

# The 2009 Florida Statutes

## CHAPTER 489 – REGULATION OF PROFESSIONS AND OCCUPATIONS

### 489.113 Qualifications for practice; restrictions.--

- (1) Any person who desires to engage in contracting on a statewide basis shall, as a prerequisite thereto, establish his or her competency and qualifications to be certified pursuant to this part. To establish competency, a person shall pass the appropriate examination approved by the board and certified by the department. Any person who desires to engage in contracting on other than a statewide basis shall, as a prerequisite thereto, be registered pursuant to this part, unless exempted by this part.
- (2) No person who is not certified or registered shall engage in the business of contracting in this state. However, for purposes of complying with the provisions of this chapter, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervisor's license and provided that the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in s. 489.105(3)(d)-(o). This subsection does not affect the application of any local construction licensing ordinances. To enforce this subsection:
- (a) The department shall issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order.
- (b) A county, municipality, or local licensing board created by special act may issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part.
- (3) A contractor shall subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work, unless such contractor holds a state certificate or registration in the respective trade category, however:
- (a) A general, building, or residential contractor, except as otherwise provided in this part, shall be responsible for any construction or alteration of a structural component of a building or structure, and any certified general contractor or certified underground utility and excavation contractor may perform clearing and grubbing, grading, excavation, and other site work for any construction project in the state. Any certified building contractor or certified residential contractor may perform clearing and grubbing, grading, excavation, and other site work for any construction project in this state, limited to the lot on which any specific building is located.
- (b) A general, building, or residential contractor shall not be required to subcontract the installation, or repair made under warranty, of wood shingles, wood shakes, or asphalt or fiberglass shingle roofing materials on a new building of his or her own construction.

(c) A general contractor shall not be required to subcontract structural swimming pool work. All other swimming pool work shall be subcontracted to an appropriately licensed certified or registered swimming pool contractor.

(d) A general contractor shall not be required to subcontract the construction of a main sanitary sewer collection system, storm collection system, or water distribution system, not including the continuation of utility lines from the mains to the buildings, and may perform any of the services, on public or private property, for which a license as an underground utility and excavation contractor is required under this part.

(e) A general contractor shall not be required to subcontract the continuation of utility lines from the mains in mobile home parks, and such continuations are to be considered a part of the main sewer collection and main water distribution systems.

(f) A solar contractor shall not be required to subcontract minor, as defined by board rule, electrical, mechanical, plumbing, or roofing work so long as that work is within the scope of the license held by the solar contractor and where such work exclusively pertains to the installation of residential solar energy equipment as defined by rules of the board adopted in conjunction with the Electrical Contracting Licensing Board.

(g) No general, building, or residential contractor certified after 1973 shall act as, hold himself or herself out to be, or advertise himself or herself to be a roofing contractor unless he or she is certified or registered as a roofing contractor.

(4)(a) When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor, he or she shall be required only to exhibit to the local building official, tax collector, or other person in charge of the issuance of licenses and building permits in the area evidence of holding a current certificate and to pay the fee for the occupational license and building permit required of other persons.

(b) Notwithstanding the provisions of paragraph (a), a local construction regulation board may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtaining a permit or permits with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality that the local construction regulation board represents or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice of an opportunity to be heard to the contractor, that such fraud or violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted to the department within 15 days after the local construction regulation board decides to deny the permit.

(c) The local government may also deny issuance of, or may suspend, any outstanding building permit where a contractor fails or refuses to provide proof of public liability and property damage insurance coverage as required by s. 489.115(5) and workers' compensation insurance coverage as required by s. 489.114.

(d) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with state laws and local jurisdiction ordinances. It is the intent of the Legislature that a local jurisdiction agency charged with enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. A "notice of noncompliance" is a notification by the local jurisdiction agency charged with enforcing the ordinance, which is issued to the licensee that is subject to the ordinance. A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance. Failure of a licensee to take action correcting the violation within a set period of time would then result in the institution of further disciplinary proceedings.

(5) The certificate is not transferable.

(6) The board shall, by rule, designate those types of specialty contractors which may be certified under this part. The limit of the scope of work and responsibility of a specialty contractor shall be established by the board by rule. However, a certified specialty contractor category established by board rule exists as a voluntary statewide licensing category and does not create a mandatory licensing requirement. Any mandatory statewide construction contracting licensure requirement may only be established through specific statutory provision.

(7) If an eligible applicant fails any contractor's written examination, except the general and building contractors' examination, and provides the board with acceptable proof of lack of comprehension of written examinations, the applicant may petition the board to be administered a uniform oral examination, subject to the following conditions:

(a) The applicant documents 10 years of experience in the appropriate construction craft.

(b) The applicant files written recommendations concerning his or her competency in the appropriate construction craft.

(c) The applicant is administered only one oral examination within a period of 1 year.

(8) Any public record of the board, when certified by the executive director of the board or the executive director's representative, may be received as prima facie evidence in any administrative or judicial proceeding.

(9)(a) This part does not prevent any contractor from acting as a prime contractor where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors that remaining work which is part of the project contracted.

(b) This part, chapter 471, chapter 481, or any other provision of law does not:

1. Prevent any licensed engineer or architect from contracting directly with a licensed contractor for the preparation of plans, specifications, or a master design manual addressing structural designs used to make an application for building permits.

2. Require a licensed engineer or architect, when preparing drawings, specifications, plans, or master design manuals for use by any licensed contractor, to prepare site-specific drawings, specifications, or plans for the design and construction of single-family and two-family dwellings; swimming pools, spas, or screened enclosures; or any other structure not exceeding 1,200 square feet or one story in height. For the purpose of issuing building permits, local building officials shall accept such drawings, specifications, or plans when submitted by any licensed contractor. Upon good cause shown, local government code enforcement agencies may accept or reject plans prepared by persons licensed under chapter 471, chapter 481, or this chapter.

As used in this section, the term "master design manual" means a restrictive design manual intended to be used to design, permit, and construct structures as described in this section. Any such manual must be prepared by a licensed engineer or architect and specifically detail the limits of its use, including, but not limited to, the structure type, size, materials, loading conditions, time limits, applicable codes, and associated criteria. The manual must also detail the required training for the contractor, engineer, or architect using the manual. All master design manuals must be peer reviewed by an independent licensed engineer or architect having no financial interest in the development of the manual or the construction of structures pursuant to the manual. The engineer or architect conducting the peer review must be identified in the manual.

(c) Notwithstanding anything in this chapter or any other provision of law, a licensed engineer or architect is not required for the preparation or use of any design guide adopted by the Florida Building Commission as part of the building code pursuant to s. 553.73.

(10) The addition of a new type of contractor or the expansion of the scope of practice of any type of contractor under this part shall not limit the scope of practice of any existing type of contractor under this part unless the Legislature expressly provides such a limitation.

**History.**--ss. 6, 17, ch. 79-200; ss. 3, 4, ch. 80-85; ss. 2, 3, ch. 81-318; s. 2, ch. 85-290; ss. 28, 31, ch. 86-159; s. 3, ch. 87-235; s. 13, ch. 87-310; s. 7, ch. 87-374; ss. 7, 20, 21, ch. 88-156; s. 32, ch. 89-374; s. 43, ch. 90-228; s. 67, ch. 91-137; s. 4, ch. 91-429; s. 59, ch. 92-149; ss. 2, 6, ch. 93-154; s. 8, ch. 93-166; s. 186, ch. 94-218; s. 481, ch. 97-103; s. 6, ch. 97-228; s. 25, ch. 98-419; s. 4, ch. 2003-257; s. 8, ch. 2007-227.