

When Do Virginia Contractors Need a License?



ATTORNEYS

Timothy Hughes

RELATED PRACTICE AREAS

Construction

RELATED INDUSTRIES

Construction

Timothy Hughes

BKK Construction & Land Use Newsletter

September 2013

The question of exactly what triggers a requirement for a contractor's license comes up frequently in my practice. Like many other things in the law, the answer is not particularly clear and can be somewhat circular. Still, there are some practical signposts that provide definition and allow for some risk analysis.

Starting Point: What Does the License Statute Say?

The starting, and likely the ending, point of the analysis is the applicable licensing statute. The Virginia code at section 54.1-1100 provides:

"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property.

The general definition of "construction" and "improvement" suggests that practically anyone involved in the trade needs a license. This may surprise quite a few painters, folks laying some limited tile work, or flooring installers.

The code states further in section 54.1-1103 that no person shall engage in, or *offer to engage in*, contracting work without a license. That means that not only can you not perform the work without a license, but you cannot even market and offer your services without a license.

Do Permit Requirements Make a Difference?

The license discussion is often triggered by permit applications. Local building permit applications require inclusion of the contractor's license obligations. When facing electrical and plumbing issues, substantial work clearly requires a permit. Similarly, even small scope projects that involve any structural alterations generally require a permit.

Certain less involved services do not appear to require a permit. The Virginia Uniform Statewide Builder Code 2009 edition (adopted effective 2012) provides that limited scope work does not require a permit, such as:

- Fences under six feet,
- Replacements of doors or windows,

- Replacements of plumbing fixtures without water supply or distribution alteration,
- Roof replacement,
- Flooring finish installation or replacement,
- Cabinetry or trim, and
- Painting or wallpapering.

Arlington, Fairfax and Prince William County each state on their website that permits are not required for the replacement of windows, installation of residential cabinets, installation of floors or finishes, or painting and wall papering.

Because these minor scope items do not require a permit, they may not trigger the conversation of whether a license is required. My thinking is that individuals and businesses performing this work should be conservative and not assume that the exception from permitting excuses a license requirement.

Getting Paid – Licensing is a Very Big Deal

There are various Virginia cases which indicate that a failure to hold a required contractor's license can absolutely bar your ability to file suit to get paid. More recently, the Virginia General Assembly passed a statute amendment barring mechanic's liens by contractors who perform work without a valid license or without the proper class of license. The lien memorandum form in the code now explicitly requires listing the contractor's license information. What this means is that regardless of the permit laws, you may still need a license to get paid for your work.

Conclusion: Think Conservatively

Given the lack of licensing statute clarity and the potential limits on your ability to enforce payment, the conservative approach is to obtain a license even if there is some question about whether you need it. Whether the quote is attributed to Frank Kafka or not, "it is definitely better to have that and not need it, than to need it and not have it."