



# LEGAL NOTES

ABA - ARIZONA BUILDERS' ALLIANCE

An Association of ABC Arizona and AGC Arizona Building Chapter  
1825 W. Adams, Phoenix, AZ 85007 (602) 274-8222 FAX: (602) 274-8999  
1661 N. Swan, Suite 144, Tucson, AZ; 85712 (520) 881-7930; FAX: (520) 327-1686

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## NO LICENSE? NO PROBLEM.

**Matthew H. Sloan, Esq.  
Jennings, Haug & Cunningham, LLP**

Arizona law is clear that a person or entity must be licensed to perform contracting work in the State of Arizona. This requirement is found at A.R.S. § 32-1151. Harsh consequences fall upon those who perform construction work without a license. Crowe v. Hickman's Egg Ranch, Inc., 202 Ariz. 113, 41 P.3d 651 (App. 2002) (Contractor barred from suing for contract balance due to non-compliance with licensing laws); State v. Wilkinson, 202 Ariz. 27, 39 P.3d 1131 (2002) (Contractor required to disgorge payments received as criminal restitution arising out of contracting without a license).

Most people are familiar with the handyman's exception to the license requirement, *i.e.*, a person who performs contracting work and with a value of \$750<sup>1</sup> or less for all labor and materials (with certain exceptions) is not required to hold a license. The \$750 figure includes all materials, even those purchased directly by the owner.

What is not as well known is that there is a list of 15 other "persons not required to be licensed" found at A.R.S. § 32-1121. For example, property owners are allowed to do work on their property

<sup>1</sup> Effective September 21, 2006, the \$750 figure will be increased to \$1,000, and certain specific types of materials will be excluded in calculating if the \$1,000 threshold is met.

without being licensed, as long as that property is intended for the use of the owner and not for use by the public. A.R.S. § 32-1121 (A)(5). Certain apartment and condo owners or their employees can also perform their own contracting services without a license. A.R.S. § 32-1121 (A)(10).

All governmental agencies and public utilities regulated by the corporation commission can perform contracting services without a license. A.R.S. § 32-1121 (A)(1) and (3). Architects and engineers may also "contract" without a license when hiring contractors to perform certain services in the performance of the architect's or engineer's professional practice. A.R.S. § 32-1121 (A)(7).

Surety companies can take over and complete a construction project without a license as long as the surety company uses licensed contractors to perform all construction work. Insurance companies can contract for repair work covered by their insurance policies, again as long as the insurance company uses licensed contractors. A.R.S. § 32-1121 (A)(12) and (13).

Material suppliers who do not install or attach their materials are not required to be licensed. A.R.S. § 32-1121 (A)(4). This holds true even if the supplier attaches its materials, but then only if the total value of the sales contract (including the installation) falls under \$750 (soon to be \$1,000). Id.

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Under a recent Arizona Court of Appeals decision however, this statutory section was held to allow a material supplier to contract for the supply *and* installation of materials without any monetary limit, and without holding any license. See, Butch Randolph & Associates, Inc. v. International Fidelity Insurance Co., 212 Ariz. 550, 136 P 3d 232 (App 2006). Although it was (unsuccessfully) argued that A.R.S. § 32-1121 (A)(4) should not be read to allow unlicensed contractors to supply and install materials without any limit in value, the Court interpreted the statute to allow just that.

In fact, the frequent amendments to A.R.S. § 32-1121 may have inadvertently created a gap between who the Arizona legislature or the Registrar of Contractors intended to be excluded from licensing laws, and those who the Courts will hold are excluded under the current language. The Butch Randolph Opinion shows how wide this gap is by holding that a "contractor" hired under a \$72,000 contract to *supply and install* metal structures is not required to be licensed if it subcontracts out the installation work to licensed subcontractors.

Under the 2006 amendment to Section 32-1121(A)(4), the \$1,000 exemption includes the cost of all materials (except anything plugged into a two or three pronged electrical outlet or fastened to the frame or foundation). This expansion is small in comparison to the opening created by the Court of Appeals in the Butch Randolph case. According to the Court, material suppliers may now contract for the supply *and installation* of their materials as long as they subcontract out the actual installation work.

For example, Home Depot, Lowe's, Ultimate Electronics and other retail stores currently hold several contractor licenses, and use those

licenses when contracting for the sale and installation of materials and equipment even though it subcontracts with other licensees for the actual installation work. However, under Butch Randolph, those retailers can now bid to supply and install practically anything, and as long as they hire licensed subcontractors to perform that installation they do not need to hold a license in their own name.

Under the Butch Randolph interpretation of A.R.S. § 32-1121 (A)(4), any person may contract to build any structure, as long as they put forth no construction related labor of their own, supply all of the materials, and hire licensed subcontractors to perform all installation work. Under that interpretation of A.R.S. § 32-1121(A)(4), many unlicensed contractors can now find some refuge from the policing efforts of the Registrar of Contractor's office.

Will there be further amendments to the list of those not required to be licensed? Will the Registrar or the Legislature see the problem caused by Butch Randolph and take action to correct it? Even if so, the legislative process is slow and any amendment is at least one year away. Moreover, the legislative method of amending statutes is cumbersome and political (how else could a two or three prong plug exemption come into being?). As a result, there is no telling if or when further amendments might be made to the current list of exemptions, or if further amendments would lead to even broader application of the exemptions. Only time will tell.

Until then, having no license is apparently no problem.

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