



Cutting Corners

Trying to save money? Beware of hiring unlicensed contractors. They could be more expensive than you think.

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A West Virginia man probably never thought he could be held liable for more than \$1 million when he hired an electrician to replace a circuit breaker in his mother's house.

A California community association never expected to be found responsible when a contractor's employee was electrocuted while installing new rain gutters.

But that's exactly what happened. In both cases, the workers were unlicensed—and, the results were costly for those who hired them.

With escalating energy and fuel costs, increased delinquencies and bad debt resulting from current economic conditions, your community association board may be looking to trim expenses anywhere it can, especially with repair and maintenance work.

Some community leaders and residents believe they can reduce costs by using day laborers or community volunteers instead of licensed contractors for such jobs. Others might believe that licenses or permits aren't required for smaller projects or that the permit process is a waste of time and an unnecessary expense. Before you take another step, consider the potentially costly consequences.

Buyer Beware

Some of the drawbacks of using an unlicensed contractor are obvious. Shoddy workmanship, inability to enforce

warranties, lack of manufacturer warranties, damages to the property and improvements and failure of the completed work to comply with applicable building codes are frequent complaints. If the work performed by the contractor does not comply with local or state codes and ordinances, the building department or agency with jurisdiction may stop the work and, if the work is complete, require corrective work to be performed. Corrective work may consist of hiring a licensed contractor to remove the improvement altogether or prepare and submit the documents necessary to obtain a permit. Of course, the corrective work is an additional expense not contemplated when initially engaging the contractor. Moreover, the local enforcement authority generally has the power to levy fines for building code violations. The fines, which may accrue on a daily basis, may result in a lien against the property.

Unlicensed contractors requiring large upfront payments without performing the services leave property owners without much recourse because state recovery programs are often limited to resolving disputes with licensed contractors. In fact, some argue that a previous version of a Florida state law that prohibited enforcement of contracts with unlicensed contractors benefited contractors more than the consumers. The law gave consumers no recourse if the contractor failed to perform the work or otherwise broke the agreement after being paid. After the devastation from Hurricane Andrew left communities in shambles, the Florida legislature recognized that protection of the public was paramount.

It noted that construction activities, especially home building and remodeling, “posed a danger of significant harm to the public when incompetent or dishonest contractors provide unsafe, unstable, or short-lived products or services.”

Poor workmanship may cause or exacerbate other problems, in some instances impairing the structural integrity of a building or improvement. Thus, the quick and inexpensive repair may produce exactly the opposite result—increased expenses and delays.

However, while not all licensed contractors perform acceptable work, not all unlicensed contractors perform substandard work either. If the work is done well, is any harm done? What about small projects that are not likely to result in building code violations or major damages, such as installing gutters, replacing a few roof tiles or hanging a ceiling fan? Why can't residents volunteer to help out when it comes to certain maintenance projects? Is hiring someone who is licensed in another state such a bad idea?

Unexpected Consequences

Using an unlicensed contractor may have negative impacts that are immediate or delayed. That's a lesson learned by Charles Harper of West Virginia well after he hired an electrician to do some work in his mother's house. Some time later, a cable company employee was working on a cable attached to a nearby utility pole and fell, breaking his hip. The cable company worker filed suit against the utility company, the cable company and Harper, the son of the owner of the property. The injured cable worker claimed the wiring from the utility pole to the circuit breaker was faulty and later discovered that the electrician that Harper hired was not licensed to perform the work. West Virginia's codes prohibit performing or engaging an unlicensed person to perform electrical work. Another statute allows anyone injured by a person violating the statutes to recover damages against the violator for injuries or losses sustained as a result of the violation. Moreover, courts in West

Virginia and many other states will presume negligence when someone has violated a state statute. When the injured cable worker sought damages from Harper, the Supreme Court of Appeals of West Virginia agreed in the 2001 ruling in *Kizer v. Harper*.

Also, it's not just the employer who can be held accountable. In the California case, both the community manager and the association were held liable for workers' compensation damages when an unlicensed contractor's employee was injured. The Montana Villas Homeowners Association hired Pegasus Properties as its property manager. As the association's managing agent, Pegasus recommended the installation of new rain gutters on the condominium building and hired Rube's Rain Gutter Service to do the work. The job was only expected to take two days at a cost of about \$1,000.

On his first day on the job, a worker was electrocuted when a gutter made contact with a high-voltage electrical wire. Rube's owner wasn't a licensed contractor and didn't carry workers' compensation insurance. The laborer filed a workers' compensation claim against Rube's, Pegasus and the association. The California Workers' Compensation Appeals Board eventually ruled that Pegasus, as the employer, was liable for damages as a result of the worker's injuries.

On appeal, Pegasus claimed that it had hired Rube's as an independent contractor and that Rube's was the sole employer of the injured worker. Pegasus also claimed that it only contracted for the work on behalf of the association and shouldn't be responsible for any damages. The court disagreed in a ruling last year.

In *Heiman v. Workers' Compensation Appeals Board*, the California appeals court found that the property manager and the contractor were “dual employers” for the purposes of workers' compensation. The court also concluded that the association had liability as well. The

court rejected claims that Rube's and the worker were independent contractors, citing a California law that requires independent contractors to be licensed. One of the consequences of hiring an unlicensed contractor, the court noted, is the creation of different employment relationships with respect to employer liability for workers' compensation and damages. The case was sent back to the Workers' Compensation Appeals Board to determine the amount of the damages.

While the West Virginia and California rulings only set precedent for those states, they can be used as examples in states with similar laws.

In addition to liability, a person or entity hiring an unlicensed contractor may be denied reimbursement for expenses that ordinarily would be covered. In *Goldman v. Fay*, the purchaser of a New York City condominium unit filed suit against the seller for failing to disclose a defective condition. The purchaser spent thousands of dollars to repair water damages and correct a mold problem caused by an air conditioning pipe, but did not use a licensed home improvement contractor for the work. The New York City Civil Court in 2005 found that reimbursement to the purchaser under such circumstances would violate public policy—even if he proved that the seller knew about the defect beforehand.

In a community association, all owners and residents are affected when problems result from code violations. How would you feel if what you considered a routine project for your unit resulted in displacing almost half of the residents of your building? Residents of a condominium development in Deerfield Beach, Fla., have paid dearly—both emotionally and financially—when a do-it-yourself home improvement project went awry.

A fire started in the condominium unit when an improperly mounted ceiling fan fell and created a short circuit. An analysis revealed that there was no fan box,

as required by the city's building code. Also, the fan was attached to the drywall with just a toggle bolt instead of being secured to a ceiling joist or beam. While the association's master insurance policy covered most of the repair work, it did not reimburse the owners for replacement housing, furniture storage or the long, costly legal battle that ensued.

Check it Out

Associations should require contractors to provide proof that they are licensed and insured. Ask to see a copy of their license. Ask for a copy of their liability and workers' compensation insurance. If the contractor won't provide proof of insurance or the declaration page for insurance has a different name, steer clear. You can also find out whether a contractor is licensed by going to the appropriate state agency.

Associations, and consumers in general, should be suspicious if a contractor asks for a large down payment, requests payments be made to an individual rather than the company or asks that checks be made payable to "cash." If you are told the work doesn't require a building permit or you're asked to apply for the building permit yourself, you should also be concerned. Each state has different requirements to obtain a contractor's license. For example, many states require at least four years of construction experience at the journeyman level or foreman level to qualify for the exam. In others, a four-year construction degree or three years of construction-related credits from an accredited college may substitute for up to three years of experience. The education and experience requirements are intended to ensure that the applicants are knowledgeable about the trade, experienced in management and familiar with the business and financial aspects of the work.

In addition, applicants must show they are legally permitted to work in the United States. They also may need to be fingerprinted and show photo identification.

Many states require the applicant to prove he or she is of “good moral character” and show evidence of financial responsibility. Criminal background checks are required for all Florida applicants as an additional means of consumer protection.

Once the applicants meet the initial criteria, they must pass an exam. In most states, the exam not only addresses technical issues associated with the trade, but also tests knowledge of business and financial issues, contract administration and project management skills. Moreover, many states require a surety or cash bond, and residential contractors also are required to provide some type of consumer protection bond or to participate

in a state recovery fund. Continuing education is often required to maintain the license.

Board members have a fiduciary duty to the association and its members to make decisions in good faith, as a reasonably prudent person would in similar circumstances, and in the best interests of the community. While board members may rely upon the advice of experts, and they often have a stronger legal defense when they do so, they must ensure they have the information necessary to make informed decisions.

Cutting corners—either in time or money—can have costly consequences.

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