Contractor’s License Bonds – Can’t Work Without ‘Em But Don’t Understand ‘Em

The State of New Mexico requires every contractor carry a Contractors License Bond, put up a cash deposit, or provide annual audited financial reports to the Construction Industries Division (CID) as Proof of Responsibility. 99.9% of contractors opt for the bond. And many of those contractors haven’t a clue about what they’re paying for. Here are some important facts about the Contractor’s License Bond:

• The Contractor’s License Bond is only to pay administrative penalties (fines) to CID. This is the “responsibility” needing proof as required under the Construction Industries Licensing Act. If the contractor is found guilty of violating the Act and doesn’t pay the fines levied against him/her, CID will “call” the bond for payment.

• No money is ever paid to a homeowner from the Contractor’s License Bond. The only beneficiary is the State of New Mexico.

• State Law requires the following Bond Amounts to cover potential fines:

<table>
<thead>
<tr>
<th>Allowable Maximum</th>
<th>Bond Required</th>
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</thead>
<tbody>
<tr>
<td>Single Permit or Contract Capacity</td>
<td>$500</td>
</tr>
<tr>
<td>$0-25,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>$25,001-200,000</td>
<td>$2,500</td>
</tr>
<tr>
<td>$200,000 – 1,000,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>$1,000,001 – and higher</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

• Contractors must include on every contract a disclosure statement that informs the consumer the Contractor’s License does not protect the consumer if the contractor defaults on the contract. This has been required since 1989. (See the reverse side of this flyer for suggested wording.) Failure to disclose this information before work is commenced, a contract is signed, or funds are paid for any residential contracting may result in a penalty fee of $150.

• You could think of your bond as a pre-paid line of credit. The surety (bonding) company is just “loaning” the bond amount to the contractor. When CID “calls” a bond for failure to pay fines, the surety company pays CID, and the amount of the fines paid to the State of New Mexico must be repaid to the surety company by the contractor.

• There are 10 reasons CID could revoke or suspend a license or fine a contractor (in simplified language) according to the Construction Industries Licensing Act.

1. Willful (or through incompetence) violation of any provision of the Act or any rule or regulation of CID;
2. Performing a service beyond the scope of the license;
3. Misrepresentation of a material fact in obtaining a license;
4. Failure to maintain proof of responsibility (the bond, financial reports, or cash);
5. Unjustified abandonment of any contract;
6. Using funds paid for one project to complete another project (conversion of funds);
7. Departure from or disregard of plans or specifications that result in code violations;
8. Willful or fraudulent actions by the contractor that results in substantial injury to another;
9. Aiding, abetting, or conspiring to evade or violate the provisions of the Act by allowing an unlicensed person to utilize the contractor’s license’;
10. Contracting in any other name than that on the license.
If you have questions about the Contractor’s License Bond, call the New Mexico Home Builders Association’s bonding subsidiary, New Mexico License Bonding, at 505.344.7277. For further information about the complaint process that could lead to a fine, call the Construction Industries Division in Santa Fe at 505.827.7067. For general information on the licensing process contact Construction Licensing Services, Inc. (C. L. S. I.) at 505-452-8311.

Information in this article is based on the New Mexico Construction Industries Licensing Act 1978, Issued by New Mexico Regulation and Licensing Department, Construction Industries Division.

This article provides general interpretation of Contractors License Bonds. It is provided free, with the understanding that New Mexico Home Builders Association does not intend this article to be viewed as rendering legal advice or service. If legal advice is sought or required, the services of a competent professional should be sought. New Mexico Home Builders Association shall not be responsible for any damages resulting from any error, inaccuracy or omission contained in this article.

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**Reminder to Contractors**

New Mexico State Licensing Act Section 60-13-19 has required since 1989 that contractors include on every contract a disclosure statement that informs the consumer the Contractors License does not protect the consumer if the contractor defaults on the contract. Failure to disclose this information before work is commenced, a contract is signed or funds are paid for any residential contracting may result in a minimum penalty fee of $150.

The 2003 Legislative session saw HB 609 add the wording that a contractor must also disclose in writing the bond (or other proof of responsibility) does not protect the consumer. Fines under HB-609 for failure to include the necessary wording could be levied by the Construction Industries Division in the range from $500 to $1,500, and payable to CID.

All contractors should **immediately** cover themselves by including the following disclosure:

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“NOTICE: Neither the Contractor’s License Bond nor the license issued under 60-13-19 of the Construction Industries Licensing Act protects the consumer if the contractor defaults on this contract.”
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