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CONTRACTOR LICENSING IN THE CONSTRUCTION INDUSTRY: SUBSTANTIAL COMPLIANCE DOCTRINE PREVENTS EGREGIOUS RESULTS

I. INTRODUCTION

Licensing is a method of regulating various professions, occupations, and businesses.\(^1\) Licensing laws are usually enacted to protect the public and often require a person acting in a particular capacity to fulfill certain requirements.\(^2\) By fulfilling specific requirements, a

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\(^1\) 1988 by Michael J. Smith

1. It is beyond the scope of this comment to discuss the general topic of licensing. For background information concerning this topic, several sources are helpful. See generally 53 C.J.S. Licenses §§ 1-102 (1987); see also 51 Am. Jur. 2d Licenses and Permits §§ 1-87 (1970).

Any discussion of licenses and licensing should include a definition of the terms "license" and "licensing." The federal Administrative Procedure Act offers definitions. Of these terms, section 551(8) defines "license" as "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." 5 U.S.C. § 551(8) (1982). And section 551(9) defines "licensing" as the "process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. § 551(9) (1982). In *Blatz Brewing Co. v. Collins*, the court defined a license as "a grant of permission to do a particular thing, to exercise a certain privilege, or to carry on a particular business or to pursue a certain occupation." 69 Cal. App. 2d 639, 643, 160 P.2d 37, 39 (1945) (citing San Francisco v. Pacific Tel. & Tel. Co., 166 Cal. 244, 249, 135 P. 971, 974 (1913)).

2. For example, in California, individuals in the following professions, occupations, and businesses must be licensed: Accountants, architects, certain athletes, barbers, behavioral science workers, contractors, cosmetologists, dentists, embalmers, engineers, funeral directors, geologists, landscape architects, medical examiners (includes physicians and surgeons, podiatrists, physical therapists), nurses, nursing home administrators, optometrists, pharmacists, private investigators, shorthand reporters, and veterinarians. *Department of Finance, California Statistical Abstract* 182-83 (27th ed. 1976).

Important to this comment is California Business and Professions Code section 7068(a), which requires contractors to be licensed. The statute provides, in pertinent part:

The board (the Contractors State License Board) shall require an applicant to show such degree of knowledge and experience in the classification applied for, and such general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the
person demonstrates a minimal level of competency, honesty, and financial capacity. The failure to fulfill the requirements may result in courts refusing to enforce a contract between the improperly licensed person and the other contracting party.\(^8\)

California Business and Professions Code section 7031 is part of the Contractors License Law.\(^4\) Under section 7031, a building board deems necessary for the safety and protection of the public.

**CAL. BUS. & PROF. CODE § 7068 (West Supp. 1988).**

3. For information on how the lack of a license may affect the enforceability of a contract in the context of the construction industry, see Annotation, *Failure of Building and Construction Artisan or Contractor to Procure Business or Occupational License as Affecting Enforceability of Contract or Right of Recovery for Work Done, Modern Cases*, 44 A.L.R. 4th 271 (1986).

In addition to not having a contract enforced, contractors and subcontractors in California cannot maintain an action to foreclose a mechanics' lien unless they can allege and prove that they satisfied the requisite licensing requirements. *M. Marsh, California Mechanics' Lien Law and Construction Industry Practice* 10-17 (4th ed. 1985 & Supp. 1987).

4. The Contractors License Law is a comprehensive scheme governing contractors who conduct business in California. **CAL. BUS. & PROF. CODE §§ 7000-7173 (West 1975 & Supp. 1988).** The law is administered by the Contractors State License Board [hereinafter the CSLB] which is a part of the California Department of Consumer Affairs. The CSLB license board licenses and regulates contractors in the various trades which compose the construction industry. *Contractors State License Board, California Contractors License Law & Reference Book* (25th ed. 1984).

The term "contractor" is defined by California Business and Professions Code section 7026 and provides:

The term contractor for the purposes of this chapter is synonymous with the term 'builder' and, within the meaning of this chapter, a contractor is any person, who undertakes to or offers to undertake to or purports to have the capacity to undertake to or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, and whether or not the performance of work herein described involves the addition to or fabrication into any structure, project, development or improvement herein described of any material or article of merchandise. The term contractor includes subcontractor and specialty contractor.

**CAL. BUS. & PROF. CODE § 7026 (West Supp. 1988).**

The CSLB issues licenses for the three following classifications: (1) Class “A”—general engineering contractor, (2) Class “B”—general building contractor, and (3) Class “C”—specialty contractor. *Contractors State License Board, California Contractors License Law & Reference Book* 5 (25th ed. 1984). Licensing requirements vary, depending upon which license is sought.

Moreover, California statutes define the terms "general building contractor" and "specialty contractor." California Business and Professions Code section 7057 provides:

A general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated
contractor is prohibited from bringing or maintaining an action in any court for the collection of sums owed for contracting services unless the contractor is properly licensed at all times during the performance of a job. An unlicensed or improperly licensed contractor will not be allowed access to the courts to recover for labor and/or materials furnished to another party. The contractor who is not properly licensed at all times during the performance of a job runs the risk of not being paid for work completed.

California courts have stated that section 7031 serves two important purposes. First, the statute serves to protect the public against the dishonest, incompetent, inexperienced, financially irre-

building trades or crafts, or to do or superintend the whole or any part thereof. This does not include anyone who merely furnishes materials or supplies under Section 7045 without fabricating them into, or consuming them in the performance of the work of the general contractor.

CAL. BUS. & PROF. CODE § 7057 (West 1975).

California Business and Professions Code section 7058(a) provides: "A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skills and whose principal contracting business involves the use of specialized building trades or crafts." CAL. BUS. & PROF. CODE § 7058(a) (West Supp. 1988).

Furthermore, the California Administrative Code provides that "specialty contractors" are classified into over 35 subclassifications. CAL. ADMIN. CODE tit. 16, §§ 830-834 (1986).

5. CAL. BUS. & PROF. CODE § 7031 (West 1975). This statute is the focus of this comment. The complete text of the statute is found in the background section of this comment.

For a brief but excellent general discussion of some basic problems with contractor licensing, see J. SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING, AND THE CONSTRUCTION PROCESS (3d ed. 1985). The author draws attention to some of the problems associated with the licensing of contractors. Specifically, contractor licensing laws can artificially reduce the pool of contractors. Also, the segregation of specialty trades by licensing tends to reduce the likelihood of more efficient organizational structures, something especially needed in the construction industry. It is common for contractors licenses to be "bought" and "sold" as any other valuable commodity. Finally, the issuance of a license can be a false representation by the state that may deceive the unwary consumer, therefore, harming persons whom the law was intended to protect. Id. at 423.

6. CAL. BUS. & PROF. CODE § 7031 (West 1975). In addition to being denied access to the courts, unlicensed contractors may face other problems. For example, California Business and Professions Code section 7028 provides that any person who engages in the business or acts in the capacity of a contractor in California without the proper license may face civil and criminal penalties. CAL. BUS. & PROF. CODE § 7028 (West Supp. 1988).

Also, California Business and Professions Code section 7028.3 provides that a superior court may restrain an unlicensed contractor from acting in the capacity of a contractor by granting a temporary restraining order, a preliminary injunction, or a permanent injunction under appropriate circumstances. CAL. BUS. & PROF. CODE § 7028.3 (West Supp. 1988).

The Contractors State License Board has the power to have unlicensed contractors' telephones disconnected if they have advertised in the yellow pages in the phone book. Under a pilot program in Sacramento County, computerized license information is updated daily and is made available to local building departments. If a builder tries to obtain a permit and is unlicensed, or if the license is not in good standing, the permit may be denied. San Jose Mercury News, Oct. 3, 1987, at D1, col. 1.
sponsible and fraudulent acts of building contractors and persons acting in the capacity of building contractors.\(^7\) Second, the statute serves to practically enforce the Contractors License Law.\(^8\) Californ-
nia courts have, at times, insisted on strict compliance with section 7031.
However, as the harshness of requiring strict compliance became apparent, California courts adopted the substantial compliance doctrine.

In the landmark decision *Latipac, Inc. v. Superior Court,* the California Supreme Court established the test for determining substantial compliance. The test is whether a contractor’s “substantial compliance with the licensing requirements satisfies the policy of the


10. 64 Cal. 2d 278, 411 P.2d 564, 49 Cal. Rptr. 676 (1966). This case is discussed throughout this comment. California has not been the only state to adopt a substantial compliance doctrine with respect to contractor licensing laws; the state of Washington has also employed this doctrine. In its leading case, *Murphy v. Campbell Inv. Co.*, the Supreme Court of Washington, sitting en banc, concluded that a contractor who inadvertently forgot to accompany his application for a license with proof that he had liability insurance, and later corrected his mistake, substantially complied with the state's licensing statute. 79 Wash. 2d 417, 486 P.2d 1080 (1971). The court noted that the intent or design of the statute is to prevent the victimizing of a defenseless public by unreliable, fraudulent, and incompetent contractors. Id. at 421, 486 P.2d at 1083 (quoting Stewart v. Hammond, 78 Wash. 2d 216, 219, 471 P.2d 90, 92 (1970)). Washington state has several cases in which substantial compliance is found. See, e.g., Northwest Cascade Constr. Inc. v. Custom Component Structures, Inc., 83 Wash. 2d 453, 519 P.2d 1 (1974) (Substantial compliance with Washington’s licensing law was found on the part of a subcontractor’s employees who completed a building contract even when the subcontractor took on another job because the contractor remained obligated under the original contract and remained sufficiently involved in the construction contract.); Expert Drywall, Inc. v. Brain, 17 Wash. App. 529, 564 P.2d 803 (1977) (Substantial compliance was found where a general contractor’s license had lapsed for a three month time period. A variety of errors made by the general contractor, an insurance and bonding company, and by state registration officials caused the lapse.).

In addition, several other states have case law in which a contractor’s licensing law was not strictly interpreted. In Arizona, for example, *Desert Springs Mobile Home Ranches, Inc. v. John H. Wood Constr. Co.* held that the statutory requirement was satisfied where the president of a construction company was individually licensed even though the license of the company itself had been suspended during the performance of the contract and no attempt was made to remove the suspension. 15 Ariz. App. 193, 487 P.2d 414 (1971). Nevada’s statute was interpreted in a manner which allowed the contractor to recover despite non-strict compliance. *See MGM Grand Hotel, Inc. v. Imperial Glass Co.*, 533 F.2d 486 (9th Cir.), *cert. denied*, 429 U.S. 887 (1976).
Moreover, the court summarized three factual elements that must be present in order to warrant the application of the substantial compliance doctrine:

(1) the fact that the plaintiff held a valid license at the time of contracting, (2) that the plaintiff readily secured a renewal of that license, and (3) that the responsibility and competence of plaintiff's managing officer were officially confirmed throughout the period of performance of the contract.13

Recent cases have raised the question of whether the satisfaction of all three Latipac elements are necessary in order to find substantial compliance. The California Supreme Court has stated that "the failure to establish all of the Latipac elements need not defeat a plaintiff's claim . . . [because the real test is whether] the contractor's substantial compliance with the licensing requirements satisfies the policy of the statute."14 Moreover, commentators suggest that the courts appear to be relaxing the stringency of the elements necessary for a finding of substantial compliance.15

This comment suggests that the three element Latipac test should be modified, and proposes a two part test to determine whether a contractor has substantially complied with section 7031. Part II of this comment discusses the background and development of the doctrine of substantial compliance. Part III discusses the problems associated with using the Latipac elements to determine whether there has been substantial compliance with section 7031. Part IV analyzes its application by the California courts. Finally, Part V outlines the proposed two element test to determine whether a contractor has substantially complied with section 7031.

II. BACKGROUND

A. Text of Section 7031

California Business and Professions Code section 7031 provides in its present form:

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12. Latipac, 64 Cal. 2d at 281, 411 P.2d at 567, 49 Cal. Rptr. at 679 (citing Lewis, 48 Cal. 2d at 149, 308 P.2d at 718).
13. Id. at 281-82, 411 P.2d at 567, 49 Cal. Rptr. at 679.
14. Asdourian, 38 Cal. 3d 276, 696 P.2d 95, 211 Cal. Rptr. 703 (1985). The court stated: "If the facts clearly indicate substantial compliance which satisfies the policy of the Contractors License Law, the failure to establish all the Latipac factors should not defeat plaintiff's claim." Id. at 284, 696 P.2d at 100, 211 Cal. Rptr. at 708.
No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract, except that such prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.  

B. **Purpose of Section 7031**

California courts have noted that the primary intent of the Legislature in enacting section 7031 was to protect the health, safety, and general welfare of members of the public who deal with contractors or persons acting as contractors. The statute is supposed to protect the public against incompetent, inexperienced and unqualified individuals acting as contractors. The statute attempts to ac-
complish this objective by denying the noncomplying contractor access to any court to recover compensation owed. The contractor who is not properly licensed during the performance of a job runs the very real risk of not being paid for work performed.

C. Development of Substantial Compliance Doctrine

In enforcing section 7031, courts attempt to reconcile two conflicting policies. On the one hand, the statute should be strictly enforced in order to protect the public from abuse by unqualified contractors. On the other hand, strict enforcement could prevent an innocent, though technically unlicensed contractor, from recovering compensation for work performed. As a result of these conflicting policies, courts have not always agreed on how rigorously to interpret the statute.

Citizens State Bank of Long Beach v. Gentry is the first case to apply the doctrine of substantial compliance to section 7031. In this case, the contractor held a valid license when the contract was executed and when the job began. While work was in progress, the license expired. The contractor formed a corporation, which he

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19. J. Acret, California Construction Law Manual (3d ed. 1982). The author states: “The contractor who is not properly licensed at all times during the performance of a job runs the risk on not being paid for his work. Moreover, the contractor who unwittingly contracts with an unlicensed contractor may find himself precluded from recovering for work performed.” Id. at 142.

20. J. Acret, Attorney’s Guide to California Construction Contracts and Disputes (2d ed. 1986). The author points out the conflict by stating that:

Rigid enforcement of [section 7031] has sometimes led to seemingly inequitable results because an owner who has received the benefit of work properly performed has nevertheless been able to escape payment on the ground that the contractor was not properly licensed at all times. On the other hand, [section 7031] is a consumer protection statute that may require strict enforcement to accomplish the desired results.

Id. at 19-20.

As to the question of why section 7031 should be strictly enforced, one court offered the following reasoning: “In denying recovery to unlicensed contractors courts have rationalized the harsh impact on some competent, but unlicensed, persons by deferring to the legislative determination that deterrence outweighs the cumulative effect of the penalty suffered by the contractor and the unjust enrichment obtained by the property owner.” Executive Landscape Corp. v. San Vincente Country Villas IV Ass’n, 145 Cal. App. 3d 496, 498, 193 Cal. Rptr. 377, 378 (1983).

21. 20 Cal. App. 2d 415, 67 P.2d 364 (1937). The court did not explicitly state that the doctrine of substantial compliance was applied to section 7031, yet the case leaves little doubt that this occurred.

22. Id. at 419, 67 P.2d at 366.

23. Id.
owned and controlled, and the license was renewed in the name of
the corporation rather than in the name of the individual con-
tactor. The contractor failed to strictly comply with section 7031 be-
cause he did not personally hold a valid license at all times during
performance of the contract. Nonetheless, a California court of ap-
peals held:

[W]here a manifestly unjust and inequitable result would follow
a holding that plaintiff contractor was without capacity to sue
on his contract, the individual plaintiff in whose name the li-
cense stood at the time the contract was made and the corporate
entity organized by him in whose name the license stood at the
time the cause of action accrued should be considered as one.

Citizens State Bank was followed by Gatti v. Highland Park
Builders, Inc., in which the California Supreme Court applied the
doctrine of substantial compliance. Here, the individual contractor
held a valid license and entered into a building contract with the
defendant. All parties to the building contract later agreed that the
contractor and his foreman, who was also a licensed contractor,
would complete the balance of the work as partners. After full per-
formance by the partnership, a partnership license was issued to the
contractor, his foreman, and a third party. The defendant argued
that the failure of the contractor and his foreman to procure a sepa-
rate partnership license in their two names prevented them from re-
covering on the contract. The majority rejected this argument and
held that a reasonable interpretation of section 7031 "compels the
conclusion that plaintiffs have substantially complied with the statu-
tory requirements." The court reasoned that the partnership ar-
rangement did not effect any change in the performance of the con-
tract. The court was also concerned that section 7031 not be used
as a shield to defeat a legitimate claim.

Although courts have found substantial compliance in some
cases, in others they have not. The following cases illustrate that sec-
section 7031, at times, receives a strict interpretation.

For example, in Lewis & Queen v. N.M. Ball Sons, the Cali-
ifornia Supreme Court failed to find substantial compliance. The de-

24. Id.
25. Id. at 420, 67 P.2d at 366-67.
27. Id. at 688, 166 P.2d at 265.
28. Id. at 690, 166 P.2d at 266.
29. Id.
30. 48 Cal. 2d 141, 308 P.2d 713 (1957).
fendants entered into four separate agreements with the plaintiff subcontractors who were not properly licensed. The court held that the subcontractors could not maintain their action and recovery was denied. The court stated that:

Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of the state.

Similarly, a court of appeals did not find substantial compliance in Bierman v. Hagstrom Construction Co. because the subcontractor failed to renew his license for a period of five weeks during a ten month job. The subcontractor could not maintain an action against the prime contractor for work done and materials used on a housing project. The court distinguished this case from its predecessors where substantial compliance was premised upon the basis that someone had a license at all times during performance. In this case, "there was a period of approximately five weeks when the plaintiff was not licensed."

A strict compliance approach was used to deny a partnership recovery in Steinwinter v. Maxwell. The contractors entered into a written contract with the defendant, however, only one of the contractors was licensed. Both contractors were officers of another corporation that was duly licensed and both contractors had been approved by the licensing board for the issuance of the corporate license. Nevertheless, the court found that "[t]he partners knew or should have known, that they were required to have a contractor's license. They had a valid license in their corporation which they

31. Id. at 154-55, 308 P.2d at 721-22. The court determined that the plaintiffs, as subcontractors, acted as a contractor without being licensed as required by law. Id. at 147, 308 P.2d at 716.
32. Id. at 151, 308 P.2d at 719.
34. Id. at 773-74, 1 Cal. Rptr. at 828. Due to an oversight, the license renewal fee was not sent in on time. Id.
35. Id. at 776-77, 1 Cal. Rptr. at 830.
36. Id. at 777, 1 Cal. Rptr. at 830.
37. 183 Cal. App. 2d 34, 6 Cal. Rptr. 496 (1960). The court determined that "[t]he application of the substantial compliance rule has been limited to very few cases and we do not feel that it should be extended to this case." Id. at 38, 6 Cal. Rptr. at 499.
38. Id. at 36-37, 6 Cal. Rptr. at 497-98.
39. Id.
could have used. For reasons unknown, they chose not to use it.\textsuperscript{40}

In the above cases, the courts did not have a specific test to aid them in making their decision as to whether substantial compliance was present. It was not until 1966, when \textit{Latipac} was decided, that the California Supreme Court summarized the elements necessary for a finding of substantial compliance.\textsuperscript{41}

D. \textit{Latipac Inc. v. Superior Court}

In \textit{Latipac}, the plaintiff contracted to grade and fill certain land owned by the defendant.\textsuperscript{48} The contractor possessed a valid license at the time the parties executed the contract but later failed to submit a renewal application and the required fee. The license expired, and at the time of its expiration the contractor had been performing under the contract for fifteen months. He completed the job and shortly thereafter renewed his license.\textsuperscript{48} Defendant Latipac, Inc. sought to restrain the court from hearing the action brought by the contractor to recover for labor and materials furnished to the defendant pursuant to the contract.\textsuperscript{44}

Justice Tobriner reaffirmed that the test is whether the contractor's substantial compliance with the licensing requirements satisfies the policies of the statute.\textsuperscript{48} He then summarized the three elements necessary to apply the doctrine:

(1) the fact that plaintiff held a valid license at the time of contracting, (2) that plaintiff readily secured a renewal of that license, and (3) that the responsibility and competence of plaintiff's managing officer were officially confirmed throughout the period of performance of the contract.\textsuperscript{48}

Justice Tobriner said the first element is important for several

\textsuperscript{40} \textit{Id.} at 38, 6 Cal. Rptr. at 499.


\textsuperscript{42} 64 Cal. 2d at 280, 411 P.2d at 566, 49 Cal. Rptr. at 678.

\textsuperscript{43} \textit{Id.} at 280, 411 P.2d at 567, 49 Cal. Rptr. at 679. The plaintiff had assigned the responsibility of renewing the license to its office manager who later suffered an emotional breakdown and was committed to a mental institution. The office manager had failed to renew the license. \textit{Id.} at 281, 411 P.2d at 567, 49 Cal. Rptr. at 679.

\textsuperscript{44} \textit{Id.} at 280, 411 P.2d at 566, 49 Cal. Rptr. at 678.

\textsuperscript{45} \textit{Id.} at 281, 411 P.2d at 567, 49 Cal. Rptr. at 679 (quoting \textit{Lewis & Queen}, 48 Cal. 2d at 149, 308 P.2d at 718 (1957)).

\textsuperscript{46} \textit{Latipac}, 64 Cal. 2d at 281-82, 411 P.2d at 567, 49 Cal. Rptr. at 679.
reasons. The presence of a license provides "official confirmation of the contractor's responsibility and experience" and also "serves as a basic determinant in the decision of prospective subcontractors and other creditors as to whether to extend credit to the contractor." The second element is important since a renewal of a contractor's license after a completion of performance "lends confirmation to [the contractor's] continuing competence and responsibility during the period of performance." The idea is that the contractor's competence and responsibility would be considered and confirmed when the license is renewed. The third element is important since "the fitness of a corporation to enjoy a contractor's license lies in the competence and experience of the individual who qualifies on its behalf" and a corporate applicant may obtain a license by demonstrating that one of its members possesses the requisite knowledge and experience.

Latipac's unresolved question is illustrated by the opinion's declaration that since all three elements were present, the court "need not determine whether any of them, singly or in more limited combination, would constitute 'substantial compliance.'"

E. Post-Latipac Cases

As mentioned earlier, the Latipac court did not indicate whether any of the three elements, either by themselves or in some limited combination, would constitute substantial compliance with section 7031. Following the California Supreme Court's articulation of the three elements, courts have been presented with cases requesting them to find substantial compliance. The following is a sampling of some of the more important cases in which the Latipac test was used.

All three Latipac elements were found to be present in Lewis v. Arboles Development Co., where the court said "the record shows

47. Id. at 282, 411 P.2d at 568, 49 Cal. Rptr. at 680.
48. Id.
49. Id. at 283, 411 P.2d at 569, 49 Cal. Rptr. at 681.
50. Id. at 285, 411 P.2d at 570, 49 Cal. Rptr. at 682.
51. Id. at 281, 411 P.2d at 567, 49 Cal. Rptr. at 679. The actual language of the opinion reads:
[Examination of the record reveals that the instant case presents each of the elements upon which the courts have in the past relied for the application of the doctrine of substantial compliance. Since all these elements here occur, we need not determine whether any of them, singly or in more limited combination, would constitute 'substantial compliance.']

Id.

52. 8 Cal. App. 3d 812, 87 Cal. Rptr. 539 (1970). The plaintiff, a licensed general
substantial compliance as defined by Latipac. . ." Thus, the contractor recovered compensation owed for the work he performed. Frank v. Kozlovsky suggested that all three elements must be present for a finding of substantial compliance. However, only the third element was present so "[t]he requirements of Latipac [were] not satisfied. . ." Substantial compliance was also found lacking in General Insurance Co. of America v. Superior Court. The contractor went bankrupt and his surety took over completion of the project. A dispute developed between the subcontractor and the surety and the surety filed suit. Because the surety "was not licensed at the time it executed the contract nor at any time during its performance" it was precluded from proceeding against the defaulting subcontractor.

Two cases followed in which the courts failed to find substantial compliance. In Weeks v. Merritt Building & Construction Co., the contractor was properly licensed and had performed 73% of the work under the contract when he suffered a heart attack. He then relinquished all control over the contract to his unlicensed surety who took over and performed the remainder of the work.

contractor, sought to foreclose a mechanic's lien against respondent. Plaintiff sued to recover $43,834.78 due on a written contract for materials and labor expended in the installation of drywall. Id. at 813, 87 Cal. Rptr. at 540.

53. Id. at 817, 87 Cal. Rptr. at 543.
54. 13 Cal. App. 3d 120, 91 Cal. Rptr. 297 (1970). The plaintiffs had contracted with defendants to build a nursery school. However, no application was made for a contractor's license for the partnership until after the work was substantially finished. Id. at 121-22, 91 Cal. Rptr. at 298-99.
55. Id. at 125, 91 Cal. Rptr. at 301.
56. 26 Cal. App. 3d 176, 102 Cal. Rptr. 541 (1972). This case provides a good general discussion of case law concerning the evolution of the substantial compliance doctrine as applied to section 7031.
57. Id. at 178, 102 Cal. Rptr. at 542.
58. Id. at 184, 102 Cal. Rptr. at 546. An examination of the case reveals that the first Latipac element was not fulfilled while the remaining two were. The first element was not fulfilled since "not only was plaintiff not duly licensed at the time the contract was executed, it was not duly licensed at any time during its performance under the contract." Id. at 183, 102 Cal. Rptr. at 545. The second element was arguably fulfilled since the contractor "did apply for and obtain a license a few months after completion of performance. . ." Id. And the third element was satisfied since "[t]he responsibility and competence of plaintiff's managing officer were officially confirmed throughout the period of performance. . ." Id. at 183, 102 Cal. Rptr. at 546.

The practical result of this decision is that sureties can, under appropriate circumstances, act as contractors within the meaning of the statutory definition and therefore must prove that they are duly licensed contractors in order to recover on contracts.

60. Id. at 522-23, 114 Cal. Rptr. at 210-11.
61. Id.
reasoned that "public policy would be circumvented if a licensed contractor could contract, abrogate performance to an unlicensed contractor and recover on the contract."62 The court also indicated that the defendant did not receive the full protection which the statute contemplates.63 In the second case, Rushing v. Powell,64 a contractor licensed as a swimming pool contractor lent his name to a business venture that enabled the plaintiff to obtain a license to construct swimming pools without having to demonstrate the requisite skill in that field.65 In denying recovery, the court said the arrangement "permitted the plaintiff in substance to engage in a specialty in which he had not demonstrated qualification by taking and passing the appropriate examination and for which he had not been licensed as an individual. . . ."66

The Latipac test was used in Airfloor Co. of California, Inc. v. Regents of Univ. of California.67 This case involved a contractor who was licensed when the contract was executed and remained licensed during the entire time he performed the contract except for one month.68 The court determined that all Latipac elements were fulfilled.69

Soon thereafter, a court of appeals determined that one out of three Latipac elements was not sufficient for a finding of substantial compliance. In Brown v. Solano County Business Development, Inc.,70 the contractor was licensed at the time of contracting and at the time he began performance. After a brief initial period of per-

62. Id. at 524, 114 Cal. Rptr. at 212.
63. Id. at 525, 114 Cal. Rptr. at 213.
64. 61 Cal. App. 3d 597, 130 Cal. Rptr. 110 (1976).
65. Id. at 605, 130 Cal. Rptr. at 115.
66. Id. A contractor who performs work in a specialty in which he has no license runs the risk of not receiving compensation for that work. In Currie v. Stolowitz, the contractor had a heating, ventilating, and air conditioning license, but no plumbing license. 169 Cal. App. 2d 810, 338 P.2d 208 (1959). He agreed to perform all heating, ventilating, air conditioning and plumbing work and later subcontracted out the plumbing work. Id. at 812, 338 P.2d at 210. The subcontractor started the work and then refused to perform anymore. The contractor then completed the work (including the plumbing). The court held that the contractor could not recover since he had performed work outside his specialty. Id.
67. 84 Cal. App. 3d 1004, 149 Cal. Rptr. 130 (1978).
68. Id. at 1009-10, 149 Cal. Rptr. at 133.
69. Id. at 1010, 149 Cal. Rptr. at 133. The court stated that first, the contractor "was licensed when the contract was executed and remained licensed for the entire time it performed the contract except for the last month." Second, the application for license renewal, "though defective, was made before the license expired." Third, the court reasoned that since an arbitration board awarded the contractor compensation the obligator must have been satisfied with the quality of work performed. Id.
formance the license expired, and during the next six and one-half months, he worked on the project without a license.\footnote{71} He then filed suit to recover money owed him.\footnote{72} In denying recovery, the court said the plaintiff proved only the first \textit{Latipac} element and therefore had not substantially complied with section 7031.\footnote{78}

\textit{Roy Brothers Drilling Co. v. Jones}\footnote{74} involved a contractor who was denied the right to recover for work performed outside his specialty.\footnote{76} The plaintiff drilled caisson holes and performed excavation work for the foundation of the defendant's residence.\footnote{76} The contractor held a license that only authorized him to install sanitation systems. The court reasoned that because the defendants were not afforded the protection contemplated by section 7031, the contractor could not recover.\footnote{77}

The issue presented in \textit{Gaines v. Eastern Pacific}\footnote{78} was whether the contractor was barred from recovery because he did not have a license at the time the contract was entered into. The court found that although the contractor was unlicensed during the first month of the contract he could recover.\footnote{79} The court noted the contractor "was not called upon to perform any contracting services . . ." during that time and that by the time the services were performed he had been licensed for approximately four months.\footnote{80}

Finally, two recent cases interpreting section 7031 should be of considerable interest to individuals in the construction industry. One is the California Supreme Court decision, \textit{Asdourian v. Araj}\footnote{81} and the other is the Second District Court of Appeals decision, \textit{Knapp Development & Design v. Pal-Mal Properties, Ltd.}\footnote{82}
The California Supreme Court equitably applied section 7031 in Asdourian. The contractor passed an examination and obtained a license issued in the name of “Artko Remodeling and Construction.” He then entered into three separate remodeling contracts with the defendant and later brought an action to enforce the contracts. The California Supreme Court heard the case and said that although the plaintiff contractor was not “duly” licensed because the license was not in his own name, a license would not have provided the defendant with any greater assurance of competence. The court noted that “[t]o allow the defendant to prevail on a technicality would be to allow section 7031 to be used as a ‘shield for the avoidance of a just obligation.’” The court appeared to be relaxing the stringency of the elements. The first element was considered unimportant since the plaintiff contractor’s firm held a valid license and the license “provided sufficient evidence of plaintiff’s qualification.” The second element was considered irrelevant since “[t]here was no period during which plaintiff’s business was not licensed, nor was there any change in the form of the business from the time the license was issued.” The third element was fulfilled since the competence and experience of the contractor formed the basis of the license issued to Artko.

The most recent case of importance to interpret section 7031 is Knapp. A court of appeals held that the contractor had substantially complied, although most of the requirements essential for a finding of substantial compliance were absent. The case involved a rather complex fact pattern.

83. Asdourian, 38 Cal. 3d at 279, 696 P.2d at 97, 211 Cal. Rptr. at 704.
84. Id. at 285, 696 P.2d at 100-01, 211 Cal. Rptr. at 708.
86. Asdourian, at 285, 696 P.2d at 100, 211 Cal. Rptr. at 708.
87. Id. at 285, 696 P.2d at 101, 211 Cal. Rptr. at 708-09.
88. Id. at 286, 696 P.2d at 101, 211 Cal. Rptr. at 709.
90. Joan Knapp was president and principal shareholder of plaintiff contractor, and had been licensed for over seventeen years. Id. at 427, 219 Cal. Rptr. at 45. The plaintiff corporation applied for a license after the project in controversy was completed, and after the controversy resulting in the filing of a lawsuit. Id. Joan Knapp was also a general partner and principal owner of a limited partnership which, as owner, entered into a construction contract with plaintiff unlicensed contractor for the construction of an office complex. Id. at 427, 219 Cal. Rptr. at 45-46. A dispute arose and plaintiff contractor recorded a mechanic’s lien on the property and sought a foreclosure. Intervenors purchased the property at a prior foreclosure sale and obtained a judgment that the lien was invalid because the plaintiff corporation was
The Knapp court considered the three Latipac elements and reached the following conclusions. Because the plaintiff did not hold a contractor’s license at the time of contracting or during performance, the plaintiff therefore had “not met the first element of the test for substantial compliance.” However, the court said that this element had far less importance here since the contractor represented both parties to the contract and was also the managing partner or officer of both entities thus “there was no problem of the other party to the contract being misled as to the responsibility or competence of the contractor due to unawareness of the contractor’s unlicensed status.” The court then found that the second Latipac element had not been fulfilled since the contractor did not apply for a license until after performance had been completed and the lawsuit filed. Finally, the court found that “the third element of the test for substantial compliance [had] been met” because the responsibility and competence of plaintiff’s responsible managing officer was officially confirmed by Joan Knapp’s continued licensing.

Because of the numerous cases following Latipac, it is necessary to explore the utility of its test.

III. Problem with the Current Approach

The current approach used by the courts to determine whether a contractor substantially complies with section 7031 asks whether the contractor’s substantial compliance with the licensing requirements satisfies the policy of the statute. The courts make this determination by examining whether the three Latipac elements are present in the case under consideration. A problem arises in that the California Supreme Court has not indicated under which circumstances a showing of less than all three Latipac elements may suffice for a finding of substantial compliance.

To briefly illustrate this point, Knapp is helpful. The majority found that the subcontractor substantially complied with section 7031 even though most of the Latipac elements were lacking. At least one and arguably two of the three Latipac elements were not

not licensed. Id. at 427-28, 219 Cal. Rptr. at 46.
91. Id. at 432, 219 Cal. Rptr. at 48-49.
92. Id. at 432, 219 Cal. Rptr. at 49.
93. Id.
94. Id.
95. Latipac, 64 Cal. 2d at 281, 411 P.2d at 567, 49 Cal. Rptr. at 679 (quoting Lewis & Queen, 48 Cal. 2d at 149, 308 P.2d at 718).
present in this case, nonetheless substantial compliance was found.\textsuperscript{97} Another recent case which states all three Latipac elements need not be present is Asdourian.\textsuperscript{98} Only two of the three Latipac elements were present yet substantial compliance was found. These two cases suggest that if the policies of section 7031 are satisfied then all three Latipac elements need not necessarily be present for a finding of substantial compliance.

Various California courts have reiterated that the ultimate purpose of section 7031 is to protect the public.\textsuperscript{99} Courts have also noted that another purpose of section 7031 is to “practically enforce the Contractors License Law.”\textsuperscript{100} If a new approach is able to satisfy these purposes, and accomplish them in a more efficient manner than the method currently used, it should be examined. This comment next analyzes how the three Latipac elements have been interpreted by the courts so far. This comment will then suggest a new approach for determining substantial compliance with section 7031.

IV. ANALYSIS

A. Element One: Plaintiff Holds Valid License at Time of Contracting

1. Purpose

This element is said to serve two purposes. The license serves as official confirmation of the contractor’s responsibility, competency and experience.\textsuperscript{101} The license also aids prospective subcontractors and other creditors in deciding whether to extend credit to the contractor.\textsuperscript{102}

2. Analysis

This element appears on its face to be unambiguous. Both the language of the element and logic suggest that a contractor must be properly licensed on the date the building contract is entered into.

a. Contractor Possesses License at Time of Contracting

The easiest way to satisfy this element is for the contractor who

\textsuperscript{97} Id. at 436, 219 Cal. Rptr. at 51.
\textsuperscript{98} 38 Cal. 3d 276, 696 P.2d 95, 211 Cal. Rptr. 703 (1985).
\textsuperscript{99} See supra note 7 and accompanying text.
\textsuperscript{100} See supra note 8 and accompanying text.
\textsuperscript{101} See supra notes 46-47.
\textsuperscript{102} See supra notes 47-48.
performs the work to possess a valid license on the date the building contract is entered into. Several cases demonstrate how contractors have satisfied this element by doing just this. In *Lewis*, the respondents admitted that the contractor was licensed for approximately ten months during the performance of the contract. The element was satisfied because at the time of contracting the contractor was properly licensed.\(^\text{103}\) Similarly, in *Airfloor*, the contractor was licensed when the contract was executed and remained licensed for the entire time he performed the contract except for the last month.\(^\text{104}\) Finally, in *Brown*, the contractor involved in the construction of a shopping center development possessed a valid license at the time of contracting and during a brief initial period of performance.\(^\text{105}\)

In all three cases, the contractor performing the work possessed his own valid license at the moment the building contract was entered into. This is the easiest manner for a contractor to satisfy this element.

b. *Contractor Does Not Possess License at the Time of Contracting: Element One Not Satisfied*

Another group of cases fall into a different category. In these cases the contractor who performed the work failed to hold a valid license at the time the parties entered into the building contract. In each instance the court refused to find the first *Latipac* element satisfied. One representative example is *Frank*.\(^\text{106}\) None of the contractors associated with the construction of a nursery school were licensed: the partnership which performed the work had no license, the qualifying partner did not possess a license, and the second partner had an inactive license for masonry contracting and none for general contracting. Moreover, the new partnership conducted business under a different name and never sought a license. Another example is *General Insurance Co.*\(^\text{107}\) The contractor who performed construction work on a mobile home park was not licensed at the time the written contract was entered into nor at the time the work was performed, and he failed to obtain a license until several months after the project was completed. As a result, the court refused to foreclose a mechanic's lien and refused to allow recovery on a pay-
ment bond.\textsuperscript{108}

Other courts also require a contractor to possess a valid license at contracting time. In \textit{Weeks},\textsuperscript{109} the court stated that "the person who performs the contract must have the required license, not the person who happens to have a right to maintain a suit for money owed under the contract."\textsuperscript{110} The surety company that took over for the contractor lost over $37,400.00.\textsuperscript{111} The contractor in \textit{Rushing}\textsuperscript{112} was licensed at the time of contracting but the license was gained through an impermissible arrangement and therefore rendered a nullity. Finally, in \textit{Roy Brothers Drilling Co.},\textsuperscript{113} no person connected with the contractor had at any time been duly licensed to perform the work so recovery was not allowed.

All five cases demonstrate that courts, at times, insist that the contractor who actually performs the work be properly licensed at the time an agreement is entered into. The problematic result is that a contractor may not recover for work performed even when the work is performed satisfactorily and even when the other party may be unjustly enriched.

c. Contractor Does Not Possess License at the Time of Contracting: Element One Satisfied Anyway

Of special interest to this comment are the \textit{Gaines}, \textit{Asdourian}, and \textit{Knapp} cases. In these cases the contracting entity was not properly licensed at the time of contracting yet substantial compliance was found. An examination of these cases reveals that courts may seek to avoid an inequitable result which could arise from a stringent application of the first \textit{Latipac} element.

In \textit{Gaines},\textsuperscript{114} the contractor did not possess a valid license at the time the contract was entered into and during the first month the contract became effective.\textsuperscript{115} The court noted that during the one month period the contractor was not called upon to perform any contracting services, the inference being that if a contractor was licensed when actual performance began there could be substantial

\textsuperscript{108} Id. at 184-85, 102 Cal. Rptr. at 542.
\textsuperscript{110} Id. at 524, 114 Cal. Rptr. at 212.
\textsuperscript{111} Id. at 524-25, 114 Cal. Rptr. at 212-13.
\textsuperscript{112} 61 Cal. App. 3d 597, 130 Cal. Rptr. 110 (1976).
\textsuperscript{113} 123 Cal. App. 3d 175, 176 Cal. Rptr. 449 (1981).
\textsuperscript{114} 136 Cal. App. 3d 679, 186 Cal. Rptr. 421 (1982).
\textsuperscript{115} Id. at 682, 186 Cal. Rptr. at 423.
compliance.\textsuperscript{118}

Next, in \textit{Asdourian},\textsuperscript{117} the contractor seeking recovery was not duly licensed in his own name but the contractor's corporation held a valid license at the time of contracting. The California Supreme Court concluded that the license issued to the corporation provided sufficient evidence of the contractor's qualifications.\textsuperscript{118} Here, as in \textit{Gaines}, the court was more concerned with an equitable result rather than a strict interpretation of the element.

Finally, in \textit{Knapp},\textsuperscript{119} the contractor did not hold a valid license at the time of contracting nor at any time during performance. However, the court determined that the element had far less importance in this case than in others because the contractor represented both parties to the contract.\textsuperscript{120} The contractor was the managing officer or partner of both entities so there was no chance that the other contracting party would be misled as to the competence and responsibility of the contractor.\textsuperscript{121}

\section*{B. Element Two: Plaintiff Readily Secured a Renewal of Its License}

\subsection*{1. Purpose}

This element is said to serve an important purpose. That is, the renewal of a license after completion of performance lends confirmation of the contractor's continuing competence and responsibility during the period of performance.\textsuperscript{122}

\subsection*{2. Analysis}

The idea underlying this element is that a contractor who obtains a license renewal has been judged to be competent and respon-

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\textsuperscript{116} \textit{Id.} The \textit{Gaines} court relied on \textit{Vitek}, 34 Cal. App. 3d 586, 110 Cal. Rptr. 86 (1973). In \textit{Vitek}, the general contractor and a corporation negotiated for the construction of an ice skating rink. A written contract was formally executed late Friday afternoon, October 25, 1968, and on October 28, 1968 the contractor's license was renewed. On October 28, 1968 the contractor made its first payment under the contract and work began. \textit{Id.} at 588, 110 Cal. Rptr. at 87-88. The court determined that "[i]t is unnecessary in the case before us to resort to this doctrine (substantial compliance), however, since there is substantial evidence (the contractor) began and completed all work after it acquired the license on October 28, 1968." \textit{Id.} at 590, 110 Cal. Rptr. at 89.
\textsuperscript{117} \textit{Id.} at 298-99, 696 P.2d at 110, 211 Cal. Rptr. at 718.
\textsuperscript{118} \textit{Id.} at 432, 219 Cal. Rptr. at 49.
\textsuperscript{120} \textit{Id.} at 434, 219 Cal. Rptr. at 50.
\textsuperscript{121} See supra note 49.
\end{flushright}
sible, otherwise, the State Contractors License Board would not renew the license. If the board determines that the particular contractor is incompetent or irresponsible, it would simply refuse to renew the license.

a. Contractor Did Not Renew License on Time

There are several cases in which various courts have determined that the second Latipac element is satisfied even though it was not strictly complied with. One case is Lewis\(^\text{123}\) where the court said the element was fulfilled because there was nothing in the declarations or the record which showed that the contractor failed to apply for a renewal of his license. Strict compliance with the element was also lacking in General Insurance Co.\(^\text{124}\) The contractor applied for and obtained a license several months after the project was completed; technically, he did not renew his license during the performance of the contract.\(^\text{125}\) Despite this fact the court determined that the element was satisfied and implicitly suggested that if a contractor attempts to renew the license, even after completion of a project, then compliance with the element may still occur.

Finally, the Airfloor court said that “[a]pplication for license renewal, though defective, was made before the license expired.”\(^\text{126}\) The majority emphasized that the renewal was sought before the license expired.\(^\text{127}\) Also of significance was that the State Contractors License Board notified the contractor that if he resubmitted a proper application, a license would issue.\(^\text{128}\) This case implied that the second Latipac element can be satisfied if a contractor makes a good faith attempt to comply.

b. Original Contractor Must Renew License

Several other cases required the original contractor to renew its original license in order to satisfy the element. One case illustrating this point is Frank.\(^\text{129}\) Here, two contractors obtained an entirely new license for a partnership which was not the one that originally entered into the contract.\(^\text{130}\) The court indicated that the element was

\(^{124}\) 26 Cal. App. 3d 176, 102 Cal. Rptr. 541 (1972).
\(^{125}\) Id. at 178, 102 Cal. Rptr. at 542.
\(^{126}\) 84 Cal. App. 3d at 1010, 149 Cal. Rptr. at 133.
\(^{127}\) Id.
\(^{128}\) Id.
\(^{130}\) Id. at 122-23, 91 Cal. Rptr. at 298-99.
not satisfied since no renewal of the original license was sought.\textsuperscript{131}

In Brown, the record established that "appellant did not ‘readily’ secure a renewal of his license."\textsuperscript{132} Thus the contractors license board did not have the opportunity to review his qualifications.

c. Recent Cases to Interpret Element Two

Recent case law suggests that courts are willing to relax the stringency of this element. In Asdourian, the court decided that the element was irrelevant since "[t]here was no period during which plaintiff’s business was not licensed, nor was there any change in the form of the business from the time the license was issued."\textsuperscript{133} And in Knapp,\textsuperscript{134} the element was not satisfied because the contractor failed to apply for a license until performance had been completed and the lawsuit filed, yet substantial compliance was found.\textsuperscript{135}

C. Element Three: Responsibility and Competence of Plaintiff’s Managing Officer Officially Confirmed Throughout the Period of Performance of the Contract

1. Purpose

This element is considered essential since it is said the fitness of a corporation to enjoy a contractor’s license lies in the competence and experience of the individual who qualifies on its behalf.\textsuperscript{136}

2. Analysis

In determining whether this element is present, courts begin by determining who is the “responsible managing officer.” In some cases, the individual contractor is considered the responsible managing officer. In other cases, an individual associated with the contractor’s business, usually a supervising employee, fits this description. The easiest way for a contractor to fulfill this element is to personally perform the work required by the contract. Instead, the contractor may supervise the performance of the work required under the

\textsuperscript{131} Id. at 124-25, 91 Cal. Rptr. at 300.
\textsuperscript{132} 92 Cal. App. 3d at 196, 154 Cal. Rptr. at 702.
\textsuperscript{133} 38 Cal. 3d at 285, 696 P.2d at 101, 211 Cal. Rptr. at 708-09.
\textsuperscript{134} 173 Cal. App. 3d 423, 219 Cal. Rptr. 44 (1985).
\textsuperscript{135} Id. at 436, 219 Cal. Rptr. at 51.
\textsuperscript{136} Latipac, 64 Cal. 2d at 278, 411 P.2d at 564, 49 Cal. Rptr. at 676. The majority determined that “[t]he pattern of [section 7031] evinces a legislative determination that the fitness of a corporation to enjoy a contractor’s license lies in the competence and experience of the individual who qualifies on its behalf.” Id. at 285, 411 P.2d at 570, 49 Cal. Rptr. at 682.
contract while being properly licensed. Another way for a contractor to fulfill this element is for the “responsible managing officer” to be a “responsible managing officer” of another corporation which is licensed. Case law shows examples of this occurring.

A separate way to satisfy this element is to ensure that a supervising employee who is intimately involved with the construction project possess a valid license. However, an improperly licensed employee who performs work without assistance, supervision and expertise of a licensed contractor will not satisfy this element. This point was illustrated in Brown. The court was concerned that some licensed individual be involved in the performance of the contract.

In short, case law demonstrates that someone intimately involved in the performance of the building contract must be properly licensed. The courts are likely to find this element satisfied if the individual contractor is properly licensed. But courts have also shown that if some responsible party is properly licensed, then the element can be satisfied.

V. PROPOSAL

This portion of the comment suggests a new approach to guide courts in determining whether a contractor has substantially complied with the requirements of section 7031. Specifically, a modification of the Latipac test is proposed. This new approach would limit the complexities and uncertainties inherent in the current approach which requires courts to determine whether the three Latipac elements are present and satisfied.

The proposed test is simple both in form and application. Instead of determining whether all three Latipac elements are present, or that some are present and others are lacking, this approach instead asks: (1) whether the contractor or a responsible managing officer of the contractor was licensed at the time the building agreement was signed, or at least before the actual work began (this is a modification of the first Latipac element); and (2) whether the responsibility and competence of the contractor’s managing officer was officially confirmed throughout the period of performance of the contract.

137. See supra note 96.
138. In Latipac, for example, the responsible managing officer of the employer was, during the entire progress of the job, also the responsible managing officer of another corporation. 64 Cal. 2d at 285-86, 411 P.2d at 570, 49 Cal. Rptr. at 682.
139. 92 Cal. App. 3d at 196, 154 Cal. Rptr. at 702.
building agreement (this is the third Latipac element). If the contractor fulfills these two elements, then substantial compliance with section 7031 is present. If the elements are not fulfilled, then section 7031 has not been substantially complied with and the contractor would not be allowed access to the courts to recover compensation owed. By using this approach the courts would no longer need to further dilute the Latipac elements.

The modification of the first Latipac element would take into account the findings of Gaines, Asdourian, and Knapp. The wholesale elimination of the second Latipac element would not be detrimental. There already exists an adequate enough incentive for contractors to renew their licenses apart from mandating that it be done as a prerequisite for finding substantial compliance with section 7031. Contractors who fail to renew their license in a timely fashion run the risk of losing business because most individuals and entities that enter into building agreements require verification or some other affirmation that the contractor is properly licensed and able to perform the work.

Retention of the third Latipac element in its present form and as currently interpreted is desirable. Contractors would be encouraged to ensure that the person(s) performing or supervising the work are qualified.

Several other advantages would also occur if this new approach is adopted. Judicial economy would be enhanced because fewer cases would need to be heard. In addition, as long as the Latipac elements continue to be used, courts will on occasion be sorely tempted to stretch the facts of a case in order to find substantial compliance. Finally, an innocent, yet technically unlicensed contractor may be able to recover compensation for services rendered and materials furnished to other parties, thereby preventing unjust enrichment.

VI. Conclusion

Before Latipac was decided, courts determined whether section 7031 was substantially complied with on an ad hoc, case-by-case basis. In 1966, Latipac held that a contractor substantially complies with section 7031 when three elements were satisfied. Following Latipac, courts have had at their disposal a test to aid them in making their determination. Applying the Latipac elements has enabled courts to allow a contractor to recover compensation owed despite non-strict compliance with section 7031. However, the current problem is whether a showing of less than all three elements is sufficient for a finding of substantial compliance. Recent case law shows that
not all three requirements need be satisfied. Moreover, recent case law demonstrates that the stringency of the elements have been relaxed to such an extent so as to merely serve as indicia of whether substantial compliance is present.

This comment argues that the Latipac test should be modified to reflect the current realities of how the elements have been interpreted. As noted by the California Supreme Court in Asdourian, it has been almost five decades since the doctrine was first applied. The Legislature has not manifested any disapproval during this time period. Consequently, California Business and Profession Code section 7031 continues to be interpreted in a manner which allows courts to prevent unjust enrichment, and provides ample room for modification such as suggested by this comment.

Michael J. Smith

140. Knapp, 173 Cal. App. 3d at 436, 219 Cal. Rptr. at 51. The court noted that the doctrine of substantial compliance is well established in the decisional law of California.