

# REAL ESTATE LAW

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## Litigation Support for Real Estate Disputes

by Deborah Dickson, CPA, CFF, MAFF

Real estate disputes are more common than you think! Smith Dickson, CPAs has provided litigation support on real estate matters since 1995. These engagements are as diverse as they are complex. Here are a few recent examples:

**Misappropriation of Funds / Fraud** – Co-ownership of properties can often result in disputes. One of our clients had an ownership interest in multiple apartment LLCs which were managed by the other member – who also separately owned additional complexes. The managing party was accused of commingling all of his property and family expenses with the apartments owned jointly with our client. Smith Dickson was hired to provide forensic analysis of expenditures, disbursements, and supporting invoices, resulting in the identification of millions of dollars that were siphoned out over several decades. Another client who managed properties for overseas relatives was accused of over \$3 million in misuse of funds; after our testimony, the jury reduced the damage award to \$1 million.

**Creditors' Rights** – Loan defaults aren't always straightforward, especially when millions of dollars are at stake in commercial properties. When our bank client foreclosed on \$15 million in loans for buildings, the borrower claimed that the loans were not technically in default due to the manner in which penalties and interest were applied. Our work involved damage calculations and expert testimony.

**Probate/Trust Beneficiary Disputes** – Those who inherit properties often contest use of trust money for personal gain and ownership percentages, such as our

client who was involved in litigation over beachfront properties with siblings. Smith Dickson reconciled the beneficiary proceeds in this matter.

**Development and Contractor Disputes** – These matters involve all facets of development and construction. A recent case involved a multi-phase project in which multiple owners funded different phases. Ownership percentages and land boundaries were disputed, and contractors sued over payment. Our work in this complex case involved tracing of capital and debt transactions as well as construction disbursements.

**Escrow and Title** – Mistakes in these matters can involve millions of dollars in damages. A recent case involved title disputes on over 100 properties owned by an LLC with numerous members located in multiple states. The underwritten title company issued clear title reports when there were actually liens. Our damage calculations proved instrumental in educating the jury to provide a resolution in this Federal criminal case.

**High-Stakes Marital Dissolution Matters** – One of our largest matters involved multiple real estate brokerages and properties owned throughout southern California. Litigation between the ex-spouses ensued for many years. Our work involved asset tracing, valuations, and asset equalization.



Dickson

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## Carpenters / Contractors Cooperation Committee, Inc.

“Luxury hotel doors opening. Residential towers breaking ground. Major public works projects taking off. Everywhere you look are signs that it will be a banner year in the construction industry. But there’s an underside. More and more, it is becoming apparent that certain types of mixed-use residential housing projects are a magnet for illegal business practices.”

# Beware, Bad Subcontractors Can Ruin Your Construction Project

by David Kersh, Executive Director, Carpenters/Contractors Cooperation Committee

Luxury hotel doors opening. Residential towers breaking ground. Major public works projects taking off. Everywhere you look are signs that it will be a banner year in the construction industry. But there’s an underside. More and more, it is becoming apparent that certain types of mixed-use residential housing projects are a magnet for illegal business practices.

### Shady Practices

That’s because in many cases developers and general contractors lean on subcontractors that pay workers off the books and use other shady schemes to cut costs and reap profits. They often shave off worker hours and evade payroll taxes and insurance. In many cases, these subcontractors also use bad checks to pay their employees and threaten those who seek help in obtaining payment for wages owed. In the most nefarious instances, workers don’t even get paid at all.

For more than 30 years, my organization has been collaborating with civil and criminal enforcement agencies to crack down on illegal business practices from wage theft to workers’ compensation fraud in the construction industry. Millions of dollars in wage restitution and penalties have been recovered and company representatives engaged in criminal activity have been sent to prison.

Along with stories of the toll on workers’ livelihood are stories of general contractors who think they can save a buck here or there, but ultimately end up having to pay a high price for the mess created by subcontractors that flout the law. Not only is it morally degrading for developers or general contractors to turn a blind eye to shady schemes that exploit workers and undercut good responsible contractors, it is actually bad for business.

### Bad Contractors, Bad for Business

Let’s face it, hiring irresponsible contractors will cost more at the end. They bring expensive additional payroll costs, accounting headaches, legal exposure and expenses that cut into the bottom line. For general contractors or developers, it means risking their reputation and putting the timely completion of a construction project on the line.

Such was the case of the framing subcontractor **RDV Construction**, which is under investigation by the state Labor Commissioner. Irvine-based general contractor **R.D. Olson** learned the hard way what it means to hire a corrupt subcontractor. It incurred financial injuries close to \$1 million dollars for RDV’s incomplete and abandoned work in Irvine and Calabasas.

So did **KPRS Construction Services**, another Orange County-based general contractor who had to pay more than \$200,000 in a settlement for RDV’s wage violations at a public transit-oriented residential project in downtown Los Angeles. Yet, both these general contractors have utilized the subcontractor **Fullerton Pacific Interiors** whose founder has a sordid history of bank fraud, workers’ compensation fraud and wage theft. This subcontractor is also under investigation by the California Labor Commissioner.

It’s unclear how that investigation will play out, but for general contractors that use the company, there’s clearly a potential for legal liability and worry that the association with such crooked contractors could tar their brand’s reputation. And there are many other problem contractors, including Newport Beach drywall subcontractor **Champion Construction**, whose owner has a long history of prevailing wage violations and workers’ compensation fraud. General contractors **T.B. Penick & Sons** and **Pro-West Constructors** were held legally accountable

for prevailing wages that **Champion Construction** failed to pay its workers. For **T.B. Penick**, this involved a case with more than \$1 million in wages owed and penalties. Another general contractor, **Deacon Construction**, has had to also spend time and money in defending itself long after a hotel project was done because of this subcontractor’s labor violations.

### General Contractors Now Face More Liability

Along with the usual headaches problematic subcontractors bring, general contractors are now jointly liable for subcontractors’ labor violations on private construction projects due to a new state law. This new law will allow labor-management groups such as my organization to clamp down on the practices ruining the construction industry and putting at risk the potential to create good jobs for our communities.

This is an important step to ending these pernicious practices. Before, general contractors could look the other way as subcontractors cheated workers. Developers and general contractors paid no price for allowing law breakers on their project. Not anymore.

Under the law, general contractors who reap the benefits of these projects are jointly responsible for labor violations. This is more than a just a policy change, it’s a law aimed at changing business behavior so general contractors are not just hiring one violator after another while fomenting a culture of tax fraud and labor violations.

### Developers Beware

We know successful developers get projects done fast. We also know from experience that bad subcontractors slow down projects. Expensive construction financing gets even more costly when bad subcontractors cause construction delays. And while general contractors might have moved on, developers must still rent out or sell their developments months, sometimes years, after they had hoped to.

Time is money. It pays to do it right the first time, and for developers and general contractors to ensure good subcontractors are on the job. Nobody benefits from a corrupt system, not the developer, not the general contractor, not the worker, not the community. It’s time that we clean up the construction industry and keep it that way, so everyone will benefit.

Find us at [www.quadc.org](http://www.quadc.org).

### David Kersh

David Kersh is the executive director of the Carpenters/Contractors Cooperation Committee, a labor-management organization that promotes quality construction jobs and works with local, state and federal agencies to stop wage theft, payroll fraud and other labor and safety violations.





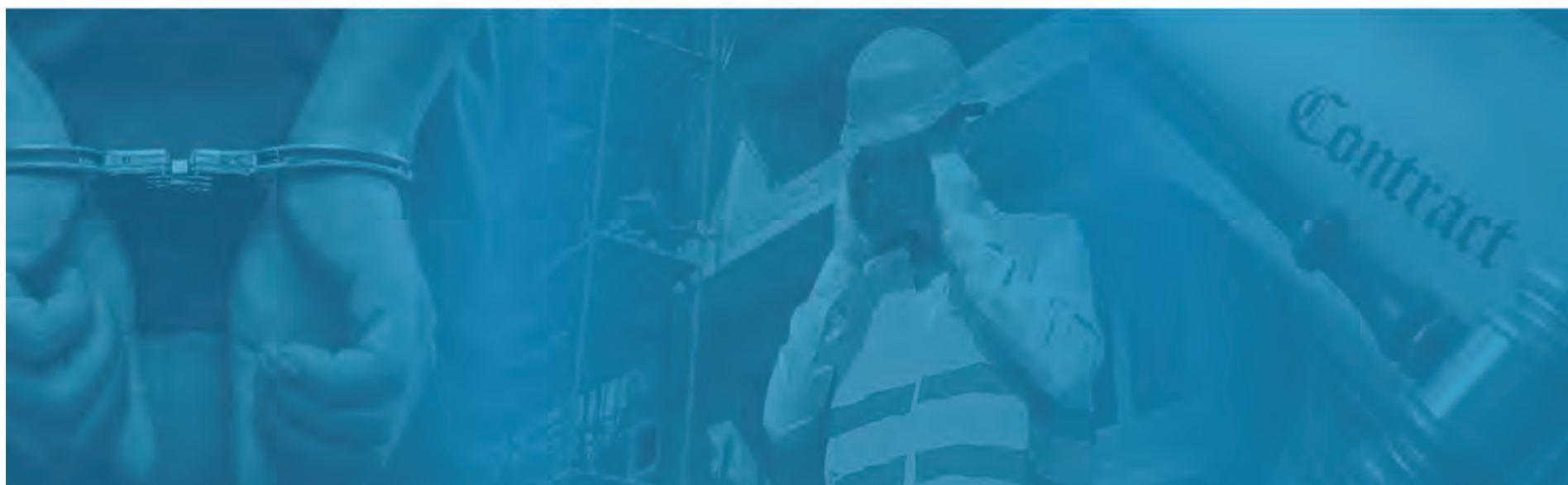
## ***Carpenters / Contractors*** *Cooperation Committee, Inc*

### **GENERAL CONTRACTORS/DEVELOPERS... THERE IS A PRICE TO PAY FOR HIRING LAW-BREAKERS**

For over 30 years, the Carpenters/Contractors Cooperation Committee (C/CCC) has been committed to promoting quality good paying construction jobs through vigorous labor compliance activities. Established as a joint labor-management cooperation committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sect 175a), the C/CCC is legally authorized in California to support the enforcement of labor laws in the construction industry. **Starting in 2018, the C/CCC will also be able to file direct legal actions against general contractors when their subcontractors break labor laws.**

This new law (Labor Code 218.7) is a critical step in helping victims of wage theft recover their money, and enable responsible contractors to compete fairly and not be undercut by law-breakers. Contractors who engage in wage theft and payroll tax fraud practices are stealing from our communities as a loss in revenue payments means less funding for social and public services, ranging from infrastructure projects to public safety.

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# Stuart Kane LLP

## Contract With Care: New Law Increases Direct Risk for General Contractors (and Indirect Risk for Owners) Regarding Subcontractor Wages

While not uncommon for owners and general contractors to haggle over payment of unforeseen cost increases on construction projects, imagine arguing over who pays for a subcontractor's labor costs. For new construction contracts after January 1, 2018, a private direct contractor in California may be held liable for "any debt owed to a wage claimant or third party on the wage claimant's behalf incurred by a subcontractor at any tier" acting under, by or for the direct contractor. Assembly Bill 1701, codified at Section 218.7 of the Labor Code, is squarely aimed at direct (general) contractors, however, owners and tenants hiring those contractors should pay careful attention to the terms of their construction contracts to avoid effectively paying twice for the same work.

### What Is Assembly Bill 1701?

Assembly Bill 1701 is intended to address perceived "wage theft" for employees of California subcontractors. The law authorizes the Labor Commissioner to bring an action against *the direct or general contractor* to enforce any liability of a subcontractor for unpaid wages and interest, although not for statutory or civil penalties or liquidated damages. The law also authorizes private civil actions by a joint-labor management cooperation committee or third parties (think unions) on a wage claimant's behalf.

### How Can an Owner or Tenant Limit Their Exposure?

The first line of defense for any owner or tenant is to ensure that any contract contemplating construction (whether a joint venture agreement or a general construction contract) clearly and unequivocally excludes owner's obligation to pay the cost of any violation of law, including labor laws, by the general contractor **and** subcontractors. Form construction contracts often do not directly address this matter, and those that do attempt to water down a general

restriction by limiting it to gross negligence or willful misconduct.

Owners should also ensure their contracts require the general contractor to obtain and review payroll records of subcontractor employees and certify the same to owner as a condition of payment. The new statute expressly gives general contractors the right to request such payroll records from lower tier contractors. If feasible, general contractors should also request certifications and lien releases from union representatives that may be collecting funds for subcontractor employees. Although AB 1701 does not provide a direct cause of action against an owner, a prudent owner can utilize the payroll information to keep tabs on their general contractor's exposure.

In addition, owners should endeavor to have consent rights over the subcontractors to be hired by the general contractor, especially those representing significant portions of the project budget. If having say over the selection of the subs is not feasible, owners may at least require payment bonds be carried by each significant subcontractor. Even if the bonding cost is high, there is comfort in having a deep pocket and diligence from the surety involved in the subcontractor approval process.

It is also worth noting that nothing in the new law prevents a general contractor or owner from requiring subcontractors to provide a contractual indemnity for this potential liability; however, a subcontractor that defaults may not have the funds to pay the general contractor – after all, if it had the funds, it probably would have paid the wages in the first place.

Proactively protecting their interests when entering into their contracts, owners and general contractors would both be wise to make sure this new liability regarding subcontractors is a point of focus before they sign on the dotted line. An owner or general contractor that ignores the impact of AB 1701 does so at its own peril.



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