

Exploring Enforcement

Construction Industry Conference

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Overview

- Enforcement Services Unit
- DLI philosophy
- Complaint investigation
- Enforcement action
- Unlicensed activity
- Worker Misclassification
- Questions

Enforcement Services Unit

- Supervisor and 15 investigators
- Conducts over 1,500 investigations and issues 500 orders each year
- Six work mainly on RBC cases
- Three work electrical/elevator cases
- Four work on worker misclassification
- One works plumbing cases

Enforcement stats

RESIDENTIAL BUILDING CONTRACTOR

	CASES OPENED	CASES CLOSED	ACTIVE CASES	ORDERS
2015	790	900	538	282
2014	774	714	657	252
2013	793	868	629	267
2012	790	735	702	203
2011	828	1,013	713	231

Enforcement stats

ELECTRICAL

	CASES OPENED	CASES CLOSED	ACTIVE CASES	ORDERS
2015	523	468	328	178
2014	250	238	220	171
2013	284	286	177	112
2012	282	380	194	131
2011	243	321	333	91

Enforcement stats

PLUMBING

	CASES OPENED	CASES CLOSED	ACTIVE CASES	ORDERS
2015	225	250	92	84
2014	149	157	102	51
2013	166	178	108	42
2012	177	173	115	45
2011	149	160	113	75

Enforcement Stats

WORKER MISCLASSIFICATION

	CASES OPENED	CASES CLOSED	ACTIVE CASES	ORDERS
2015	279	237	251	172
2014	289	260	148	178
2013	210	171	162	113
2012	186	274	128	154
2011	340	370	214	255

DLI Enforcement Philosophy

- Goal is to assist compliance, not collect fines, but there must be accountability
- Listen to both sides
- Impartial review of all facts
- Fair, reasonable, consistent

Complaint investigation

- Anyone can file a complaint
 - Homeowners, inspectors, subs, union reps, attorneys
- Case assigned to investigator
- Investigator reviews allegations and Respondent's license status, history, and does judgment search
- Letter sent to Respondent (usually with a copy of the complaint enclosed)

Complaint investigation (cont.)

- Respondent given deadline to respond (usually two weeks)
- No response, late or incomplete response is a violation by itself
- Investigator reviews response; determines whether to interview others, obtain more information

Complaint investigation (cont.)

- Purpose of investigation is to determine whether violations have occurred and can be proven
- Once investigation complete, investigator closes file with letter to each party or decides to take enforcement action

Complaint investigation (cont.)

What conduct can lead to enforcement action against anyone CCLD regulates?

- Unlicensed activity
- Fraudulent, deceptive, or dishonest practices
- Incompetence, untrustworthiness, or financial irresponsibility
- Failing to cooperate with investigation
- No permits, plan review, inspection
- Allowing use of license

Complaint investigation (cont.)

What conduct can lead to enforcement action against a residential building contractor?

- Everything on last slide
- Failing to pay subs or suppliers
- Forging lien waivers
- Refusing to correct code violation (even in non-code area!)
- Covering deductibles
- Missing contract provisions

Enforcement action

If enforcement action is warranted, it is achieved in one of two ways: **Consent Order** or **Administrative/Licensing Order**

- DLI prefers to settle with Respondent
- Litigation is costly to both parties
- DLI does not keep penalties: they go to Assigned Risk Safety Account

Consent Order

- Essentially a 'plea bargain'
- Respondent and DLI agree on sanction
- Not considered an admission of guilt or finding of fact, but is considered a public enforcement action
- Often contains stayed penalty (not owed unless new violations in the future)

Administrative Order

- Can go to licensee or unlicensed person
- Usually contains cease and desist language
- Civil penalty – part of which may be forgivable if corrective action taken
- Describes facts and violations in detail
- Final if no hearing requested in 30 days

Licensing Order

- Only issued to licensees
- Can revoke or suspend a license as well as impose a civil penalty
- Can contain cease and desist language
- Describes facts and violations in detail
- Final if no hearing requested in 30 days

Contested case proceeding

If Respondent requests a hearing:

- DLI file sent to Attorney General, which represents DLI from that point forward
- Notice and Order for Prehearing Conference issued
- Conference scheduled to explore settlement, talk scheduling for hearing if no settlement can be reached

Contested case proceeding (cont.)

- Hearing is held before an administrative law judge (ALJ) at the Office of Administrative Hearings (OAH) in St. Paul
- Both sides call and cross examine witnesses, present evidence
- After the hearing, ALJ issues a Recommendation to the DLI Commissioner

Contested case proceeding (cont.)

- Both sides submit "argument and exceptions" to Commissioner
- The Commissioner (or designee) issues Findings of Fact, Conclusions of Law, and Order containing final sanction
- Respondent may appeal to MN Court of Appeals within 30 days, otherwise Order becomes final

Unlicensed activity



What DLI can do

- If unlicensed activity is proven, DLI can issue cease and desist order and impose a monetary penalty
- If contractor is cooperative, a Consent Cease and Desist Order is usually issued with large chunk of penalty stayed
- If contractor is not cooperative, DLI issues an Administrative Order

What DLI can't do

- File criminal charges
- Confiscate tools or vehicles
- Physically stop contractor from working or placing ads
- Stop homeowners from hiring unlicensed contractors

What evidence does DLI need?

- Positive identity of contractor including legal name and address
- We must prove that unlicensed activity occurred:
 - Contracts, proposals, advertisements, flyers, yard signs, websites, business cards
- Anonymous complaints are OK but we can't get back to you for clarification

Worker Misclassification

- Employees being treated as independent contractors
- ICEC program failed; replaced by Contractor Registration Program
- All contractors who perform commercial or residential building construction or improvement services must register if not required to be licensed

Worker Misclassification (cont.)

- Contractor will be deemed to be an employee, not independent contractor if not registered **and**:
 - Have active Secretary of State filing
 - Meet nine factor test
 - Use invoices and accept payment only through legal business name

Consequences?

- DLI can penalize employers for misclassifying workers
- These penalties are usually minor; DLI's focus is on education and compliance
- However, DLI findings are referred to DEED and Dept. of Revenue
- Penalties for unemployment insurance and tax violations are much more painful

Verify subs' registration/licensure online:



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Department of Labor and Industry



The agency's mission is to ensure Minnesota's work and living environments are equitable, healthy and safe. The agency oversees the state's apprenticeship, construction codes and licensing, occupational safety and health, wage and hour standards, and workers' compensation programs.



DLI ReNew

Apply for a new or renew an existing construction license, certificate or registration

License Lookup

Verify construction licenses, bonds, certifications, registrations and building officials



License lookup

Use the search feature below to find personal and business licenses, bonds, certifications and registrations issued by DLI. To begin, choose either "Personal" or "Business." Next, select a specific type from the drop-down menu or leave the default "All."

To verify an individual's or company's current status, enter in a specific license, bond, certificate or registration number or the individual's or company's name and click "Search." For personal licenses, type the last name first. If no search results are found, change selection of "Personal" or "Business" and search again. Because the lookup will retrieve all records containing the exact text you enter, it's best to start with just an individual's last name or part of the business name. Do not type in punctuation marks or wildcards (* or % for example).

[Click here](#) for more detailed instructions and information to help you search effectively.

Municipalities: [Download current plumbing bond information here.](#)

License class ALL Personal Business

Select a discipline Registered Contractors

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The CCLD Review

- Quarterly CCLD newsletter
- Sent via e-mail and posted on website
- Articles highlight changes in laws, policies, interpretations
- Contact DLI Communications Unit to subscribe
 - chris.thompson@state.mn.us

CCLD Contact Information

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(651) 284-5074 (Contractor Registration)

(651) 284-5034 (Licensing)

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Questions?