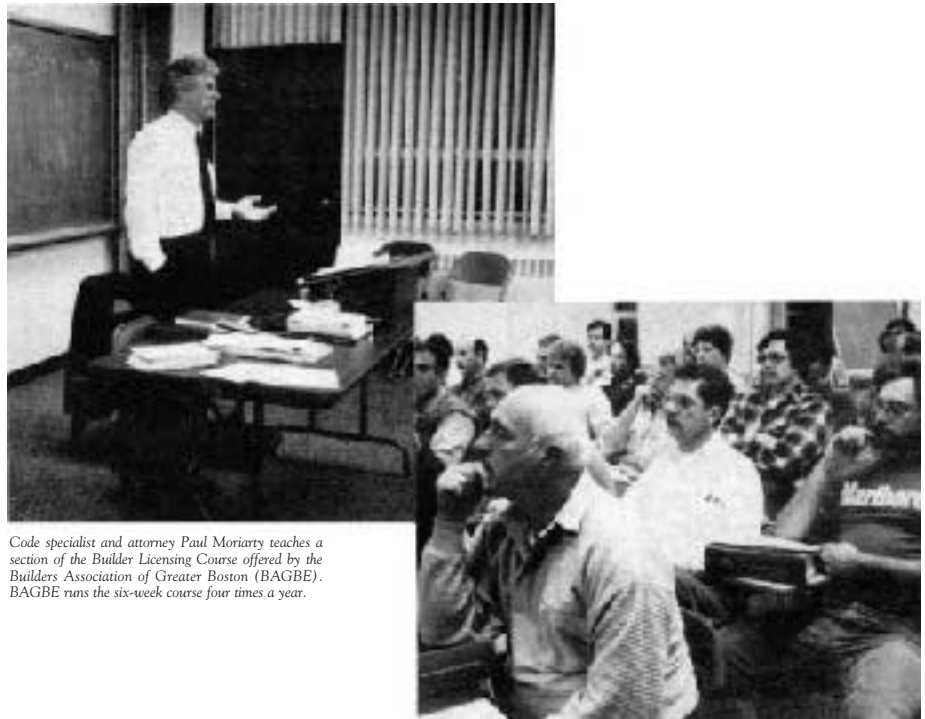


# TO LICENSE OR NOT TO LICENSE

by Anthony Mitchell

Nurses,  
teachers,  
accountants,  
and most other  
professionals  
are licensed.  
Why not  
builders?



Code specialist and attorney Paul Moriarty teaches a section of the Builder Licensing Course offered by the Builders Association of Greater Boston (BAGBE). BAGBE runs the six-week course four times a year.

When the issue of licensing is discussed among contractors, the air is often filled with charges and countercharges about whether licensing works, and who benefits the most. It's an important debate, because most states have either instituted licensing in one form or another, or are considering doing so.

According to a 1987 survey conducted by the National Association of Home Builders, 32 states now require registration or licensure of building contractors. In addition, in states that do not have statewide licensing laws, licensing is required by many local jurisdictions. Most state legislatures discussed the issue during their 1988 legislative sessions, with deliberation of bills to initiate licensing or to strengthen existing requirements.

The advantages and disadvantages of licensing are difficult to measure, in part because there is little consistency among existing laws. Some states focus

primarily on residential contractors, while others focus on commercial builders. Some states require testing, many require financial information, and a few require nothing but registration.

## Origins of Licensing

Historically, licensing can be traced back at least to the worker guilds of the Middle Ages in England. Efforts to regulate occupations and professions on this continent began with the Virginia Medical Practice Act of 1639.

In the late 1800s, a majority of states began licensing attorneys, dentists, pharmacists, physicians, and teachers. Between 1900 and 1970, the list grew to include accountants, nurses, real estate brokers, barbers, hairdressers, chiropractors, and funeral directors. Several states began licensing contractors during this period—South Carolina and California were among the first.

The original reason for licensing was to separate legitimate practitioners from charlatans. Rarely has licensure been imposed upon an occupation against its wishes. In almost every instance, licensing has been sought by professional or occupational groups for their own professional and/or economic purposes.

## Advantages of Contractor Licensing

Among contractors, support for licensing is far from unanimous. But many, perhaps a majority, maintain that it offers a long list of benefits, including:

- screening of applicants to ensure that they possess at least minimum qualifications for safe practice
- improving the image of the occupation
- increasing professionalism
- setting of standards and codes of conduct, so that the public has a basis to

## LICENSING POP QUIZ

Test yourself with these sample questions from actual licensing exams for residential building and business practices. Answers are at the end.

### Construction Questions

1. Which of the following is an indication that an interior partition is not a bearing wall?

(A) The partition runs down the center of the structure. (B) Overhead joists are spliced over the partition. (C) The partition runs at right angles to overhead joists and breaks up a large span. (D) The overhead joists run parallel to the partition.

2. When using sheathing grades of plywood, an identification index of 48/24 would indicate that the maximum the plywood is designed to span is 24 inches between framing members on a \_\_\_\_\_, when the plywood edges are blocked.

(A) floor (B) wall (C) roof (D) ceiling

3. Given: A 20-foot beam rests equally on two columns, one at each end. The columns have actual dimensions of 4 x 4 inches. Each column can support a maximum compressive load of 1,050 pounds per

square inch. The maximum uniform load that may be placed on the beam is \_\_\_\_\_ pounds per lineal foot.

(A) 525 (B) 1,050 (C) 1,680 (D) 2,100

4. Given: A stairway has a total rise of 8'-2" between finish floors. There are 15 risers. The unit rise is \_\_\_\_\_ inches (select the closest answer).

(A) 6 (B) 6 1/4 (C) 6 1/2 (D) 6 3/4

5. Given: A 9 x 30 foot wall with no openings is to be covered with wood shingle siding. For single-course application, the contractor will use 24-inch shingles laid with an 11-inch exposure. These shingles cost \$75/square when laid with a 7 1/2-inch exposure. Make no allowances for starter courses, waste at eaves, or waste in general. Considering only the cost of the shingles, it will cost \_\_\_\_\_ to shingle the wall.

(A) \$93 (B) \$138 (C) \$203 (D) \$297

### Business Questions

6. During construction, the systematic recording of all labor, material, and other direct costs used on a construction project is called:

(A) selling expenses (B) deferred debits

(C) cost accounting (D) performance standards.

7. A liquidated damage clause in the contract may be used to simplify:

(A) the process of establishing the amount of damages resulting from late completion (B) the process of liquidating a contractor's assets during bankruptcy proceedings (C) the monitoring of damages that can occur because of faulty workmanship (D) a contractor's record of past lien claims

8. Given: A construction company has a balance sheet on December 31 that shows current assets of \$250,000; current liabilities of \$185,000; fixed assets of \$500,000; and fixed liabilities of \$250,000. According to this balance sheet, the construction company has net working capital on December 31 of \_\_\_\_\_.

(A) \$35,000. (B) \$65,000. (C) \$250,000. (D) \$315,000.

9. The type of insurance coverage used to insure the owner or contractor against loss which is the result of a storm is \_\_\_\_\_.

(A) general liability. (B) property and

operation. (C) catastrophic occurrence. (D) builder's risk.

10. Given: A contractor estimates total direct costs on a project to be \$10,000. The contractor's overhead expenses are 20 percent of the bid price. The contractor wants to make a 15 percent net profit (15 percent of the bid) on the project. If the above expenses are the only expenses to be considered, the total bid on the project should be \_\_\_\_\_.

(A) \$12,000. (B) \$13,500. (C) \$14,286. (D) \$15,385.

### Answers

1. (D), 2. (A), 3. (C), 4. (C), 5. (B), 6. (C), 7. (A), 8. (B), 9. (D), 10. (D).

While this is far too small a sampling to constitute a fair test, in most examinations 70 percent is a passing grade. Therefore, if you got 7 correct answers, you passed the quiz. ■

judge whether a contractor's performance is acceptable

- providing a mechanism to investigate charges of incompetence or impropriety against contractors
- preventing the easy movement of unqualified or unscrupulous contractors between localities

### Disadvantages of Contractor Licensing

Opponents of licensing have an equally broad array of arguments to support their position. They maintain that licensing, among other things:

- adds to government control, bureaucratic red tape, and possibly even restraint of trade
- adds to consumer costs
- creates one more hoop for contractors to jump through, a hoop that is subject to the whims of the state legislature
- is almost never adequately enforced, creating a disadvantage to those who do follow the rules
- doesn't guarantee good workmanship
- is not needed, especially in rural communities where everyone knows each other

### Consumer Expectations

Regardless of the pro and con arguments, licensing is here to stay in a growing number of jurisdictions throughout the U.S.

When licensing laws are written, key questions need to be addressed. What do consumers want from licensing? What do contractors want from licensing? What principles must be adhered to by regulators to make licensing fair and effective?

Theoretically, what consumers want from licensing is an assurance of competence: a professional job, completed on time, to specifications, at the price originally contracted for.

The National Electrical Contractors Association recently asked over 500 consumers to list the criteria they use to select an electrical contractor or subcontractor. Over 90 percent said they seek a contractor who is licensed, bondable, financially capable, has a reputation for quality, and has the specific experience

**Among contractors who support licensing (or accept it as a fact of life), the first priority is an even playing field with their competitors.**

that the job requires.

Similar criteria would undoubtedly be listed by knowledgeable consumers of virtually any construction service. But in reality, not all consumers are knowledgeable or experienced. The average homeowner is often a one-time, or occasional, consumer of construction services. All too often, the homeowner's decision is based on only one factor: cost. Who will do the job for the least amount of money?

Of course, that attitude changes quickly when something goes wrong. Then the homeowner asks, "How could the state allow something like this to happen?"

### Contractor Expectations

What do contractors look for from licensing?

Among contractors who support licensing (or accept it as a fact of life), the first priority is an even playing field with their competitors. One Arkansas contractor put it this way:

"Good competition is good. What's bad is bad competition. I have no problem competing against a contractor who is also licensed, knows and follows the law, and pays taxes. The problem is the one who stays unlicensed, avoids paying his share of state and federal taxes, workers' compensation, unemployment insurance, and sales tax, and is therefore able to underbid me by 20 percent on any given job."

In addition, general contractors often find licensing to be a useful tool in choosing subcontractors. One of the biggest risks a general contractor faces is subcontractor failure.

Another concern among contractors is that the licensing process be rational, with no unreasonable hassles by the regulatory agency. From the contractor's standpoint, those in the profession should be well represented on the governing body or licensing board, administration should be fair, legal remedies should be available, and compliance should not be overly expensive or stifling.

### Criteria for Licensing

New contractors tend to be people with strong practical and technical skills, good hands-on knowledge, and years of experience in their trade specialty. They also tend to have few assets

(possibly only a pickup truck and tools), little or no business knowledge, and almost no recognition of what it takes to survive in business.

That's a stereotype, but in general terms, it describes many of the people entering the business. What assurance does a customer have that the work will be performed in a satisfactory manner? Licensing, at its best, will include criteria to assure the public that a contractor has met appropriate standards, and is therefore qualified to render safe, effective service at some minimal level of competency.

Those criteria fall into three general categories (1) education and experience, (2) financial stability, and (3) compliance with legal requirements.

### Education/Experience

Most professionals require a prescribed number of years of schooling in an accredited educational establishment, or a number of hours of training or apprenticeship in an approved setting.

Candidates for an architect's license, for example, generally must be graduates of a five-year approved university program, then serve three years in an architect's office before they are allowed to take the four-day-long licensing examination.

Engineers must graduate in engineering from an accredited college or university, pass the national engineering-training (E.I.T.) examination, and work for three years in engineering before qualifying to take the Professional Engineer (P.E.) exam.

While entry requirements are far less specific for contractors, a minimum level of education and/or experience is needed to demonstrate that the candidate has sufficient technical training, on-the-job or otherwise, and sufficient practical experience to perform safely and competently.

Most states that license contractors require evidence of three to four years experience and/or technical training. In addition, most states have, or are moving toward, requiring the candidate to pass written tests to demonstrate the prescribed knowledge, skills, and abilities needed on the job. A typical test comes in two parts. Part I covers business practices or business and law. Part II covers trade specifics.

The most rigorous examination process occurs in Florida, where a candidate takes two days of examinations to be licensed either as a residential contractor, a building contractor, or a general contractor. The subject areas covered for each level of licensure are financial administration, business administration, construction management, and project administration.

In addition to screening out unqualified applicants, the examinations serve as a learning tool. An analogy might be a state examination for a driver's license: A new driver, in cramming for the exam, may become more knowledgeable about motor vehicle laws and safe driving techniques. Similarly, those studying for a contractor's licensing exam may fill in gaps in their knowledge of building codes, business practices, and state laws.

Portions of the exam are often administered in open-book format. Applicants aren't expected to memorize all provisions of the state building codes, for example, but they are expected to be able to find the information when questions arise.

Contractor Licensing Requirements by State

State	Who Needs to be Licensed	Yearly Fees	Renewal
Alabama	All general contractors, with any single project in excess of \$20,000, except single-family residences	\$115-\$575	Annual
Alaska	General and residential contractors, remodelers	\$180-\$360	Biennial
Arizona	General and residential contractors, remodelers	\$235-\$110	Annual
Arkansas	Municipalities may require registration of residential contractors. Commercial contractors for any project in excess of \$20,000. All non-resident contractors	\$25-\$100	Annual
California	General and residential contractors, remodelers	\$200-\$350	Biennial
Connecticut	Remodelers, if projects exceed \$1,000	\$30-\$35	Annual
Delaware	General and residential contractors, remodelers	\$50	Annual
Florida	General and residential contractors, remodelers	\$54-\$209	Biennial
Georgia	Non-resident contractors, if a project exceeds \$10,000	\$10	Per contract
Hawaii	General and residential contractors, remodelers	\$200-\$460	Biennial
Idaho	Public works contractors	n/a	n/a
Kansas	Non-resident contractors	\$10	Per contract
Louisiana	General contractors, non-resident contractors	\$125-\$425	Annual
Maryland	General and residential contractors, remodelers, non-resident contractors	\$16-\$218	Annual, or in some instances, biennial
Massachusetts	Construction supervisors, whose projects exceed 35,000 square feet	\$0-\$150	Every five years
Michigan	General and residential contractors, remodelers	\$30-\$80	Annual
Mississippi	Any contractor with work exceeding \$25,000, excluding residential construction	\$100	Annual
Montana	Any contractor with a contract for public construction work in excess of \$5,000	\$100-\$250	Annual
Nebraska	Non-resident contractors	\$25	Per contract
Nevada	General and residential contractors, remodelers	\$260	Annual
New Jersey	Residential contractors, remodelers	\$10-\$200	Annual, or in some instances, biennial
New Mexico	General and residential contractors, remodelers	\$55-\$205	Biennial
North Carolina	General, residential, and non-resident contractors, remodelers	\$150-\$825	Annual
North Dakota	General and residential contractors, remodelers	\$10-\$250	Annual
Oklahoma	Non-resident contractors	n/a	n/a
Oregon	General and residential contractors, remodelers	\$60	Annual
South Carolina	General and residential contractors, remodelers	\$80-\$230	Annual
Tennessee	General and residential contractors, remodelers	\$51-\$76	Annual
Utah	General and residential contractors, remodelers	\$80-\$110	Biennial
Virginia	General and residential contractors, remodelers	\$20-\$105	Biennial
Washington	General and residential contractors, remodelers	\$40	Annual
Wyoming	Non-resident contractors	n/a	Per contract

The summary of statewide contractor licensing laws is based on information provided by the National Association of Home Builders. States not listed do not have statewide licensing, but local jurisdictions within those states may require licensing.

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### Financial Stability

Many of the problems associated with contractors are related to financial stability. State licensing boards generally use one or more of the following approaches to verify financial capacity.

**Financial statements.** The requirement to file a financial statement is almost universal. Some states require that statements be audited, while others do not. Many states require a minimum level of net worth or of operating capital as a criterion for establishing bid limits.

**Credit checks.** Credit reports, bank references, and vendor references are sometimes used to provide an indication of the applicant's past credit worthiness and financial performance. Bonding. Many states only issue the license if the contractor possesses or secures a bond for a prescribed amount.

### Compliance With Laws

While passing the exam suggests that a person is capable of doing quality work, it does not guarantee that the person will actually do quality work or be ethical in his or her dealings.

Most problems do not arise from what a contractor knows (or doesn't know), but rather from what the contractor actually does. The same is true of just about every professional occupational field, from Certified Public Accountants to Registered Nurses.

Licensing can't guarantee personal or professional integrity, but it can provide recourse in the event of a serious consumer complaint. If a license is a prerequisite to practice, people with records of swindling and lawbreaking can, to some extent, be kept from practicing.

In addition, states are increasingly using the licensing mechanism to enforce compliance with a variety of legal requirements.

For example, an applicant may be required to submit evidence that the

appropriate papers have been obtained or filed for worker's compensation, unemployment insurance, liability insurance, state sales tax, and other state programs.

### Evolution of Licensing Laws

Relative to other professions, licensing of contractors is in an early stage of evolution.

Are the criteria being used in the various states effective? Are they fairly applied and do they have a positive impact on the profession? Do they create an even playing field for business competitors? Do they provide protection to consumers, without unduly raising construction costs?

Those and other pertinent questions are being asked by state legislators, licensing boards, associations that represent contractors, individual builders, and consumers throughout the country. As answers evolve, new approaches will continue to be adopted, tested, revised, and adapted.

The movement toward adoption and strengthening of licensing laws is propelled by two factors. First, the construction industry has the second highest failure rate of any business group (exceeded only by restaurants). Second, among the trades and professions, contractors generate one of the highest rates of complaints made to state governments.

As a result, in an increasing number of jurisdictions, the debate is not whether contractors should be licensed, but which criteria and enforcement mechanisms would best serve the interests of the public and the profession. ■

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