request a corrected judgment, but they are rarely granted.

Construction-related judgments can go beyond violations of Contractor's License Law; they can include secondary damage to your property, such as lawn damaged by work trucks. Such construction-related judgments should be sent to CSLB's Judgment Unit, as well.

If CSLB receives an acceptable copy of an unsatisfied judgment within 90 days of the judgment, CSLB gives the contractor 90 days to pay the judgment. If it is not paid within 90 days, the license is suspended until paid. If CSLB receives an acceptable copy of an unsatisfied judgment 91 days or longer after the judgment, the license is immediately suspended until paid.

The CSLB cannot suspend the license if the contractor files bankruptcy and cannot pay a judgment. In that case, collecting from the surety company may be your only recourse.

Other Resources

California Department of Consumer Affairs (DCA)
www.dca.ca.gov

The publication, *Using the Small Claims Court*, is available on the DCA Web site.

Contractors State License Board
www.cslb.ca.gov

The pamphlet, *A Guide to Contractor License Bonds*, is available on the CSLB Web site or can be ordered from the address below.

Contractors State License Board
P.O. Box 26000, Sacramento, CA 95826-0026
www.cslb.ca.gov

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A Consumer Guide to *Filing a Small Claims Court Construction Claim*

