



From the President...

I cannot believe my first year as President is almost over, it really flew by. I was pleased with what the Association accomplished in 2012 and the Board of Directors has already outlined events and activities for 2013. There is always room for more events, if you have an event or topic you would like to see the Association pursue, please let us know.

As the new year approaches, most of our members have noticed the membership renewal invoices have been sent out, this of course if your renewal date is January 1. As always, we hope that you will renew your membership as we rely on that to conduct our day to day business, it is your support that keeps the Association moving forward. There are also many non-members who receive this newsletter, and I hope that 2013 is the year that you decide to join our cause.

Regardless of the reason(s) that makes you a member; Search Engine, Networking, Education, Camaraderie, Charitable Projects, your support is crucial and we strive to deliver the service you expect.

The Association looks forward to providing quality educational programs for 2013 which includes our Dinner Meetings, I hope to see you at those functions in the coming year.

If you have any issues or comments or suggestions, please contact me at any time, my contact information is listed on sdrca.com.

Cheers

Sid Scott, SDRCA President

Inside this Issue:

- SDRCA Vision 2012
- Looking to sit on the SDRCA Board of Directors?
- SDRCA New Mailing Address
- Attorneys Fees In Stop Payment Notice Actions
- SCAM ALERT!
- And much more.....

2013 Meeting Schedule

Wednesday, February 20th

Wednesday, May 15th

Wednesday, August 21st

Wednesday, November 13th

The San Diego Roofing Contractors' Association (SDRCA) has been serving the Roofing Industry for over forty years.

Times, techniques and technology has changed, but the SDRCA Core Values, Code of Ethics, Mission and Vision Statement has not. The 2012 Board of Director Team is committed and dedicated to serving our members and this association with new education, resources, training and savings for the purpose of helping our members continue a tradition of profitability and professionalism in our industry.

It is the intent of this Association to establish and maintain professional standards and practices in the Roofing Industry through education and public awareness. Our members are committed to excellence and they use the benefits offered by the Association to help obtain this goal. The SDRCA encourages you to become fully aware of the potential problems of dealing with an unlicensed, uninsured roofer.

The SDRCA was formed in 1957 to preserve and promote the art of roofing application. SDRCA members recognize that after 50 years of innovation in roofing technology and Application, the following goals are as meaningful and relevant today as they were yesterday and will be tomorrow.

The SDRCA remains a strong supporter of open competition and the free enterprise system; indeed, this competitive environment led to the success of its members. SDRCA members recognize that the perpetuation of such a healthy business environment is greatly influenced by their own professional conduct. The SDRCA supports the following practices, and encourages them in its members.

SDRCA Member Code of Ethics:

1. To conduct my business in an ethical manner, so that I will reflect credit and confidence by the public in our industry as well as my own business.
2. To consider my vocation worthy and dignified and thus affording a distinct opportunity to serve society.
3. To hold that the exchange of my goods and service for a fair profit is legitimate and ethical, provided all parties in the exchange are benefited.
4. To elevate the standards of my vocation by exercising a high degree of care in the execution of all work, and correct any defective work as a direct challenge to my ability and integrity.
5. To protect and defend the public from fraudulent and unethical practices affecting our industry.
6. To cooperate with the association in its effort to better conditions in the industry, so that public, management, capital and labor will all mutually benefit.
7. To operate my business in accordance with the rules and regulations of constituted authority at all levels and in a manner which will leave no doubt as to my loyalty to my country and its ideals and fundamental principals.

The SDRCA Mission Statement:

The mission of the San Diego Roofing Contractors' Association is to establish and maintain professional standards and practices in the roofing industry through education and public awareness.
Adopted January 1997

To elevate...To protect and defend...To cooperate...so that all benefit.

The SDRCA 2012 Vision Statement:

The mission of the San Diego Roofing Contractors' Association is to establish and maintain professional standards and practices in the roofing industry through education and public awareness. Adopted January 1997

SDRCA presence at Career Fair

On November 14th, 2012 the SDRCA joined the students and staff of Abraxas High school and other members of the community at their annual Career Fair.

The Career Fair provides the opportunity for the students to learn more about the career opportunities and training available to them in the community as well as to make personal connections with possible future employers. SDRCA Board Members, Gary Gilmore of Roofing Supply Group San Diego and Wayne Sorensen of Top Line Roofing, stated that they met several promising candidates, a sentiment shared by every attendee.

Abraxas High School is a continuing high school that serves students who need an educational environment that is smaller, more intimate, and more flexible than what is typically found at comprehensive high schools. The school has been named a Model Continuation High School for the past three consecutive years by the California Department of Education and the California Continuation Education Association.

Abraxas students typically select this school because they are at risk of not receiving a high school diploma, and they believe that Abraxas can help to make that goal a reality. Those who enroll at Abraxas High School are usually 16 years old or older, and voluntarily choose to attend this school because they and their parents appreciate the unique opportunities that Abraxas makes possible.

Eight students have expressed an interest in making roofing a possible career. The students will be available after the first of the year to start a career in roofing. If you, an employer, are interested in interviewing any of these potential employees, please contact the SDRCA office (ed@sdrc.com).



Special Thank You

The SDRCA would like to thank two BOD members that are leaving the Association.

Debra Sweet of Sweet Marketing Solutions has been serving the Association for the past three years, specifically in assisting the Association in Marketing. No doubt the Association has advanced in its marketing techniques with her assistance.

Katie Biddlecome of Dry Force has served the Association for the past two years and has sat on various committees. Dry Force was also a sponsor for many of our events. Dry Force has decided to terminate its San Diego office. Katie has moved on to Arizona while still with Dry Force.

Thank you to both, the Association wishes you the best in future endeavors.

Attorneys Fees in Stop Payment Notice Actions

By Kenneth S. Grossbart (Abdulaziz, Grossbart & Rudman)

The case *Tri-State, Inc. v. Long Beach Community College District* dealt with Civil Code section 3186 (now renumbered to be Civil Code section 9358). Tri-State, Inc. ("Tri-State") was a subcontractor on a project owned by Long Beach Community College District ("District"). Tri-State delivered a Stop Notice (now defined as a Stop Payment Notice) as well as filed a complaint against the general contractor (note that the proper definition is now a direct contractor) for reasonable value of labor and materials furnished, enforcement of the Stop Payment Notice, and several other counts.

The direct contractor obtained a release bond in the amount equal to 125% of the claim. The District accepted the release bond for dismissal in the action. This is when the District asked for an award of attorneys fees under Civil Code section 3186 because it was the "prevailing party." The trial court awarded the attorneys fees and Tri-State appealed the decision.

Civil Code section 3186 read as follows:

"It shall be the duty of the public entity, upon receipt of a stop notice pursuant to this chapter, to withhold from the original contractor, or from any person acting under his or her authority, money or bonds (where bonds are to be issued in payment for the work of improvement) due or to become due to that contractor in an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder. The public entity may satisfy this duty by refusing to release money held in escrow pursuant to Section 10263 or 22300 of the Public Contract Code."

The new Civil Code section 9358 states:

- "(a) The public entity shall, on receipt of a stop payment notice, withhold from the direct contractor sufficient funds due or to become due to the direct contractor to pay the claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice.
- (b) The public entity may satisfy its duty under this section by refusing to release funds held in escrow under Section 10263 or 22300 of the Public Contract Code."

Please note that in neither the old Civil Code section 3186 (which was still applicable when this case was heard) or the new and now applicable Civil Code section 9358 provide for "an attorneys fee award" but only "reasonable cost of any litigation." The appellate court reversed the trial court's decision. The Court of Appeal stated, "We believe that the Legislature would have expressly provided for an attorney fee award in favor of the prevailing party in an action to enforce payment of a claim... if so... intended... absence of such provision... indicate... no such intention."

Although this decision came down when Civil Code section 3186 was still applicable, the premise of this situation does not change because the new Civil Code section 9358, covers the same concept and replaces the old code section.

Lastly, public entities still have the option of filing an interpleader (depositing the money with the court) action when they are served with a Stop Payment Notice Complaint in order to potentially receive attorneys fees and costs.

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SCAM ALERT

Dear Southern California Roofing Professionals,

I have just learned of a scam targeting both licensed contractors and license applicants in California. The CSLB is required to make public the name and address of all accepted applications. These lists are used by the various schools and bond companies as a source for their marketing.

At least one unscrupulous company is using this public information to contact the applicants, saying they're from CSLB, and that the applicant needs to pay money to get an exam test date. They try to get money by credit card over phone or sent to a PO Box they've set up in San Diego.

I also understand that they've begun targeting licensees as they come up for their renewal, based on license information on the CSLB website. Again, they say they are from CSLB and are contacting licensees to tell them there is a new law requiring continuing education in order to renew their license, and selling them materials for this. There is no new law and CSLB doesn't require continuing education. They never send them materials either.

The CSLB has issued an "Industry Alert" to start getting the word out about this. Here's a link to that alert: <http://www.cslb.ca.gov/GeneralInformation/Newsroom/IndustryBulletins/IndustryBulletins2012/IndustryBulletin20121120.asp>.

CSLB is also putting warnings on letters to applicants and renewal notifications, as well as other places on their website.

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SDRCA NEW MAILING ADDRESS

PO BOX 1328
Solana Beach, CA
92075

Please change the SDRCA information in your files

The Use of “Salesperson” for Activities Other Than Sales

By Bruce D Rudman (Abdulaziz, Grossbart & Rudman)

A number of our clients utilize registered salespersons on Home Improvement Projects for more than just sales. Indeed, it is becoming more common in the industry that these persons, who are the first interaction between the customer and the contractor, continue on the project by acting in the manner of a construction manager. Many of these salespersons coordinate the subcontracts, supervise or inspect the work, and negotiate change orders and payments with the customer.

For some time, there has been a controversy in the Home Improvement industry whether salespersons can be independent contractors. The Contractors' Board has declared that a salesperson almost never can be an independent contractor, and requires workers' compensation insurance to be obtained by the contractor for their salespeople. The Employment Development Department and IRS each have factors that they use in determining whether a person may be deemed an independent contractor or an employee. It does seem to be possible that a pure salesperson, who only negotiates that sale, and nothing more, could possibly fall within the definition provided by the taxing authorities of an independent contractor notwithstanding the opinion of the Contractors' Board. However, when that person who is not an employee of the contractor does anything that would require a contractor's license, we now get into a gray area that can complicate the entire transaction.

Business and Professions Code sections 7026 and 7026.1, among other laws, define the activities of a contractor. The statute is inclusive:

"...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 herself 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, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, 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. "Contractor" includes subcontractor and specialty contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or any public conveyance." (emphasis added)

Recently, the Legislature passed AB 2237 which amended Business and Professions Code section 7026.1, which adds to the definition of a contractor on Home Improvement Contracts to include the term "consultant" as a person who: (1) provides or oversees a bid for a construction project, or (2) arranges for and sets up work schedules for contractors and subcontractors and maintains oversight of a construction project. The result of this change makes it crystal clear that a person who undertakes such tasks must either themselves be licensed as a contractor or be an employee of a contractor. Thus, if you classify a salesperson as an independent contractor and then have them perform these tasks, you are contracting with an unlicensed contractor to do these tasks and face the possibility of discipline as well as the inability to collect for the portion of work that they do.

It is a simple task (although perhaps not so easy economically) to make every salesperson an employee of your company. We recommend this to avoid potential ramifications and difficulties in the future.

Thank You to the 2012 Advocate Sponsors

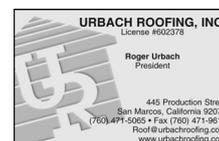
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The SDRCA wishes to Thank our contributing Sponsors. The ability to bring ongoing, valuable educational, social and professional benefits and training is dependant upon our sponsors. We look forward to the new sponsorships and training opportunities 2012 will bring our members.

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