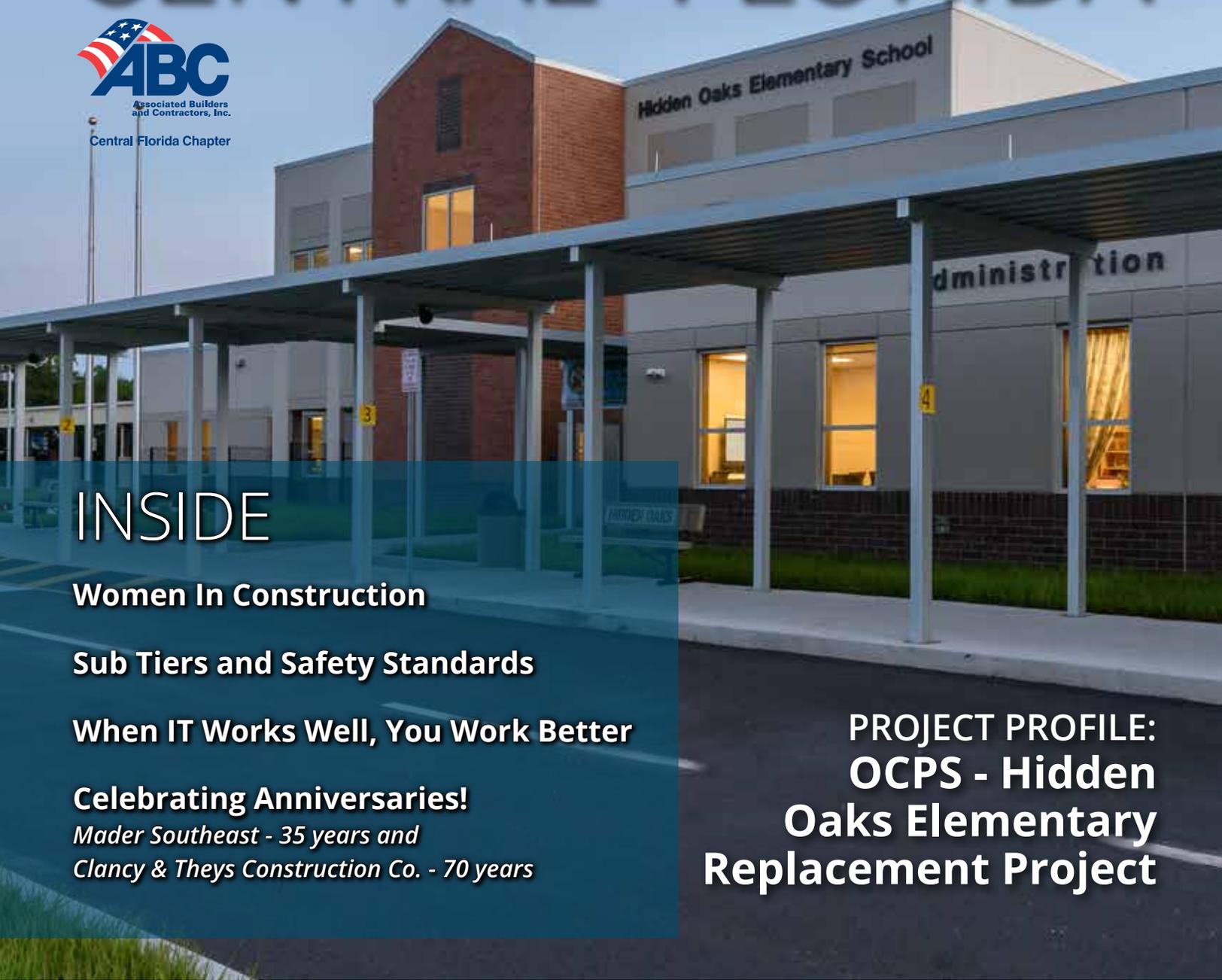


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Thou Shall Not Work Without a Proper License

A roadmap for the “good guys”

BY: BRIKENA ISAI TOMASIC, ESQ., ATTORNEY, MARTIN | HILD, P.A.

Everyone has heard the horror stories of unlicensed construction contractors swindling money from people or leaving behind a trail of shoddy work. It is easy to dismiss the issue of working without a proper license as only applying to the “bad apples” of the industry.

Be aware! The unfortunate fact is that, due to innocent oversight or lack of information, even the “good guys”—who work hard and try to do the right thing—may end up without a proper license. The laws regulating contractors in such situations do not take into account intent.

As a result, the consequences of working without the proper license—even when it is unintentional—are very harsh.

What are the legal consequences to a contractor for working without a proper license?

- Loss of contract rights
- Loss of right to get paid
- Loss of right to file lien
- Loss of right to file against bond
- Pay triple damages
- Subject to sanctions by Department of Business and Professional Regulation
- Subject to criminal penalties
- Subject to “disgorgement”, i.e. reimburse money received

Depending on the situation, the consequences of working without a proper license can spell professional and financial ruin for a contractor.

What should a contractor do—or, more appropriately, not do—in order to avoid finding him/herself working without proper license?

Top 5 Don’ts

Don’t Fail to Get Properly Licensed: Suppose your company is joining forces with another company to pursue a project. Your company is properly licensed. The other company may or may not be licensed. It is easy to assume that, since one or both of the joint venture partners are licensed, the joint venture does not need a separate license. Wrong! The administrative rules require the joint venture to go through the process of obtaining its own

qualifying agent and become properly licensed.

Another situation where proper licensing may fall through the cracks is when you convert your company from one type of entity to another. Let’s say your company is a corporation. Your accountant has been on you for a long time to convert the corporation into a limited liability company so you can save on taxes. You finally decide to go for it. You assume that licensing will automatically follow the entity conversion and that there is no need to do anything for the purposes of licensing. Wrong! The conversion of the



entity structure requires follow up for the purposes of licensing. You must submit documentation to transfer the license to the converted entity. In some situations, the transfer of the license is not possible. You may be required to apply for qualification of the converted entity as you would do with a new entity. Proper licensing becomes an issue also when dealing with single-purpose entity situations. Let’s say you are a contractor-developer or, maybe, you enter into a design/build or IPD agreement with an owner. In order to limit liability and more easily administer the project, you decide to form a single-purpose entity. It is easy to assume that, since your company is properly licensed, that license will transfer to the single-purpose entity. Wrong! The single purpose entity is considered a new entity and will need to go through the process of obtaining its own qualifying agent in order to be properly licensed.

Don’t Fail to Renew the License: The construction industry is fast-moving. Every day is a new day of following up on technical issues, dealing with subcontractors, negotiating with owners/clients and putting out fires. In the hustle and bustle, it is easy to lose sight of the license renewal deadline. The license renewal deadline might fall off the radar but it should not! If your license or that of your sole qualifying agent becomes inactive or delinquent, you and your company are considered unlicensed. Unfortunately, once becoming unlicensed, the law does not consider how busy you are or what other

things you have going on in your life that prevented you or your qualifying agent from renewing on time. So, the license renewal date should be on the calendar and circled in red in order not to forget it. Also, you and your company’s qualifying agent need to ensure the Florida Department of Business and Professional Regulation has the most recent contact information. That way, they can send a reminder to renew.

Don’t Fail to Complete Continuing Education Requirements: In order to keep and renew the construction license, the law requires the contractor to take a certain amount of Continuing Education courses. Once you obtain your license, there is a tendency to put this requirement on the back burner. Make it a priority instead! The Continuing Education requirements are such that you cannot knock them out in one sitting. If the deadline for renewal

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is up and the Continuing Education requirements have not been met, no renewal will be issued. Failure to renew the license turns into working without proper license. As noted in this article, working without a proper license can lead to all sorts of harsh consequences. The bottom line is: keep up with the Continuing Education requirements.

Don't Perform Work Outside the Scope of the License: A contractor cannot perform work that is outside the scope of his/her license. Also, a company cannot provide services that are outside the scope of its qualifying agent's license. As is the case in any industry, it is difficult to say no to a client. It's just not good business. But if your client is asking you or your company to perform work that is outside the scope of the license, think twice! If a license is required for the work and the work is not included in the scope of the license, you and your company are operating without proper license. This leads to the harsh consequences

listed in this article. So, what to do when the client asks? If it is clear that the work is outside the scope of the license—as hard as it is—say no. Depending on the project, maybe, you can bring in another company that has the proper license to do the work. If it is not clear whether the work is within or outside the scope of the license, do not make assumptions. Contact your attorney or call the Department of Business and Professional Regulation for guidance. In some situations, you may be able to submit a request for what is called a declaratory statement to get formal clarification from the Department of Business and Professional Regulation. In light of the harsh consequences of working without a proper license, it is better to be safe than sorry.

Don't Lose the Only Qualifying Agent: If your company has only one qualifying agent and that person leaves or passes away, there is a big problem! The company has sixty days to obtain a new qualifying agent. Otherwise, the company would be operating without a proper license. A temporary relief can be

obtained by requesting the Department of Business and Professional Regulation to allow the company to finish work already under way when the qualifying agent was on board. However, until a new qualifying agent is approved, the company cannot conduct any new business. That means no possibility to bid, enter into a contract, or work in any new projects even for current clients. In order to avoid losing business in this way, always make sure the company has at least two qualifying agents. That way, if one leaves or passes away, there is no risk of working without proper license or losing business.

The information discussed in this article is meant to be general information on potential issues, not legal advice. Brikena Isai Tomasic focuses her practice in the area of construction law. She also teaches on the subject of construction contract negotiating. Ms. Tomasic has been a member of ABC since 2008. ■

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