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A trap for the unwary: Joint ventures must have their own contractor's licenses

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Anyone with a passing familiarity with Oregon construction laws knows that there is a requirement for contractors to be licensed. However, there are special rules that apply to licensing joint ventures, which even some sophisticated contractors, to their chagrin, have come to appreciate only after expensive litigation.

The general rule is that Oregon contractors must be continuously registered from the time they solicit work through the completion of the work. However, a special rule applies to "joint ventures," combinations of two or more companies for the purpose of performing a project. For joint ventures, the rule is that a separate contractor's license is not needed while the work is being solicited so long as at least one of the named members of the joint venture has its own contractor's license. However, at the time of contracting and performance, the joint venture must have its own contractor's license, independent of its members. The failure to be properly licensed carries with it a number of adverse consequences, including the inability to pursue a claim for compensation either through litigation or arbitration.

Although the Oregon statutes are

clear concerning the joint venture licensing requirement, a couple of recent cases demonstrate that even sophisticated and large contractors can run afoul of licensing requirements.

In the first case, a joint venture was formed between two contractors to install a bleaching system at a pulp plant. Both contractors were licensed in Oregon. The project went badly and was delayed. When the joint venture filed a lawsuit on its \$2 million claim, the owners determined that the joint venture had never obtained the required separate license. As a result, rather than having to address the disputed claim on its merits, the owner's defense was based on the fact that the joint venture was legally barred from pursuing the claim because of its lack of licensure.

Before the trial judge, the joint venture tried to avail itself of a statutory exemption to the licensing requirement by arguing that it was ignorant of the separate licensing requirement for joint ventures, despite the clear language of the statute. However, this argument was discredited in part by the fact that the joint venture sponsor arranged to have the joint venture designated as one of its assumed business names in an attempt to satisfy the separate licensing requirement, thus demonstrating that the joint venture knew very well of the requirement. Ultimately, the trial court ruled that the joint venture could not

pursue its claim because of its failure to have a separate license. That decision has been appealed, but it demonstrates the hazard of ignoring, or worse, trying to circumvent, the joint venture licensing requirement.

In another recent case, a joint venture also failed to obtain a license separate from its licensed members. Because it was unlicensed, the trial court barred the joint venture from pursuing a claim for \$686,000 against a subcontractor. On appeal, the court of appeals ruled that there was at least a factual issue as to whether the joint venture could avail itself of a statutory exemption because it was ignorant of the separate licensing requirement. (Supposedly, the joint venture did not obtain a separate license because of some erroneous advice given by a representative of the Construction Contractors Board.) The trial court's ruling was reversed and the joint venture claim was sent back for a trial.

These cases involving sophisticated contractors reveal the dangers of joint venture members taking a casual approach to comply with special licensing rules that apply to joint ventures. Before a joint venture proceeds on any project, the applicable licensing requirements should be carefully reviewed and satisfied.

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