

Contractor Licensure in North Carolina

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April 30, 2015



North Carolina requires that anyone who contracts with another person or entity to construct or make improvements to any building, highway, or public utilities, including grading, or who undertakes to superintend or manage such activities, be licensed as a general contractor if the work costs \$30,000 or more.[1]

Understanding this requirement and its nuances is an important part of acting as a general contractor or hiring

someone to act as a general contractor.

What is a General Contractor, What is the Licensure Requirement, and Why is There a Licensure Requirement?

The term "general contractor" is used in two different contexts. First, it is commonly used in a relationship context when a contractor retains other contractors to perform specific aspects of the work required by the contractor's agreement with another person or entity ("owner"). The other contractors are referred to as subcontractors. In this context, the "general" in "general contractor" refers to the nature of the contracting arrangement: A party hires the general contractor to be responsible for everything, including retaining the right subcontractors. Frequently, the subcontractors perform most, if not all, of the actual work required by the contractor's agreement. Thus, the general contractor's work essentially becomes coordinating the subcontractors and insuring that their collective effort produces the improvement the owner is expecting. North Carolina law recognizes this by including in the definition of "general contractor" persons contracting with another to "superintend or manage" construction.

For example, if Mr. Jones contracts with ABC Builders, Inc. to construct a house on property owned by Mr. Jones, and ABC Builders subcontracts with XYZ Framers, LLC to be responsible for the framing work in construction of the house, then Mr. Jones is the owner, ABC Builders is the general contractor, and XYZ Framers is a subcontractor on the project.

Second, the term "general contractor" in the North Carolina licensure context (N.C. Gen. Stat. §§ 87-1, et seq.) means any person, firm, or corporation that undertakes to construct for another person a building, highway, public utility, or improvement, including grading work, where the cost of the project is \$30,000 or more. North Carolina's licensure statute requires that anyone meeting this definition be licensed as a general contractor with the North Carolina Licensing Board for General Contractors ("Board"). It does not matter whether this "general contractor" hires any other contractor. What matters is whether the contractor is dealing directly

with the owner of the property being improved for work costing \$30,000 or more. Thus, a person or entity that is normally a "subcontractor" on a project can be a "general contractor" for purposes of the licensure statute if that person or entity contracts with the owner of the property rather than with a licensed general contractor.

Obtaining a license from the Board generally requires that the applicant take and pass a written competency test, pay a fee, and demonstrate the financial capacity to perform as a general contractor. There are three licensure tiers:

- A limited license allows the holder to act as a general contractor on projects with values up to \$500,000;
- An intermediate license allows the holder to act as a general contractor on projects with values up to \$1,000,000; and,
- An unlimited license allows the holder to act as a general contractor on projects of any value.

Since the licensure statute requires a license only for projects that cost \$30,000 or more, there is arguably a fourth tier which is sometimes known as the "handyman exception"—for construction projects that cost under \$30,000, no license is required.

The cost of a project is calculated not only at the time the project commences, but also throughout the project. Thus, if a contractor initially agrees to perform work that costs \$20,000 and later, during the course of the project, agrees to do an additional \$15,000 in work (usually pursuant to a change order), then the contractor will be required to have a general contractor's license since the final cost of the project is \$35,000.

Although a general contractor may typically hire subcontractors to perform some or all of the work, doing so has no effect on the requirement that the general contractor be licensed. Therefore, even if a general contractor performs all of the work (i.e., does not hire any distinct subcontractors), the general contractor must still be properly licensed with the Board if the contract with the owner has a cost of \$30,000 or more. The license must be held by the entity or person who actually enters into the contract with the owner.

Although subcontractors may be required to obtain certain trade licenses if acting as electricians, plumbers, carpenters, etc., they are not required to have a general contractor's license even if their subcontract is valued at \$30,000 or more if they are contracting with a licensed general contractor. Subcontractors dealing with a licensed general contractor do not have to have the same expertise; the expertise of the licensed contractor is deemed sufficient. However, if a party that typically acts as a subcontractor—by contracting through general contractors—contracts directly with an owner in a contract in the amount of \$30,000 or more, the subcontractor will become a general contractor for that particular project and must be so licensed.

One important exception to the general contractor licensing requirement is if the owner engages a contractor to act in a specific and limited capacity, such as to perform purely electrical, plumbing, or HVAC work. Such trades have their own licensing requirements. If the contract is for \$30,000 or more but is limited to a specific trade and the contractor has a license to perform that trade, the contractor will not be required to also have a general contractor's license even though the contractor is technically also a general contractor (the \$30,000 minimum has been reached and the contractor is dealing directly with the owner).

Why is there a licensure requirement for general contractors? The Supreme Court of North Carolina has observed that:

The purpose of Article 1 of Chapter 87 of the General Statutes, which prohibits any contractor who has not passed an examination and secured a license as therein provided from undertaking to construct a building costing [\$30,000] or more is to protect the public from incompetent builders.

(Emphasis added).

The Contractual Effects of Not Complying with the Licensure Requirement

In the same case quoted above, the Supreme Court of North Carolina held that:

When, in disregard of such a protective statute, an unlicensed person contracts with an owner to erect a building costing more than the minimum sum specified in the statute, he may not recover for the owner's breach of that contract. This is true even though the statute does not expressly forbid such suits.

Thus, an unlicensed general contractor may not bring a breach of contract claim against the owner. The contract is considered "void" based on the general contractor's failure to comply with the requirements of the licensure statute. Put simply, the unlicensed general contractor may not enforce its contract and may not compel the owner to pay for the work performed, even if there are no defects in the work itself.

Therefore, if, in the example above, ABC Builders does not hold a license with the Board but nevertheless enters into a contract with Mr. Jones to construct a house upon land owned by Mr. Jones for the contract price of \$150,000, then ABC Builders cannot force Mr. Jones to pay it a dime after it completes construction of the house. Pangs of guilt or his internal moral compass may compel Mr. Jones to pay ABC Builders, but the courts of North Carolina will do nothing to help ABC Builders recover the contract sum from Mr. Jones because the contract is considered void due to ABC Builders' failure to be properly licensed.

This is a striking—and, for the unlicensed general contractor, a very harsh—rule. The North Carolina courts have noted the harshness of the rule while, at the same time, repeatedly enforcing it, holding that it is the public policy of North Carolina that those acting as general contractors be properly licensed.[2]

Not surprisingly, many unlicensed general contractors confronted at the end of a project with the prospect of not getting paid for their work (or not getting paid their last draw) have pleaded with the courts to allow an exception to the general rule based on the specific circumstances of their case. But the courts have found very few, if any, exceptions to the general rule. Thus, recovery has been denied to unlicensed general contractors where:

- The contractor sought recovery in quantum meruit (an alternative, equitable contract theory);
- The contractor was a partnership and one of the partners possessed a general contractor's license;
- The contractor was a corporation and the president and sole shareholder held a general contractor's license; and,
- The contractor employed a licensed general contractor to supervise the project.

The North Carolina Court of Appeals has even held that a general contractor who contracts to construct a dwelling on the contractor's own property for sale to another person must be denied recovery, as the statute applies regardless of who owns the land upon which the dwelling is built. However, the Court of Appeals also held in that case that:

This is not tantamount to holding, as [the contractor] suggest[s], that any person is prevented . . . from building anything on his own property and subsequently undertaking to sell what he has built. As the language of the statute suggests, the . . . prohibition applies only to a builder who contracts with another to construct any building without obtaining the requisite license, regardless of who owns the land upon which the building is to be constructed.

Thus, if an unlicensed seller-contractor enters into a contract with a buyer for the seller to build a house on the

seller's land and then convey the land and the house to the buyer, the seller will not be able to enforce the contract. However, the result in this situation would likely be that the seller would just refuse to convey the house and the land if the buyer has indicated the intent to not pay anything.

Even if our hypothetical seller-contractor protects itself by refusing to convey the now-constructed house to the recalcitrant buyer, it is unclear if the seller could ever sell the structure even if the seller held the property for at least 12 months before selling it pursuant to Section 87-1(b)(2) of the North Carolina General Statutes because the building was not intended solely for occupancy by the contractor and the contractor's family, firm, or corporation after completion.

Indeed, even if the seller-contractor in our hypothetical built the house first without a prospective buyer (a "spec-house") and, only after completion of the construction of the house, entered into a contract with a buyer to sell the land and the house, the reasoning from the North Carolina case quoted above would still not allow the seller to enforce the sales contract against the buyer because the seller-contractor still needed a license. While it was building the house "on [its] own behalf," it was not building it for the purpose of actually occupying it as the contractor's residence. If the latter was the purpose, Section 87-1(b) creates an exception from the requirement for a license.

A recent North Carolina Court of Appeals case allowed an unlicensed contractor to recover from the owner. In that case, the Court of Appeals focused not on whether the contractor had been hired to erect improvements for the owner, but rather on whether the contractor had engaged in supervising the other contractors. The other contractors had contracted directly with the owner and another party had contracted with the owner to coordinate the work. Thus, the unlicensed contractor attempting to recover had not actually supervised the other contractors or the overall project. Because the contractor had not engaged in supervising the overall work of the entire project, the Court held that the contractor was not a *general* contractor and, therefore, was not subject to the statute's requirement that the contractor hold a general contractor's license.

This is a significant departure from previous interpretations of the statute by North Carolina courts that had focused on whether the contractor had contracted with the owner to erect improvements on the owner's property, not on whether the contractor had exercised a certain degree of control over the project or other contractors. This opinion—when evaluating whether an unlicensed contractor can recover—appeared to focus on the "superintend or manage" prong of the definition of general contractor in Section 87-1 and overlooked the "contract with another to construct" prong of the definition.

Substantial Compliance

However, recovery is not denied to an unlicensed general contractor if the contractor has achieved substantial compliance with the statutory licensing procedures. In evaluating substantial compliance, considerable weight is given to whether or not the contractor was licensed at the time it entered into the contract.

Substantial compliance has been found where the contractor was licensed at the time it entered into the contract, failed to renew the license during the construction project, promptly acted to correct the error, and was successful in ultimately renewing its license. The fact that a general contractor at one time in the past had a license is not substantial compliance.

Other Effects of Not Complying with the Licensure Requirement

There are other potential risks for an unlicensed general contractor beyond not getting paid for its work. The Board may seek to enforce penalties. These penalties include monetary penalties, criminal charges, and a court order prohibiting the general contractor from acting as a contractor in the future. An unlicensed general contractor also runs the risk that if an owner asserts a claim that the general contractor's work is defective the

general contractor's unlicensed status will support or reinforce the conclusion that the work is indeed defective.

Conclusion

From a consumer's point of view, entering into a contract with someone who is not properly licensed as a general contractor is fraught with risk. On the other hand, from an unlicensed general contractor's point of view, agreeing to perform construction work for someone in an amount of \$30,000 or more means that, among other things, the contractor may end up performing that work for free. Understanding and complying with North Carolina's licensure requirements are important for both consumers and those who contract with them to build improvements.

[1] Anyone who undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code must also have a general contractor's license, but this article will not address this component of the licensure issue.

[2] Although the unlicensed general contractor cannot maintain a suit for breach of contract, it may enforce the contract defensively, as a setoff, to claims asserted against the contractor by the owner. Further, the courts have held that an unlicensed general contractor is not precluded from enforcing a subcontract or recovering damages for the breach thereof against an unlicensed subcontractor.

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