

Why You Need Insurance and a License

by Quenda Behler Story

At a New Year Eve's party, I was cornered by a local remodeler who wanted to talk about uninsured contractors. "It's not fair to expect me to pay a fortune for insurance and licenses," he complained, "and then leave me to compete with guys who can put in lower bids because they don't bother with that stuff."

I try to avoid debates with people who are both right and wrong at the same time, especially at parties where alcohol is being served. Yes, it is unfair and difficult to compete with people who don't have the proper licenses or insurance, but licenses and insurance are important protections builders and remodelers should not give up. Let's take a quick look at why.

Basic Protection

Doing business without workers comp insurance is very much like standing on a hill at the golf course with a metal driver in your hand during a thunderstorm. Workers who are injured on the job have compensation rights that can cost contractors big time.

Sometimes it's a homeowner or a passerby who is injured by the construction process. If they can prove negligence was involved in the accident, they have liability rights that can cost a contractor incredible amounts of money. That's what liability insurance is for.

Sometimes the problem isn't that the contractor is uninsured — it's that his subs aren't insured. Some contractors think they have taken care of this problem by writing a requirement into the contract saying that subs must have insurance. The subs sign the contract, but the contractor doesn't confirm this

requirement. Instead, after the job is finished, the contractor simply withholds the last payment until the sub produces a copy of the insurance certificate.

By withholding that last payment from the sub, the contractor keeps money on hand to pay the surcharge the insurance company will impose after its auditor discovers the uninsured sub. But the goal of requiring that subs be insured is not to protect the contractor from his insurance company; it's to protect him from the possible consequences of hiring uninsured subs.

For protection during the course of the job, the GC needs to see the insurance certificate *before the job starts*. Claims for workers comp or negligence arise out of events that occur on the job site while the sub is working. Legally speaking, after the job is over, the contractor has no further relationship with that sub except for payment. Getting the certificate after the job is finished is a classic case of closing the barn door after the horse is gone.

Not only that, if the sub sued the contractor for payment, the contractor would probably be ordered to pay up. At best, the court might reduce the sub's judgment by the actual dollar amount of the insurance surcharge.

Licenses

Most of what I've said about insurance applies to licenses, too. Most states require licenses and impose various fines and penalties for doing construction work without them. For example, here in Michigan, if the contractor does not have a valid license, he can't sue to collect money owed to him for work he has done.

If a general contractor holds a valid license, but his subs do not, that's asking for trouble, too. A sub who doesn't have a state-required license looks an awful lot like an employee to the Internal Revenue Service, as well as to the unemployment compensation agency, the workers comp claims agent, and the courts. In situations involving injured workers, or where the sub has been negligent and would have been liable for it, the GC could be left holding the bag. Worse yet, the GC's insurance policy may exclude claims involving an unlicensed sub.

General contractors are not the only ones who should check on proper licenses. Subcontractors need to be careful, too. The Michigan courts had a nasty surprise for the unpaid subcontractor of an unlicensed GC. The sub, who was himself licensed, had asked to see the GC's license, but didn't notice that he was instead shown a license that belonged to somebody else. When the sub didn't get paid because he had waived his lien rights and the homeowner had already paid the GC, the sub then sued the GC, who was last seen heading south. This left the sub with an unpaid judgment that was not worth the lawyer's fees it cost to get.

Ironically, when the properly licensed sub went to the Construction Lien Recovery Fund for compensation — a fund supported in part by licensing fees — the sub wasn't allowed to collect from the fund because the absconding contractor had been unlicensed.



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