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CALIFORNIA LEGISLATURE AMENDS CALIFORNIA'S CONTRACTORS' STATE LICENSE LAW TO ALLOW LIMITED LIABILITY COMPANIES TO BE LICENSED AS CONTRACTORS

On September 30, 2010, the Governor signed Senate Bill No. 392 which will permit a limited liability company ("LLC") to be licensed as a contractor under the Contractors' State License Law. LLCs have been authorized under California law since 1994, but many of the State's licensing regimes (including the Contractors' State License Law) have not permitted LLCs to hold licenses. SB 392 finally brings California in line with the majority of states that permit a contractor to be formed as an LLC. The License Law was amended comprehensively to treat LLCs generally on a par with corporations with respect to licensing.

Although additional bonding and insurance requirements imposed by SB 392 may prove to be difficult for "start-up" LLCs or LLCs with limited bonding capacity, the ability of an LLC to obtain a contractor's license should be a welcome option to many LLCs, such as real estate development joint ventures, and offers planning opportunities for developers who desire to create special purpose general contractors. For instance, affordable housing developers frequently desire to act also as a general contractor in the development of affordable housing due to differing guidelines many state housing agencies have with respect to fees that can be charged for development activities as opposed to general contracting activities. Expanding contractor licensing to LLCs creates greater flexibility for developers in structuring such arrangements.

Primary opposition to expanding the law to LLCs was concern of interest groups that limits on LLC member liability could leave construction employees without recourse for non-payment of wages. As a compromise, SB 392 requires that for an LLC to hold a license, it must file and maintain a surety bond in the amount of \$100,000 for the benefit of employees to ensure payment of wages, interest, and fringe benefits. (This bond is in addition to the \$12,500 contractor's bond required of all licensees.) Additionally, if the LLC is signatory to a collective bargaining agreement, the bond will be required to cover fringe benefit trust fund contributions.

Licensed LLCs will be required also to maintain and submit proof of errors and omissions insurance coverage in an amount of not less than \$1,000,000, and up to \$5,000,000, depending on the number of persons listed on the personnel of record of the LLC. The policies of insurance must cover damages arising out of claims arising out of the provision of contracting services by the LLC.

An LLC will be able to qualify for a license by examination of either a responsible managing officer, manager, member, or employee. SB 392 also provides for transfer of existing license numbers to an LLC under certain conditions which will enable existing licensees to take advantage of the LLC form of doing business.

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SB 392 takes effect January 1, 2011 and requires the Contractors' State License Board to begin processing applications for licenses from LLCs no later than January 1, 2012. However, the License Board is expected to begin processing applications prior to that date.

SB 392 was a sponsored initiative of the Associated General Contractors of California and San Diego legislative program, in which members of CC&N participate and provide counsel.

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