

# FLORIDA CONTRACTOR LICENSE LAW UPDATE

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# Presentation Outline

## I. Requirements for the Licensure of Contractors

- A. Overview of Licensing
- B. Definitions & Scopes / Services Needing a License
- C. Exceptions to Licensure

## II. Consequences for Unlicensed Contracting

- A. Administrative...Civil...Criminal...Penalties
- B. Case Law Applications

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

- Construction Industry Licensing Board (**CILB**) – w/in Florida Department of Business & Professional Regulation (**DBPR**) and tasked with licensing and regulating construction industry

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex 1: I want to become a **licensed GC** in FL and *qualify* my company “David Adelstein General Contractors, Inc.” How do I do this?

- 1) I need to qualify for and pass **state certification examination**
- 2) Submit **application for licensure** (and satisfy requirements (experience, education, financial, fingerprint, insurance, fee))

State of Florida  
Department of Business and Professional Regulation  
Construction Industry Licensing Board  
Application for Certified General Contractor Who is Qualifying a Business  
Form # DBPR CILB 6-A

*\*Note* – if I was not looking to qualify company, I would submit Form CILB Form 5-A to certify myself (individual) as GC

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

What are prerequisites to me as an “applicant” to getting licensed other than passing exam:

- must be at least 18

- is of **good moral character** (note- there are due process appellate considerations if applicant denied based on this reason)

- has certain **educational or experience requirements** as set forth in Fla. Stat. s. 489.111 and Fla.Admin.Code.r. 61G4-15.001

- insurance**- furnish affidavit verifying workers comp and property damage insurance up to amount required by CILB as set forth in Fla. Stat. s. 489.115(5)

- **financial responsibility**- furnish a credit report reflecting financial responsibility and no unsatisfied judgments or liens against applicant or business entity which applicable previously qualified or is trying to qualify as set forth in Fla. Stat. s. 489.115(5) and Fla.Admin.Code.r. 61G4-15.006

  - CILB can require applicants that do not have FICO score of 660 or higher to obtain financial stability bond or irrevocable letter of credit)

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex 2: I want to become a licensed GC in FL and **qualify my company** “David Adelstein General Contractors, Inc.” But I am already a licensed contractor in NY. How do I do this?

- 1) I need to qualify for and pass **state certification examination**
- 2) Submit **application for licensure** (and satisfy requirements (experience, financial, fingerprint, insurance, fee)

The Same as if I was not licensed in FL!

*\*Note*-there is CILB Form 10 called “Endorsement as Certified Contractor” for contractors licensed in another state that want to avoid taking license. Very, very hard and per CILB, rarely approved.

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex 3: I am a GC in FL and have a “David Adelstein General Contractors, Inc.” I want to *qualify* a **NEW company** called “New General Contractors.” How do I do this?

- 1) Submit **application for additional business entity**

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex 4: I am a GC in FL and have a “David Adelstein General Contractors, Inc.” I to form a **joint venture** with another company to form “General Contractors Joint Venture.” How do I do this?

- 1) Submit **application for additional business entity**

*\*Note*-A joint venture must be qualified no different than any other general contracting entity (e.g., “David Adelstein General Contractors” or “New General Contractors”). See Fla. Stat. 489.112(2)(e); Fla.Admin.Code r. 61G4-15.0022

*\*\*Note* – Unlicensed JV ma submit bid under following circumstances a) there is written JV agreement; b) one of JV partners must be properly licensed contractor; c) each JV partner must sign statement of authority giving licensed contractor (JV partner) full authority to perform contracting, d) Copies of JV agreement and statement of authority must be received and approved by CILB prior to submitting bid; and e) If JV awarded contract, licensed contractor (JV partner) must qualify JV w/in 90 days. See Fla.Admin.Code r. 61G4-15.0022.



# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex 5: I am a GC in FL and have a “David Adelstein General Contractors, Inc.” I want to serve as a **design-builder** but I am not a licensed architect or engineer. Can I do this?

Yes! A licensed contractor, architect, or engineer can serve as a design-builder as long as they utilized the services of a licensed professional not within their discipline.

Fla. Stat. s. 481.229(3)- “Notwithstanding the provisions of this part, a general contractor who is certified or registered pursuant to the provisions of chapter 489[architecture & interior design] is not required to be licensed as an architect when negotiating or performing services under a design-build contract as long as the architectural services offered or rendered in connection with the contract are offered and rendered by an architect licensed in accordance with this chapter.”

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex. 6: I am not licensed. I am an owner and want to serve as my own contractor and supervise the work. Can I do this?

Yes. Owners can act as on contractor when “building or improving farm outbuildings or **one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$75,000, on such property for the occupancy or use of such owners and not offered for sale or lease.** In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure by the owner-builder within 1 year after completion of same creates a presumption that the construction was undertaken for purposes of sale or lease. See Fla. Stat. 489.103(7).

# I. Requirements for the Licensure of Contractors

## A. Overview of Licensing

Ex. 7: I am solely qualifying David Adelstein General Contractors and want to resign. Can David Adelstein General Contractors still operate as a general contractor after my resignation?

Yes and no. The company has 60 days from my termination to hire another qualifying agent. The company cannot perform contracting unless CILB issues it a temporary certificate to proceed with incomplete contracts.

# I. Requirements for the Licensure of Contractors

## B. Definitions & Scopes / Services Needing a License

(See Fla. Stat. 489.105)

What is a **contractor** as defined by Florida's licensing law?

“Contractor” means the person who is **qualified** for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, **for compensation**, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term “demolish” applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

Fla. Stat. 489.105(3)

# I. Requirements for the Licensure of Contractors

## B. Definitions & Scopes / Services Needing a License

(See Fla. Stat. 489.105)

3 types of licensed contractors:

1) **Certified** – required to be licensed by state and you can practice anywhere in state (receive certificate of competency from state)

2) **Registered**- registering with state for purposes of fulfilling requirements of local jurisdiction where registration issued and may only contract in that jurisdiction(s)

3) **Specialty** – a contractor whose scope limited to certain phase that may be certified as designated by CILB (in Administrative Code Chapter 61G4-15). It is a VOLUNTARY certification (e.g., drywall, glass and glazing, structural, marine, etc.)

# I. Requirements for the Licensure of Contractors

## B. Definitions & Scopes / Services Needing a License

(See Fla. Stat. 489.105)

Certified contractors – (for purposes of discussion) most important since they are required by licensed by state. Contractors required to be certified are:

### Division I

- a) **General contractor**- Unlimited to any structure
- b) **Building contractor**- Limited to commercial and residential structures not exceeding 3 stories OR limited to remodeling or repair any size building if services do not affect structural members of building
- c) **Residential contractor**- Limited to 1-family, 2-family, or 3-family residences not exceeding 2 habitable stories above no more than one uninhabitable story

### Division II

- d) **Sheet metal contractor**-
- e) **Roofing contractor**-
- f-h) **Class A, B, and C air conditioning contractor**-
- i) **mechanical contractor**-
- j) **Commercial pool/spa contractor**-
- k) **Residential pool/spa contractor**-
- l) **Swimming pool/spa servicing contractor**-
- m) **Plumbing contractor**-
- n) **Underground utility and excavation contractor**-
- o) **Solar contractor**-
- p) **Pollutant storage systems contractor**-

# I. Requirements for the Licensure of Contractors

## B. Definitions & Scopes / Services Needing a License

(See Fla. Stat. 489.105)

Examples of definitions of Division II contractors:

**“Roofing contractor”** means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

# I. Requirements for the Licensure of Contractors

## B. Definitions & Scopes / Services Needing a License

(See Fla. Stat. 489.105)

**“Mechanical contractor”** means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.



# I. Requirements for the Licensure of Contractors

## B. Important Definitions

(See Fla. Stat. 489.105)

We know how state defines a contractor. What about the term “contracting”?

“Contracting” means, **except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting.** If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure. **However, the term “contracting” shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, or to the individual or business entity that offers to sell or sells manufactured or factory-built buildings that will be completed on site on property on which either party to a contract has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this chapter have been or will be retained for the purpose of constructing or completing such residences.**

\*Selling contracting services, bidding, and negotiation of a bid/contract constitutes contracting

\*\*Developer not engaging in contracting by selling or offering to sell completed residences if developer uses qualified contractor

# I. Requirements for the Licensure of Contractors

## B. Important Definitions

(See Fla. Stat. 489.105)

What is a qualifier / qualifying agent?

**“Primary qualifying agent”** means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

**“Secondary qualifying agent”** means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained a permit, and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

# I. Requirements for the Licensure of Contractors

## B. Important Definitions

(See Fla. Stat. 489.105)

What is a financially responsible officer?

**“Financially responsible officer”** means a person other than the primary qualifying agent who with the approval of the board assumes personal responsibility for all financial aspects of the business organization.

\*Primary qualifying agent is responsible for all financial matters of business. The primary qualifying agent removes this responsibility through designation of financially responsible officer.

# I. Requirements for the Licensure of Contractors

## B. Definitions & Scopes / Services Needing a License

“If any qualifying agent ceases to be affiliated with a business organization, he or she shall inform the department. In addition, if the qualifying agent is the only certified or registered contractor affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and shall **have 60 days from the termination of the qualifying agent's affiliation with the business organization in which to employ another qualifying agent. The business organization may not engage in contracting until a qualifying agent is employed, unless the executive director or chair of the board has granted a temporary nonrenewable certificate or registration to the financially responsible officer, the president, a partner, or, in the case of a limited partnership, the general partner, who assumes all responsibilities of a primary qualifying agent for the business organization.** This temporary certificate or registration shall only allow the business organization to proceed with incomplete contracts. For the purposes of this paragraph, an incomplete contract is one which has been awarded to, or entered into by, the business organization prior to the cessation of affiliation of the qualifying agent with the business organization or one on which the business organization was the low bidder and the contract is subsequently awarded, regardless of whether any actual work has commenced under the contract prior to the qualifying agent ceasing to be affiliated with the business organization.” Fla. Stat. 489.119(3)(a).

# I. Requirements for the Licensure of Contractors

## C. Exceptions to Licensure

Exemptions to licensure:

1. Owner/builder exemption (discussed above)
2. Design-builder exemption (discussed above)
3. Developer exemption (discussed above)
4. Jim Walter exemption re: local license of single family residence:

“Any person who is **not** required to obtain registration or certification pursuant to s. 489.105(3)(d)-(o) may perform contracting services for the construction, remodeling, repair, or improvement of **single-family residences**, including a townhouse as defined in the Florida Building Code, **without obtaining a local license if such person is under the supervision of a certified or registered general, building, or residential contractor.** As used in this paragraph, supervision shall not be deemed to require the existence of a direct contract between the certified or registered general, building, or residential contractor and the person performing specialty contracting services.”

# I. Requirements for the Licensure of Contractors

## C. Exceptions to Licensure

- Entity that employs licensed contractors responsible for obtaining permits and supervising construction on their own property and have minimum net work of \$20MM not required to be licensed. Entity must provide CILB with name and license number of its employed contractors. (E.g., Disney) Fla.Stat. s. 489.119(7)
- Contractors that work on bridges, roads, streets, highways and railroads (although FDOT will require own certification )
- If work is of minor nature in which aggregate contract price is less than \$1k but if work is part of major operation (whether through same or different contractor) person can't make contractors for less than \$1k simply to evade licensing requirements

## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

Misdemeanor (Fla. Stat. s. 489.127(1) and (2)(a)):

- falsely holding himself or entity as licensed
- falsely impersonating a licensed contractor
- presenting license of another
- using suspended or revoked license
- engaging as a contractor or advertising as a contractor without being duly licensed
- operating an entity after 60 days following termination of qualifying agent w/o designating another
- commencing work which permit is required w/o a permit in effect
- willfully violating local ordinances relating to unlicensed contractors.

\*Unlicensed person who commits violation after already being found guilty of a violation commits felony of third degree

## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

- Stop-work order can be issued for unlicensed work on a project upon finding probable cause work required licensure. Fla.Stat. s. 489.127(3)
- County or municipality may designate code enforcement officers to enforce unlicensed contracting. Code enforcement officer can issue citation with civil penalties per Fla.Stat. s. 489.127(5).



## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

- CIILB can place on probation, reprimand, suspend, revoke, deny issuance or renewal of license, require financial restitution to a consumer for financial harm, impose administrative fine not to exceed \$10k per violation, require continuing education, or assess costs with the investigation and prosecution if primary qualifying agent, secondary qualifying agent, or financially responsible officer is found guilty of:
  - obtaining license by fraud
  - being convicted or found guilty or entering nolo contendere plea re: crime relating to practice of contracting
  - assisting person engaging in unlicensed contracting if licensee knows person is not licensed

*Continued (Fla.Stat. s. 489.129)*

## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

- conspiring with unlicensed person by allowing license to be used by unlicensed person (e.g., loaning license)
- acting in capacity of contractor under another's license
- committing mismanagement or misconduct that causes financial harm to consumer per criteria set forth in Fla.Stat. s. 489.129(1)(g)
- being disciplined by municipality or county for violation under 489.129
- violating a rule or lawful order of CILB
- abandoning project
- committing fraud, incompetency, misconduct, gross negligence
- proceeding on job without obtaining applicable permits and inspections
- intimidating or threatening service of notice to owner
- failing to satisfy w/in reasonable time terms of civil judgment against licensee or entity licensee qualifies relating to licensee's profession

## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

Filing complaint against licensee w/ DBPR / CILB:

- can be anonymous but must state violation
- will remain confidential until 10 days after probable cause found by probable cause panel

\*incentive to resolve complaint before it goes to probable cause panel

\*\*privilege exists against civil liability to complainant or witness re: info furnished unless complainant or witness acted in bad faith or w/ malice

\*\*\*a complaint can still proceed even if complainant and licensee civil resolve issue and complainant withdraws complaint

*Cont. (Fla. Stat. s. 455.225)*

## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

- If complaint found to be legally sufficient (*see Fla.Stat. 489.129* for violations) by investigator, copy of complaint will be sent to subject licensee and he/she will have 20 days to respond
- Regional office will investigate merits of complaint and prepare investigative report (that will include any response by subject licensee) with recommendations concerning probable cause
- Probable cause panel will determine whether probable cause exists for it to file and serve administrative complaint

## II. Consequences for Unlicensed Contracting

### A. Administrative...Civil...Criminal...Penalties

#### Fla.Stat. 489.128

**“[C]ontracts entered into...by an unlicensed contractor shall be unenforceable in law or in equity by the unlicensed contractor. [Unlicensed contractor will also have no lien or bond rights]**

An individual is unlicensed if the individual does not have a license...concerning the scope of the work to be performed under the contract.

A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent...concerning the scope of the work to be performed under the contract.

If a state license is not required for the scope of work to be performed under the contract, the individual performing that work is not considered unlicensed.

[A] contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.”

## II. Consequences for Unlicensed Contracting

### B. Case Law Applications

*Earth Trades, Inc. v. T&G Corp.*, 108 So.3d 580 (Fla. 2013) – Unlicensed sub sued GC. Sub argued the in pari delicto doctrine, i.e., that GC had knowledge of sub not being licensed and participated in wrongdoing, so GC cannot reap benefit of Fla.Stat. 489.128. Florida Supreme Court held in pari delicto doctrine not apply even if GC knowingly hires unlicensed sub.

## II. Consequences for Unlicensed Contracting

### B. Case Law Applications

*Home Construction Management, LLC v. Comet, Inc.*, 125 So.3d 221 (Fla. 4<sup>th</sup> DCA 2013) - Owner/GC hired unlicensed contractor to complete construction of residence. Owner/GC sued contractor associated for treble damages per **Fla. Stat. s. 768.0425** and recovered judgment.

“In any action against a contractor for injuries sustained resulting from the contractor's negligence, malfeasance, or misfeasance, the consumer shall be entitled to three times the actual compensatory damages sustained in addition to costs and attorney's fees if the contractor is neither certified as a contractor by the state nor licensed as a contractor pursuant to the laws of the municipality or county within which she or he is conducting business.”

## II. Consequences for Unlicensed Contracting

### B. Case Law Applications

*Lake Eola Builders, LLC v. The Metropolitan at Lake Eola, LLC*, 416 F.Supp.2d 1316 (M.D.Fla. 2006) – denying owners summary judgment finding issue of fact as to whether contractor was licensed. Contractor formed new entity for purposes of constructing project. At time of contract, new entity was not licensed. However, person that signed contract on behalf of contractor (and pulled permit) was licensed.

“[T]he Court finds that the best method for determining whether LEB [contractor] should be considered licensed is to determine whether LEB had a **qualified** contractor who was responsible for the Four Points project beginning with the effective date of the contract. Construing the evidence in the light most favorable to LEB, the Court finds that LEB has at least created a disputed issue of material fact as to this point. Owens-a licensed general contractor at all relevant times-signed the contract on behalf of LEB.” *Id.* at 1319-20.



## II. Consequences for Unlicensed Contracting

### B. Case Law Applications

*Taylor Morrison Services, Inc. v. Ecos*, 163 So.3d 1286 (Fla. 1<sup>st</sup> DCA 2015) – homeowners hired homebuilder and homebuilder submitted permit application. Prior to the contract, homebuilder’s qualifying agent resigned (yet her signature was on permit application). Homebuilder had another designated qualifying agent testify he was employed at time of contract and thereafter (but did not supervise work). Homebuilder was licensed.

**“Although Appellant may have violated the law by building the home with a contractor other than the one whose name appears on the permit, by using Steiner’s license [person that resigned prior to contract] when she was not affiliated with the project, and by conducting the project with inadequate supervision, these transgressions did not retroactively render Appellant unlicensed within the meaning of section 489.128..”**