

The 2009 Florida Statutes

CHAPTER 489 – REGULATION OF PROFESSIONS AND OCCUPATIONS

489.103 Exemptions.--This part does not apply to:

(1) Contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto. The board, in agreement with the Department of Transportation, shall, by rule, define "services incidental thereto" for the purposes of this subsection only.

(2) Any employee of a certificateholder or registrant who is acting within the scope of the license held by that certificateholder or registrant and with the knowledge and permission of the licenseholder. However:

(a) If the employer is not a certificateholder or registrant in that type of contracting, and the employee performs any of the following, the employee is not exempt:

1. Holds himself or herself or his or her employer out to be licensed or qualified by a licensee;
2. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
3. Performs any of the acts which constitute contracting.

(b) The legislative intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.

For the purpose of this part, "employee" is defined as a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law.

(3) An authorized employee of the United States, this state, or any municipality, county, irrigation district, reclamation district, or any other municipal or political subdivision, except school boards, state university boards of trustees, and community college boards of trustees, unless for the purpose of performing routine maintenance or repair or construction not exceeding \$200,000 to existing installations, if the employee does not hold himself or herself out for hire or otherwise engage in contracting except in accordance with his or her employment. If the construction, remodeling, or improvement exceeds \$200,000, school boards, state university boards of trustees, and community college boards of trustees shall not divide the project into separate components for the purpose of evading this section.

(4) An officer appointed by a court when he or she is acting within the scope of his or her office as defined by law or court order. When construction projects which were not underway at the time of appointment of the officer are undertaken, the officer shall employ or contract with a licensee.

(5) Public utilities, including special gas districts as defined in chapter 189, telecommunications companies as defined in s. 364.02(14), and natural gas transmission companies as defined in s. 368.103(4), on construction, maintenance, and development work performed by their employees, which work, including, but not limited to, work on bridges, roads, streets, highways, or railroads, is

incidental to their business. The board shall define, by rule, the term "incidental to their business" for purposes of this subsection.

(6) The sale or installation of any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent fixed part of the structure, such as awnings. However, this subsection does not exempt in-ground spas and swimming pools that involve excavation, plumbing, chemicals, or wiring of any appliance without a factory-installed electrical cord and plug. This subsection does not limit the exemptions provided in subsection (7).

(7) Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors:

(a) 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.

(b) When repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of such owner or tenant of the owner and not offered for sale within 1 year after completion of the work and when the property has been damaged by natural causes from an event recognized as an emergency situation designated by executive order issued by the Governor declaring the existence of a state of emergency as a result and consequence of a serious threat posed to the public health, safety, and property in this state.

This subsection does not exempt any person who is employed by or has a contract with such owner and who acts in the capacity of a contractor. The owner may not delegate the owner's responsibility to directly supervise all work to any other person unless that person is registered or certified under this part and the work being performed is within the scope of that person's license. For the purposes of this subsection, the term "owners of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner must personally appear and sign the building permit application and must satisfy local permitting agency requirements, if any, proving that the owner has a complete understanding of the owner's obligations under the law as specified in the disclosure statement in this section. If any person violates the requirements of this subsection, the local permitting agency shall withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit issued. The local permitting agency shall provide the person with a disclosure statement in substantially the following form:

DISCLOSURE STATEMENT

1. I understand that state law requires construction to be done by a licensed contractor and have applied for an owner-builder permit under an exemption from the law. The exemption specifies that I, as the owner of the property listed, may act as my own contractor with certain restrictions even though I do not have a license.
2. I understand that building permits are not required to be signed by a property owner unless he or she is responsible for the construction and is not hiring a licensed contractor to assume responsibility.

3. I understand that, as an owner-builder, I am the responsible party of record on a permit. I understand that I may protect myself from potential financial risk by hiring a licensed contractor and having the permit filed in his or her name instead of my own name. I also understand that a contractor is required by law to be licensed in Florida and to list his or her license numbers on permits and contracts.
4. I understand that I may build or improve a one-family or two-family residence or a farm outbuilding. I may also build or improve a commercial building if the costs do not exceed \$75,000. The building or residence must be for my own use or occupancy. It may not be built or substantially improved for sale or lease. If a building or residence that I have built or substantially improved myself is sold or leased within 1 year after the construction is complete, the law will presume that I built or substantially improved it for sale or lease, which violates the exemption.
5. I understand that, as the owner-builder, I must provide direct, onsite supervision of the construction.
6. I understand that I may not hire an unlicensed person to act as my contractor or to supervise persons working on my building or residence. It is my responsibility to ensure that the persons whom I employ have the licenses required by law and by county or municipal ordinance.
7. I understand that it is a frequent practice of unlicensed persons to have the property owner obtain an owner-builder permit that erroneously implies that the property owner is providing his or her own labor and materials. I, as an owner-builder, may be held liable and subjected to serious financial risk for any injuries sustained by an unlicensed person or his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an owner-builder and am aware of the limits of my insurance coverage for injuries to workers on my property.
8. I understand that I may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on my building who is not licensed must work under my direct supervision and must be employed by me, which means that I must comply with laws requiring the withholding of federal income tax and social security contributions under the Federal Insurance Contributions Act (FICA) and must provide workers' compensation for the employee. I understand that my failure to follow these laws may subject me to serious financial risk.
9. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern owner-builders as well as employers. I also understand that the construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.
10. I understand that I may obtain more information regarding my obligations as an employer from the Internal Revenue Service, the United States Small Business Administration, the Florida Department of Financial Services, and the Florida Department of Revenue. I also understand that I may contact the Florida Construction Industry Licensing Board at (telephone number) or (Internet website address) for more information about licensed contractors.
11. I am aware of, and consent to, an owner-builder building permit applied for in my name and understand that I am the party legally and financially responsible for the proposed construction activity at the following address: (address of property) .
12. I agree to notify (issuer of disclosure statements) immediately of any additions, deletions, or changes to any of the information that I have provided on this disclosure.

Licensed contractors are regulated by laws designed to protect the public. If you contract with a person who does not have a license, the Construction Industry Licensing Board and Department of Business and Professional Regulation may be unable to assist you with any financial loss that you sustain as a result of a complaint. Your only remedy against an unlicensed contractor may be in civil court. It is also important for you to understand that, if an unlicensed contractor or employee of an individual or firm is injured while working on your property, you may be held liable for damages. If you obtain an owner-builder permit and wish to hire a licensed contractor, you will be responsible for verifying whether the contractor is properly licensed and the status of the contractor's workers' compensation coverage.

Before a building permit can be issued, this disclosure statement must be completed and signed by the property owner and returned to the local permitting agency responsible for issuing the permit. A copy of the property owner's driver license, the notarized signature of the property owner, or other type of verification acceptable to the local permitting agency is required when the permit is issued.

Signature: (signature of property owner) .

Date: (date) .

(8) Any construction, alteration, improvement, or repair carried on within the limits of any site the title to which is in the United States or with respect to which federal law supersedes this part.

(9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

(10)(a) Any construction or operation incidental to the construction or repair of irrigation and drainage ditches;

(b) Regularly constituted irrigation districts or reclamation districts; or

(c) Clearing or other work on the land in rural districts for fire prevention purposes or otherwise except when performed by a licensee.

(11) A registered architect or engineer acting within the scope of his or her practice or any person exempted by the law regulating architects and engineers, including persons doing design work as specified in s. 481.229(1)(b); provided, however, that an architect or engineer shall not act as a contractor unless properly licensed under this chapter.

- (12) Any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.
- (13) Any person who is licensed pursuant to chapter 527 when such person is performing the work authorized by such license.
- (14) Any person who sells, services, or installs heating or air-conditioning units which have a capacity no greater than 3 tons or 36,000 Btu, which have no ducts, and which have a factory-installed electrical cord and plug.
- (15) The installation and maintenance of water conditioning units for domestic, commercial, or industrial purposes by operators of water conditioning services. No municipality or county may adopt an ordinance, rule, or regulation which requires such an operator to become licensed, certified, or registered as a plumber or which otherwise prevents the installation and maintenance of such water conditioning units by an operator.
- (16) An architect or landscape architect licensed pursuant to chapter 481 or an engineer licensed pursuant to chapter 471 who offers or renders design-build services which may require the services of a contractor certified or registered pursuant to the provisions of this chapter, as long as the contractor services to be performed under the terms of the design-build contract are offered and rendered by a certified or registered general contractor in accordance with this chapter.
- (17) Contracting for repair, maintenance, remodeling, or improvement by any person licensed under part I of chapter 475 while acting as the owner's agent pursuant to that license, where all work requiring a contractor is performed by a contractor who has a current, valid certificate or registration issued under this part to perform such work, and where the aggregate contract for labor, materials, and all other items is less than \$5,000; however, this exemption does not apply:
- (a) If the maintenance, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$5,000 for the purpose of evading this part or otherwise.
 - (b) To a person who advertises that he or she is qualified to engage in contracting.
- (18) Any one-family, two-family, or three-family residence constructed by Habitat for Humanity International, Inc., or its local affiliates. Habitat for Humanity International, Inc., or its local affiliates, must:
- (a) Obtain all necessary building permits.
 - (b) Obtain all required building code inspections.
 - (c) Provide for supervision of all work by an individual with construction experience.
- (19) A disaster recovery mitigation organization or a not-for-profit organization repairing or replacing a one-family, two-family, or three-family residence that has been impacted by a disaster when such organization:

(a) Is using volunteer labor to assist the owner of such residence in mitigating unsafe living conditions at the residence;

(b) Is not holding itself out to be a contractor;

(c) Obtains all required building permits;

(d) Obtains all required building code inspections; and

(e) Provides for the supervision of all work by an individual with construction experience.

(20) The sale, delivery, assembly, or tie-down of prefabricated portable sheds that are not more than 250 square feet in interior size and are not intended for use as a residence or as living quarters. This exemption may not be construed to interfere with the Florida Building Code or any applicable local technical amendment to the Florida Building Code, local licensure requirements, or other local ordinance provisions.

(21) The sale, delivery, assembly, or tie-down of lawn storage buildings and storage buildings not exceeding 400 square feet and bearing the insignia of approval from the Department of Community Affairs showing compliance with the Florida Building Code.

(22) A person licensed pursuant to s. 633.061(1)(d) or (2)(b) performing work authorized by such license.

History.--ss. 11, 17, ch. 79-200; ss. 2, 3, ch. 81-318; s. 1, ch. 84-160; s. 1, ch. 87-235; ss. 2, 20, 21, ch. 88-156; s. 3, ch. 89-115; s. 69, ch. 89-162; s. 1, ch. 89-343; s. 29, ch. 89-374; s. 38, ch. 90-228; ss. 34, 68, ch. 91-137; s. 4, ch. 91-429; s. 7, ch. 92-55; s. 1, ch. 93-154; s. 1, ch. 93-166; s. 255, ch. 94-119; s. 4, ch. 96-298; s. 73, ch. 96-388; s. 1125, ch. 97-103; s. 39, ch. 98-250; s. 19, ch. 98-287; s. 22, ch. 98-419; s. 39, ch. 2000-141; s. 34, ch. 2000-154; s. 30, ch. 2000-372; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 26, ch. 2003-32; s. 5, ch. 2005-30; s. 26, ch. 2005-132; s. 43, ch. 2005-147; s. 1, ch. 2006-283; s. 56, ch. 2007-217; s. 25, ch. 2009-195.