



Mariposa County Building Department

Mike Kinslow, Building Director

5100 Bullion St., P.O. Box 1268, Mariposa, CA 95338

Phone (209)966-3934 Fax (209)742-5024

Owner Builder Responsibility and Liability

In the building and permitting process in California the property owner is still allowed to complete the construction permitting and work of his/her own property as "owner builder". There are numerous responsibilities, sources of liability and pitfalls the "owner builder" should be aware of. The following is intended to bring awareness to some of the issues. **WARNING:** The Building Department inspection process is not an all-inclusive inspection process or a quality control inspection process. The Building Director holds the permit applicant solely responsible for knowing all building codes and applying them properly in the construction process. Per CRC R110.5 the Building Director shall revoke the Certificate of Occupancy (C of O) any time a code violation is discovered, even after the C of O has been issued. The applicant is fully responsible for everything!

Owner Builder Responsibility:

1. To understand the California/Mariposa County permitting process. When is a permit required? How to take out a permit? Completely understand what you are signing in the permit application. How and when to call for building inspections. How to final a permit and project.
2. To understand and know the building code of California. The Building Code is the written minimum to which a building can be constructed. It is the applicant/builder's responsibility to know, understand and follow all of the current building codes.

Owner Builder Liability:

1. Hiring anyone (handy man, owner's agent, contractor with expired license, etc.) to do work on your project that is not a properly licensed contractor in California. If the contractor has any employees they must properly insured for Workman's Compensation Insurance. Go to the California Contractors Licenses Board to make sure @ <http://www.cslb.ca.gov/>.
2. Be aware that under new State Law if an owner builder hires an "agent" or "consultant" for their project that schedules construction, calls for inspections, directs subcontractors or performs any "contractor type duties" shall be, in fact, a California licensed contractor OR shall be the owner's employee and evidence of Workman's Compensation Insurance shall be required, taxes withheld, etc.

Beware of any unlicensed contractor, licensed contractor with employees but no workman's comp. insurance, unlicensed handymen or "owners agents" suggesting that they can give you a great construction deal if you take out the permit as "owner builder" (or worse yet no permit at all). If you do this, you have just assumed a tremendous amount of liability and responsibility. I have numerous examples of projects started like this that have left the owner with much liability and little recourse. Feel free to contact this office for more information.

Important Note: The California Contractors State License Board may conduct a random visit to your "owner builder" or "no permit" job site at any time ... be prepared.

Attached are some additional words of wisdom from the California Contractors State License Board.



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Owner-Builder Risks

There are a number of important issues to consider before beginning a construction job as an "owner-builder." This section guides you through some of the legal obligations and risks you face.

You may find it helpful to reference the QuickLinks menu on the left for further information.

What is an Owner-Builder?

This section defines what an owner-builder is and the laws surrounding the practice.

Owner-Builder Responsibilities

This section outlines the job responsibilities of a property owner when they decide to handle their own construction projects as an owner-builder.

Owner-Builder Risks

This section presents some additional issues that should be taken into consideration before deciding to become an owner-builder.

 **ALERT:** Be wary of "consultants" or unlicensed individuals who will try to talk you into becoming an owner-builder as a way to save money. They are usually the ones who illegally profit from this arrangement.

What is an Owner-Builder?

This section defines what an owner-builder is and the laws surrounding the practice.

- An owner-builder is what the term indicates: a person owns the property and acts as their own general contractor on the job, and either does the work themselves or has employees (or subcontractors) working on the project.
- The work site must be their principal place of residence that they have occupied for 12 months prior to completion of the work.
- The homeowner cannot construct and then sell more than two structures during any three-year period.

 **LAWS AND REGULATIONS** *Business & Professions Code section 7044* has more information about owner-builders

Owner-Builder Responsibilities

This section outlines the job responsibilities of a property owner when they decide to handle their own construction projects as an owner-builder.

When you sign a building permit application as an owner-builder, you assume full responsibility for all phases of your project and its integrity. You must pull all building permits. Your project must pass codes and building inspections.



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

The owner-builder is responsible for ordering materials and making sure all suppliers are paid.

An owner-builder also is responsible for supervising, scheduling, and paying subcontractors. If you use anyone other than your immediate family or a licensed subcontractor for work, you may be considered an "employer."

Employers must register with the state and federal governments and are obligated to participate in state and federal income tax withholding, federal Social Security taxes, workers' compensation insurance, disability insurance costs, and unemployment compensation contributions.

 **TIP:** For more specific information about your obligations under federal law, contact the Internal Revenue Service at (800) 829-1040, and the U.S. Small Business Administration at (800) 359-1833. For more specific information about your obligations under state law, contact the Employment Development Department at (916) 653-0707, the Department of Industrial Relations at (415) 703-5070, and the Franchise Tax Board at (800) 852-5711

Owner-Builder Risks

This section presents some additional issues that should be taken into consideration before deciding to become an owner-builder.

Unless you are knowledgeable about construction, mistakes can be costly and take additional time to repair or correct.

Subcontractors and suppliers who are not paid on schedule may file mechanics liens against your property. Educate yourself about mechanics liens and how to prevent them.

If your workers are injured, or your subcontractors are not licensed or do not carry liability insurance or workers' compensation insurance and they are injured, you could be asked to pay for injuries and rehabilitation through your homeowner's insurance policy or face lawsuits.

You should be cautious of unlicensed individuals claiming to be contractors who prey upon homeowners. They may promise to guide you through the owner-builder process for a consulting fee, but they are breaking the law.

REMEMBER:

As an owner-builder, you assume full responsibility for all phases of your project and its integrity.

Licensed contractors must demonstrate knowledge of their craft, be tested, fingerprinted, bonded, and undergo an FBI background check before they are licensed to work in California.

Illegal contractors can botch a job or leave with the down payment, leaving the owner-builder to deal with the consequences.

Owner/builders take note!

A word of caution from the Contractors State License Board

*Hiring an unlicensed
"consultant" to manage
the project does not
save you money
in the long run.*

*By hiring a licensed
experienced contractor
for your project to hire
licensed knowledgeable
tradespersons, the
contractor becomes
responsible for all
phases of construction.*



Anyone who talks you into being your own general contractor, or "owner/builder," may be doing you no favor.

"Owner/builder" describes a situation in which the homeowner becomes the general contractor. As an owner/builder, *you* (not the person you hire) assume responsibility for the overall job.

Your responsibilities may include such things as state and federal taxes, workers' compensation insurance, and other legal liabilities. You may be required to hire various subcontractors for your project, scheduling their work and supervising the job. If a worker is injured while working on your property, you could be asked to pay for injuries and rehabilitation through your homeowner's insurance policy.

By signing a building permit application as an owner/builder, you assume full responsibility for all phases of your project and its integrity.

Hiring an unlicensed "consultant" to manage the project does not save you money in the long run. By hiring a licensed experienced contractor for your project to hire licensed knowledgeable tradespersons, the contractor becomes responsible for all phases of construction.

Unless you are very experienced in construction, it is best to leave these matters to your licensed contractor.

Assembly Bill No. 2237

CHAPTER 371

An act to amend Section 7026.1 of the Business and Professions Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor September 19, 2012. Filed with Secretary of State September 19, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2237, Monning. Contractors: definition.

Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law defines the term "contractor" to include, among others, any person or consultant to an owner-builder who undertakes, offers to undertake, or submits a bid to construct a building or home improvement project. Existing law requires applicants and licensed contractors to pay specified fees that are deposited into the continuously appropriated Contractors' License Fund. Under existing law, it is a crime for a person to act as a contractor without a license.

This bill would define the term "consultant" for purposes of the definition of a contractor to include a person who provides a bid, or who arranges for and sets up work schedules and maintains oversight of a construction project, with respect to a home improvement contract, as specified. Because consultants who provide the above-described services would be required to pay license fees which are deposited into the Contractors' License Fund, the bill would make an appropriation. Because this bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7026.1 of the Business and Professions Code is amended to read:

7026.1. The term "contractor" includes all of the following:

(a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

(b) (1) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any building or home improvement project, or part thereof.

(2) For purposes of this subdivision, a consultant is a person, other than a public agency or an owner of privately owned real property to be improved, who meets either of the following criteria as it relates to work performed pursuant to a home improvement contract as defined in Section 7151.2:

(A) Provides or oversees a bid for a construction project.

(B) Arranges for and sets up work schedules for contractors and subcontractors and maintains oversight of a construction project.

(c) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter. The provisions of this subdivision shall not apply if there is a properly licensed contractor who exercises supervision in accordance with Section 7068.1 and who is directly responsible for the final results of the work. Nothing in this subdivision shall require a qualifying individual, as provided in Section 7068, to be present during the supervision of work covered by this chapter. A contractor requesting the services of a temporary labor service agency shall provide his or her license number to that temporary labor service agency.

(d) Any person not otherwise exempt by this chapter, who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryperson who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(e) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, re-perforating, or abandoning any water well, cathodic protection well, or monitoring well.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O



Mariposa County Building Department

Mike Kinslow, Building Director

5100 Bullion St., P.O. Box 1268, Mariposa, CA 95338

Phone (209)966-3934 Fax (209)742-5024

PROPERTY OWNER'S PACKAGE

Disclosures & Forms for Owner-Builders Applying for Construction Permits

IMPORTANT! NOTICE TO PROPERTY OWNER

Dear Property Owner:

An application for a building permit has been submitted in your name listing yourself as the builder of the property improvements specified at _____.

We are providing you with an Owner-Builder Acknowledgment and Information Verification Form to make you aware of your responsibilities and possible risk you may incur by having this permit issued in your name as the Owner-Builder. **We will not issue a building permit until you have read, initialed your understanding of each provision, signed, and returned this form to us at our official address indicated.** An agent of the owner cannot execute this notice unless you, the property owner, obtain the prior approval of the permitting authority.

OWNER'S ACKNOWLEDGMENT AND VERIFICATION OF INFORMATION

DIRECTIONS: Read and initial each statement below to signify you understand or verify this information.

____ 1. I understand a frequent practice of unlicensed persons is to have the property owner obtain an "Owner-Builder" building permit that erroneously implies that the property owner is providing his or her own labor and material personally. I, as an Owner-Builder, may be held liable and subject to serious financial risk for any injuries sustained by an unlicensed person and his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an Owner-Builder and am aware of the limits of my insurance coverage for injuries to workers on my property.

____ 2. I understand building permits are not required to be signed by property owners unless they are *responsible* for the construction and are not hiring a licensed Contractor to assume this responsibility.

____ 3. I understand as an "Owner-Builder" I am the responsible party of record on the permit. I understand that I may protect myself from potential financial risk by hiring a licensed Contractor and having the permit filed in his or her name instead of my own.

____ 4. I understand Contractors are required by law to be licensed and bonded in California and to list their license numbers on permits and contracts.

____ 5. I understand if I employ or otherwise engage any persons, other than California licensed Contractors, and the total value of my construction is at least five hundred dollars (\$500), including labor and materials, I may be considered an "employer" under state and federal law.

____ 6. I understand if I am considered an "employer" under state and federal law, I must register with the state and federal government, withhold payroll taxes, provide workers' compensation disability insurance, and contribute to unemployment compensation for each "employee." I also understand my failure to abide by these laws may subject me to serious financial risk.

____ 7. I understand under California Contractors' State License Law, an Owner-Builder who builds single-family residential structures cannot legally build them with the intent to offer them for sale, unless *all* work is performed by licensed subcontractors and the number of structures does not exceed four within any calendar year, or all of the work is performed under contract with a licensed general building Contractor.

___ 8. I understand as an Owner-Builder if I sell the property for which this permit is issued, I may be held liable for any financial or personal injuries sustained by any subsequent owner(s) that result from any latent construction defects in the workmanship or materials.

___ 9. I understand I may obtain more information regarding my obligations as an "employer" from the Internal Revenue Service, the United States Small Business Administration, the California Department of Benefit Payments, and the California Division of Industrial Accidents. I also understand I may contact the California Contractors' State License Board (CSLB) at 1-800-321-CSLB (2752) or www.cslb.ca.gov for more information about licensed contractors.

___ 10. I am aware of and consent to an Owner-Builder building permit applied for in my name, and understand that I am the party legally and financially responsible for proposed construction activity at the following address:

___ 11. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern Owner-Builders as well as employers.

___ 12. I agree to notify the issuer of this form immediately of any additions, deletions, or changes to any of the information I have provided on this form. Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the Contractors' State License Board may be unable to assist you with any financial loss you may sustain as a result of a complaint. Your only remedy against unlicensed Contractors may be in civil court. It is also important for you to understand that if an unlicensed Contractor or employee of that individual or firm is injured while working on your property, you may be held liable for damages. If you obtain a permit as Owner-Builder and wish to hire Contractors, you will be responsible for verifying whether or not those Contractors are properly licensed and the status of their workers' compensation insurance coverage.

Before a building permit can be issued, this form must be completed and signed by the property owner and returned to the agency responsible for issuing the permit. Note: A copy of the property owner's driver's license, form notarization, or other verification acceptable to the agency is required to be presented when the permit is issued to verify the property owner's signature.

Signature of property owner _____ Date: _____

Note: The following Authorization Form is required to be completed by the property owner only when designating an agent of the property owner to apply for a construction permit for the Owner-Builder.

AUTHORIZATION OF AGENT TO ACT ON PROPERTY OWNER'S BEHALF

Excluding the Notice to Property Owner, the execution of which I understand is my personal responsibility, I hereby authorize the following person(s) to act as my agent(s) to apply for, sign, and file the documents necessary to obtain an Owner-Builder Permit for my project.

Scope of Construction Project (or Description of Work): _____

Project Location or Address: _____

Name of Authorized Agent: _____ Tel No _____

Address of Authorized Agent: _____

I declare under penalty of perjury that I am the property owner for the address listed above and I personally filled out the above information and certify its accuracy. *Note: A copy of the owner's driver's license, form notarization, or other verification acceptable to the agency is required to be presented when the permit is issued to verify the property owner's signature.*

Property Owner's Signature: _____ Date: _____



Mariposa County Building Department

Mike Kinslow, Building Director

5100 Bullion St., P.O. Box 1268, Mariposa, CA 95338

Phone (209)966-3934 Fax (209)742-5024

NOTICE

Effective January 1, 2009

Assembly Bill 2335 amends California Health and Safety Code, Section 19825, regarding disclosures and verifications required for all applicants seeking Owner-Builder construction permits. These new application requirements provide an enhanced level of consumer awareness and protection for property owners accepting the risks associated with Owner-Builder construction permits.

“The Legislature hereby finds and declares that there is an urgent and statewide public interest in assuring that building contractors comply with the Contractors License Law...and provisions of law relating to Workers' Compensation Insurance for building construction, that property owners are informed about, and protected from, fraudulent representations, liability for worker's injuries, liability for material and labor costs unpaid by contractors, licensing requirements, and employer's tax liabilities when improving their property as owner-builders”

THIS OFFICE WILL BE ENFORCING THESE REQUIREMENTS AS FOLLOWS:

