



# CONTRACTORS' TIMES



CARLTON & ALBEROLA | CONSTRUCTION INDUSTRY NEWSLETTER

## Include Your CSLB License Number On All Advertising - And That Includes Hats, T-Shirts, Coffee Mugs And Everything Else

A contractor's license number must be included on all contracts, subcontracts, and calls for bid, but one's license number is to be used on more than just contracts. You see it all the time -- companies advertising on the side of vehicles, on hats, t-shirts, coffee mugs, you name it. What you don't always see on those trucks, hats, t-shirts, mugs, etc., are license numbers. Did you know you should always see a license number associated with those items? Under California Business & Professions Code Section 7030.5, "Every person licensed ... shall include his license number in: (a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms of advertising, as prescribed by the registrar of contractors, used by such a person."

The fact is, and the CSLB recommends, that license numbers should be on your business cards, contracts or proposals to contract, vehicles, signs or billboards advertising

your company, electronic transmissions, including your website, brochures, clothing items and any directory or other listing stating or implying that you are a contractor.

In fact, California law has some very specific requirements when it comes to advertising on vehicles. Under California Business & Professions Code Section 7029.5, "Every C-36 plumbing contractor, C-45 sign contractor, and C-57 well-drilling contractor ... shall have displayed on each side of each motor vehicle used in his or her business, for which a commercial vehicle registration fee has been paid ... his or her name, permanent business address, and contractor's license number, all in letters and numerals not less than 1 1/2 inches high." A contractor's "[f]ailure to comply with this section constitutes a cause for disciplinary action." For all other contractors, they "...

shall have displayed, in or on each motor vehicle used in his or her construction business, for which a commercial vehicle registration fee has been paid ... his or her business name and contractors' license number in a clearly visible location in print type of at least 72-point font or three-quarters of an inch in height and width." B&P Code Section 7029.6

When you do advertise, be it on your vehicle, hat, t-shirt or otherwise, be sure you stay within the scope of your license classification. Under California Business & Professions Code Section 7027.1(a) "[i]t is a misdemeanor for any person to advertise for construction or work of improvement ... unless that person holds a valid license under ... the classification so advertised..." The exception is that a licensed building (B) or engineering contractor (A) may advertise for construction

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## It's Now Easier to Serve 20-day Preliminary Notices

Before serving a preliminary 20-day notice, should contractors research public records to verify that the owner or general contractor correctly identified the project's lender? For now, contractors don't need to always inspect public records, as was held by the Court of Appeal in *Force Framing, Inc. v. Chinatrust Bank*.

In September 2006, Andrew Carlton's client, Force Framing, relied on a preliminary information sheet provided by a project's owner to serve its preliminary 20-day notice. It turned out the owner's preliminary information sheet identified the wrong lender, which, of course, resulted in Force Framing serving its preliminary 20-day notice on the wrong lender.

It was not until Force Framing had completed its work that it learned the identity of the actual lender - Chinatrust Bank. Because California Code requires that a contractor need merely serve the "reputed construction lender," and because Force Framing served the bank "reputed" to be the project's lender, Force believed its preliminary 20-day

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notice was proper. Thus, when the owner failed to pay Force Framing for its work on the project, Force sued Chinatrust Bank under a bonded stop notice claim.

In an attempt to capitalize on Force Framing's failure to serve the actual lender with a preliminary 20-day notice, Chinatrust filed a motion claiming Force Framing should have inspected the county recorder's public records, which would have revealed that Chinatrust was the actual lender. Chinatrust further argued that Force Framing could not rely on the information from the project's owner, which erroneously identified another bank. Chinatrust argued that in light of this, Force Framing should not be allowed to pursue its stop notice claim against it because it had not received the preliminary 20-day notice.

The trial court agreed with Chinatrust, holding that Force Framing could not rely on information from the project's owner, as to the identity of the project's lender. The trial court held that a contractor is required to verify the identity of a project's lender by searching the county records before serving a preliminary 20-day notice. The trial court dismissed Force Framing's stop notice claims against Chinatrust - apparently more concerned with protecting banks than protecting a contractor's right to payment.

Believing that the trial court's ruling in favor of Chinatrust was wrong, Andrew Carlton, on behalf of Force Framing, appealed the decision. The Court of Appeal reversed the lower court's ruling, stating that if a contractor: "... has reasonably relied on an owner's and/or general

contractor's statements identifying a lender, then ... [that contractor] does not need to check county records to prove that he had a good faith belief that the lender was the actual lender." *Force Framing Inc. v. Chinatrust Bank* (2010) 187 Cal.App.4<sup>th</sup> 1368, 1376. However, the appellate court noted that in order to show its good faith, a contractor should research public records "if a stop notice claimant has (1) no lender information, or (2) untrustworthy lender information..." *Id.* at 1378.

The Court of Appeal's opinion became law on September 30, 2010. Chinatrust petitioned the California Supreme Court to review the matter. The California Supreme Court denied Chinatrust's petition. Thus, for the time being, so long as the information provided in a Preliminary 20-day Notice is obtained from a sufficiently reliable source, such as from the owner, a contractor need not investigate extraneous sources to verify said information.



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## Advertising

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work as a general contractor.

Under California Business & Professions Code Section 7027.1(c), "[a] violation of this section is punishable by a fine of not less than seven hundred dollars (\$700) and not more than one thousand dollars (\$1,000), which fine shall be in addition to any other punishment imposed for a violation of this section." Additional other punishment that may be imposed includes the CSLB "... inform[ing] the Public Utilities Commission of the violation, and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising." See California Business & Professions Code Section 7099.10(c). In short, they can have phone disconnected, too.

When you do advertise, while you may think it advantageous to mention that you are bonded, you don't want to do that. You do not want to mention the fact that you are bonded in any advertising because under California Business & Professions Code Section 7071.13 "[a]ny reference by a contractor in his advertising, soliciting, or other presentments to the public to any bond required to be filed pursuant to this chapter is a ground for the suspension of the license of such contractor."

Thus, follow the "better safe than sorry" credo. That is, in addition to your contracts, proposals and the like, whenever you advertise, be it on your vehicles, hats, t-shirts, coffee mugs, or anything else, prudence dictates that you use your license number on all of it. Finally, make sure that your advertising does not go beyond the scope of your particular license classification, and don't mention Your bond. Follow these rules, and you should be fine.

**TO ARRANGE A FREE CONSULTATION TO DISCUSS YOUR  
LEGAL CONCERNS CALL CARLTON & ALBEROLA AT (949) 954-6666**