

# Powers Limited

## How State Watches Builders

**EDITOR'S NOTE:** The following is a discussion of state licensing limitations by Charles E. Harmon, director of the Michigan Department of Licensing and Regulation. It first appeared recently in "Consumer News & Views," published by the Michigan Consumers Council, and is reprinted with permission of that agency.

Few marketplace transactions will excite and distress a consumer more than a leaky basement, an abandoned building job, or a misleading clause in a home improvement contract.

Consequently, of the 32 occupational licensing acts administered by the Michigan Department of Licensing and Regulation (L&R), probably none commands more attention than the State Residential Builders' and Maintenance Contractors' Licensing Act.

It is a relative infant in the licensing field, adopted by the Michigan Legislature in 1965 and taking effect the following year. In contrast, real estate brokers have been licensed since 1920, certified public accountants since 1925 and medical doctors since 1899.

It is one of the few licensing areas in which the ultimate policy-making authority is not lodged solely with a board made up of licensees. This authority is shared by the director of licensing and regulation and a board made up of representatives of various facets of the building industry, including organized labor.

It encourages more complaints, with the exception of real estate, and results in more license suspensions and revocations than any other licensing act. And it has incurred its share of criticism, Monday-morning quarterbacking and opposition from

various quarters, both individual and organized.

MY PURPOSE in this article is not that of a drumbeater; I am not in the business of "selling" license laws. Rather, I speak to limitations and problem areas, and to what we can and have done or can't do, and why.

1. We do investigate complaints. In 1971 four field investigators processed 652 complaints, conducted 600 investigative conferences and 580 field investigations, and fielded thousands of telephone and personal inquiries.

2. We do suspend, revoke and deny licenses. In 1971 there were 65 formal hearings against licensees, or prospective licensees—more than in any other licensing area.

The board and myself revoked 21 licenses and suspended 11 others—more than in any other licensing area. Three license applications were denied as a result of formal hearings. Another seven matters were dismissed and the remainder are awaiting action.

3. There are various grounds upon which direct action can be taken by the state against a licensee, either on its own volition or upon the complaint of a consumer. This includes among other things abandonment of a project, illegal diversion of funds, willful departure from plans—or, specifications, making false promises, failing to furnish a complete agreement to a purchaser, and bankruptcy or insolvency.

We can proceed on the basis of such a complaint only if made within 18 months after completion, occupancy or purchase of the residential structure.

4. We cannot accept a complaint involving an allegation of a structural

defect directly from a homeowner. Example: If a new home develops a leaky basement, the homeowner must get a local building official to inspect the premises, and that official must verify the defect in writing to us before we can proceed.

This is perhaps the most controversial part of the law. It presumes that local building officials are in the best position to screen such complaints and further presumes full cooperation by all levels of government in enforcing the license law.

This has not always been the case. A few communities will not forward such "verified complaints" to us. In certain outstate areas qualified building officials do not exist. As a result, some persons have been left without full and equal protection of the license law.

5. We are not a law enforcement agency in the strict legal sense of the term. We cannot fine. We cannot sentence to prison. We cannot arrest.

The enforcement of the act in instances of unlicensed builders and contractors, our second largest enforcement problem area, again requires maximum assistance of local officials. It requires prosecution and the willingness of the judiciary to fine and sentence violators.

It also requires proof positive that an alleged violator is doing something for which a license is required. As a result, it is usually not enough simply to allege that a contractor is working illegally because he is not licensed. Proof is required, usually contractual, to show that what he is doing does not fall within one of the exemptions from licensure.

6. We are not a small claims court or a collection agency. We cannot settle financial disputes per se. We do, however, resolve many differences between licensees and customers.

A large portion of the complaints filed with us never reach the formal hearing stage. Some fall for lack of evidence or lack of grounds under the act to proceed. Many others are settled through the efforts of investigators to bring the parties together and the corrective steps and understandings that result from such conferences.

7. And we are not a fast-service supermarket for consumer grievances. A serious contested complaint can take more than a year from the time it is received until the hearing record reaches the board and myself. Part of the reason for this is the Michigan Administrative Procedures Act of 1969 which governs license hearing procedures for all state agencies and which has added legitimate but time-consuming protections for defendants in violation cases.

DURING THE shakedown period of the act's early years, we have recognized just as readily as others the need for improvement and revision. Where do we go from here?

First, several loopholes in the act must be plugged and its enforcement teeth must be sharpened. The department and the board are proposing to do just that through Senate Bill 701 which passed the Senate earlier this year and is now in the House Urban Affairs Committee.

The amendments proposed in the bill would eliminate certain of the exemptions that have crippled enforcement efforts against unlicensed operators, would add legal tools to move against such violators (such as injunctive authority), and would broaden the grounds for suspending, revoking and denying licenses.

Second, we must find a solution to the dilemma surrounding local verification of structural-type complaints, or more to the point, the lack of such action in certain

communities. Either we must move to a state inspection system or there must be a clearer mandate as to local responsibility, or some state-local check-and-balance system must be devised.

Third, we must intensify our effort to educate other officials as to the requirements of the law and in its enforcement. Finally, the department's physical ability to respond to enforcement demands must be improved. In the end result this means manpower, and this we are exploring as we prepare our budget requests.



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