



JIMERSON & COBB, P.A.

Construction Licensing

Presented by:

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CILB Chairman - 2017

Division II Board Member



FLORIDA'S CONSTRUCTION INDUSTRY LICENSING

- ▶ Regulated under Chapter 489, Florida Statutes
- ▶ 61G4 12-23, Florida Administrative Code
- ▶ Chapter 489, Florida Statutes, is divided into three parts

Part I: Construction Contracting

(ss. 489.101-489.146)

Part II: Electrical Contracting

(ss. 489.501-489.538)

Part III: Septic Tank Contracting

(ss. 489.551-489.558)



CONSTRUCTION INDUSTRY LICENSING BOARD

Created by 489.107, Florida Statutes

Consists of 18 members:

- Four (4) General Contractors
- Three (3) Building or Residential Contractors
- One (1) Roofing Contractor
- One (1) Sheet Metal Contractor
- One (1) Air-conditioning Contractor
- One (1) Mechanical Contractor
- One (1) Pool Contractor
- One (1) Plumbing Contractor
- One (1) Underground Utility Contractor
- Two (2) Consumer Members
- Two (2) Building Code Officials



CILB: DIVISIONS

► Division I

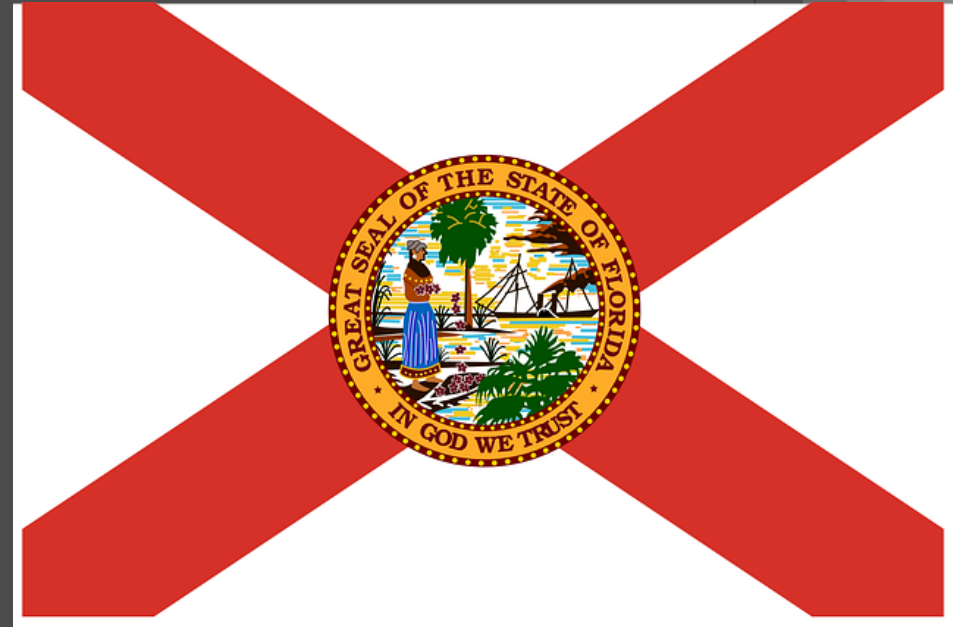
- 3 classes of licensure

► Division II:

- 13 classes of licensure

► Specialty Licenses:

- Assigned to the Board Divisions based on scope of work



LICENSURE TYPES

► Certified Contractors (State Wide)

- Operate on a state wide basis
- Required to only exhibit their state license and comply with local occupational license and permitting requirements (489.113(4)(a), F.S.)

► Registered Contractors (Local)

- Licensed by local jurisdiction (competency card)
- Registered with the State of Florida: DBPR
- Only permitted to operate in the geographic area of the licensing jurisdiction
- May register multiple local competency cards

PRIMARY VS. SECONDARY QUALIFIER

Primary Qualifier (s. 489.105(4), F.S.) must supervise, direct, manage, and control of both business activities and construction activities of the business.

Secondary Qualifier (s. 489.105(5), F.S.) responsible to supervise construction activities only on jobs for which they have obtained a permit. No financial responsibility.

489.1195(1)(a), F.S.

FINANCIALLY RESPONSIBLE OFFICER

- ▶ Responsible for all financial aspects of the business organization and may not be designated as the primary qualifying agent.
- ▶ Relieves the primary qualifier of responsibility for the business organization.
- ▶ FRO is assigned a number in DBPR system. However, no requirement to renew or to take continuing education.
- ▶ May be subject to disciplinary action.



CILB LICENSING: WHAT IS CONTRACTING?

489.105(3), F.S., defines CONTRACTOR as a person:

- for compensation
- 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
- job scope is substantially similar to scope in (3)(a)-(p)

Negotiation, bidding for or advertising for these services constitutes contracting.



CILB LICENSING REQUIREMENTS

- ▶ Examination - Div. I - Contract Admin, Project Admin., Business and Finance. Div. II – Trade Knowledge, & Business and Finance
- ▶ Experience/Education - College v. Work Experience
- ▶ Financial Responsibility - No Liens/Judgments
660 Credit Score
- ▶ Good Moral Character/Criminal Background
- ▶ Insurance - Workers Comp Ins., General Liability



CILB: DIVISION I

- ▶ General contractor: unlimited as to the type of work which he or she may contract for, except as otherwise expressly provided in s. 489.113.
- ▶ Building contractor: commercial buildings, single and multi-family residential buildings not exceeding three stories, may perform non-structural work on any building.
- ▶ Residential contractor: Limited to one, two and three family residential not exceeding two stories over uninhabitable story plus accessory use structures.



CILB: DIVISION I



CILB: DIVISION II

- ▶ Commercial pool/spa contractor
- ▶ Residential pool/spa contractor
- ▶ Swimming pool/spa servicing contractor
- ▶ Roofing contractor
- ▶ Mechanical contractor
- ▶ Plumbing contractor
- ▶ Underground utility and excavation contractor
- ▶ Solar contractor
- ▶ Pollutant storage systems contractor
- ▶ Class A air-conditioning contractor
- ▶ Class B air-conditioning contractor
- ▶ Class C air-conditioning contractor
- ▶ Sheet metal contractor



CILB: DIVISION II



CILB SPECIALTY LICENSES

Specialty licenses adopted by CILB rule:

- Specialty Structure Contractors
- Gypsum Drywall Specialty Contractors
- Glass and Glazing Specialty Contractors
- Irrigation Contractors
- Gas Line Specialty Contractors
- Pollutant Storage System Specialty Contractors
- Swimming Pool Specialty Contractors
- Marine Specialty Contractors
- Tower Specialty Contractors
- Industrial Contractors



CILB LICENSING: WHO NEEDS A LICENSE?

Only a person who is certified or registered as a contractor in the State of Florida can engage in the business of contracting. (489.113(2), F.S.)

Exemptions:

- ▶ Jim Walter
- ▶ Owner Builder
- ▶ Big Boy
- ▶ Demolition of certain structures
- ▶ Developer
- ▶ Manufactured Housing



Exemptions to Florida Construction Licensure



PUBLIC WORK

489.103(1) & (3), F.S.

- ▶ Contractors who work on Bridges, roads, streets, highways, railroad and services incidental thereto.
- ▶ Authorized employee of the USA, state, county, municipality or other political subdivision for work not exceeding \$200,000.

Johnson v. State of Florida, DBPR, 212 So.3d 382 (Fla. 4th DCA 2017). Holding that employees of municipalities are expressly excluded from licensure and are not able to qualify the governmental agency.



FINISHED PRODUCTS

489.103(6), F.S.

- ▶ 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.

Example -

- ▶ Above ground hot tub
- ▶ Conveyor system in a factory
- ▶ Appliances



OWNER BUILDER EXEMPTION

489.103(7), F.S.

- ▶ Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors
- ▶ Only farm outbuildings, one-family or two-family residences, or commercial improvements of less than \$75,000
- ▶ May not be sold or leased within 1 year
- ▶ Owner must actually employ unlicensed trades and withhold taxes, FICA, and social security

“Employee” is defined by 489.103 (2)(b) – receives compensation and is under the supervision of employer



OWNER BUILDER EXEMPTION 489.103(7), F.S.



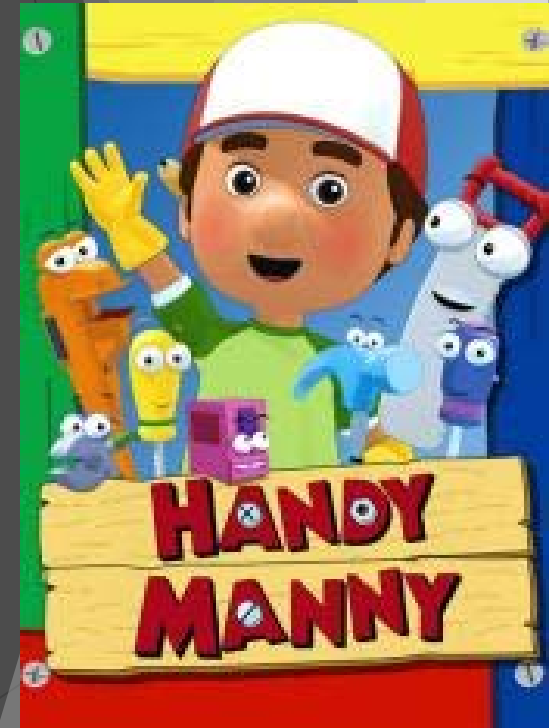
HANDY MAN

489.103(9), F.S.

- ▶ 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.

Exception does NOT apply -

- ▶ Work is part of a larger or major operation
- ▶ To a person who advertises or represents that they are a licensed contractor



BIG BOY EXEMPTION

489.119(8), F.S.

Exemption from licensure for any entities that employ a licensed contractor for any construction improvements on their own property and have a net worth of \$20 million. This exemption is typically for theme parks, like Disney or Universal.

Put your big boy
pants on...



DEVELOPER EXEMPTION

489.105(6), F.S.

- ▶ “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.
- ▶ A certified or registered contractor must construct the residence. (CGC, CBC, CRC)



JIM WALTER EXEMPTION

489.117(4)(6), F.S.

- An uncertified or registered contractor may perform *specialty* contracting services for the construction, remodeling, repair, or improvement of single-family residences or single family townhouse, if supervised by a certified or registered general, building, or residential contractor.

Florida Home Builders Ass'n v. St. Johns County, 914 So. 2d 1035 (Fla. 5th DCA 2005).



UNLICENSED CONTRACTING

489.128, F.S.

As a matter of public policy, contracts entered into by an unlicensed contractor shall be unenforceable in law or equity.

- 1) Individual does not have license
- 2) Business is unlicensed if it does not have a primary or secondary qualifier
- 3) Business tax is not unlicensed activity
- 4) Effective date of the contract for the work determines unlicensed activity
- 5) No date – first day of performing work
- 6) Does not affect the rights of parties other than the unlicensed person – example material supplier providing materials for unlicensed contractor
- 7) Doctrine of *in pari delicti* does not apply



UNLICENSED CONTRACTING

489.128, F.S.

There are at least eight possible legal consequences that can result from construction activities by an unlicensed contracting entity:

- 1) Loss of contractor's contract rights (F.S. §489.128 and 489.532)
- 2) Loss of lien and bond rights (F.S. §713.02(7) and 489.128(2))
- 3) Treble damages (F.S. §768.0425)
- 4) Damages for violation of building code (F.S. §553.84)
- 5) Administrative sanctions (F.S. §§455.228 and 489.13)
- 6) Criminal penalties (F.S. §489.127(2)(c))
- 7) Possible action for “disgorgement” (per case law)
- 8) Cause of action for “unfair trade practice” (F.S. §501.204)



UNLICENSED CONTRACTING 489.128, F.S.

This is for conducting contracting without a license OR,

PERFORMING WORK THAT IS *OUTSIDE*
THE SCOPE OF YOUR CURRENT LICENSE!!



CILB JOINT VENTURE 489.119(2)(E), F.S.

Requirements for Joint Ventures:

- Separate Business Entity
- JV Agreement
- Authorization from CILB – prior to bidding.
- Must be Qualified by License Holder.
- All members of JV must sign authorization allowing license holder permission to contract.
- JV must be qualified within 90 days from being awarded the bid.



61G4-15.0022, Fla. Admin. Code



CILB TERMINATION OF QUALIFIER

489.121, F.S.

The business shall have sixty (60) days from the termination of the qualifying agent's affiliation to employ a new qualifier.

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.

This temporary certificate or registration allows the business to proceed on incomplete contracts only during the sixty-day time frame. The business cannot enter any new contracts until they retain a new qualifying agent.



CILB ADDITIONAL BUSINESS

489.119, F.S. AND 61G4-15.0024

Requirements for Qualifying an Additional Business:

- 20% or more ownership
- W2 Employee
- Other Evidence to ensure control over the construction
- Final approval and authority over all construction operations and all business matters
- No payments from new business can be 1099. That is renting the license and is illegal
- 3 or more business – mandatory CILB appearance



CILB ADDITIONAL BUSINESS

Definition of Employee:

“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.

489.103(2)(b), Florida Statutes



CILB DECLARATORY STATEMENTS

120.565, F.S.

Binding Interpretation or Opinion from CILB:

- ▶Caption – “Petition for Declaratory Statement”
- ▶Name, Email and Address of Petitioner
- ▶Name, Email and Address of Petitioner’s Attorney
- ▶Statutory Provision at Issue
- ▶Description of how statute substantially affects the petitioner
- ▶Signature
- ▶Date

CILB DECLARATORY STATEMENTS

120.565, F.S.

Reasons for Denial

- ▶ Procedural defects in Request
- ▶ Vague Request or Answer in the Statute
- ▶ Pending Litigation
- ▶ Conduct has already occurred – must be future action
- ▶ Conduct of 3rd Party – i.e. Building Official
- ▶ CILB has 90 days to answer or deny
- ▶ DBPR – has Dec Statements on website

CILB DISCIPLINE

489.129, F.S.

Complaint alleging Discipline:

- Owner files a Complaint
- Department Investigates
- Probable Cause Panel
- Formal Administrative Complaint
- Election of Rights
- Not dispute/waiver – Informal Hearing
- Dispute Facts – Dept. of Admin Hearings (DOAH)
- Board Action – Discipline/Settlement Stipulation
- Revocation, Suspension, Probation, Fines, Restitution, Administrative Costs, Reprimand, Letter of Guidance, Dismissal
- Appeals of Notice of Intent and Discipline



CILB DISCIPLINE

489.129, F.S.

Common Grounds for Discipline:

- Financial Mismanagement
- Valid Liens not satisfied in 75 days
- Abandonment
- File any forged or false affidavit
- 10% deposit – 30 days for permit / 90 days for to start work (489.126, F.S.)
- Civil Judgment not paid in 60 days
- Gross negligence
- Proceeding on a job without a permit
- Discouraging the service of an NTO
- Failing to comply with a CILB order
- Discipline by a local jurisdiction



HOMEOWNERS RECOVERY FUND

489.140-144, F.S.

Complaint alleging Consumer Harm:

- Owner files a Complaint with the Recovery Fund
- Contract must have Recovery Fund Warning for Residential Construction
- Violation must be for 489.129(1)(g, j or k)
- Must be made within 1 year from Judgment or Board restitution order
- Must be for actual damages or restitution amount
- Must be Homeowners primary residence
- Can only be made against a licensee
- Payment from the Fund – license goes into immediate suspense



NEW CILB LEGISLATION

MILITARY EXPERIENCE

Military Experience:

- Adds Section 489.1131
- Must have received Honorable Discharge
- DBPR will accept up to 3 years of Active Duty in lieu of Education or Experience
- At least 1 year additional year as Foreman in the Trade.
- CILB must report to DBPR begin October 1, 2017 on Military Applications



NEW CILB LEGISLATION

MINOR APARTMENT REPAIRS

Minor Apartment Repairs:

- Adds New Exemption Section 489.103(23)
- Minor Repairs to existing electric water heaters or electric heating and HVAC systems
- W-2 Employment by Apartment
- Only for Apartment Complex of more than 100 units
- One year of maintenance experience with 90 hour course and test
- No replacement or major work. Solar and gas units – need licensed contractor



NEW CILB LEGISLATION

DIVISION II ON RECOVER FUND

Construction Industry Recovery Fund:

- Adds Division II contractors to Recovery Fund
- July 1, 2016 – Must contain Recovery Fund Warning for residential construction contracts
- \$15,000 per claim / \$150,000 aggregate per license
- Division II claims commence after January 1, 2017
- CILB paid out on a FHCRF claim, then license is suspended until the claim is paid back by the license holder.



NEW CILB LEGISLATION

DIVISION II ON RECOVER FUND

FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

Construction Industry Licensing Board
2601 Blainstone Road
Tallahassee, Florida 32399-1039
(850) 487-1395



NEWS ISSUES IN CONTRACTING

Solar Roof Panels



NEWS ISSUES IN CONTRACTING

GAF DecoTech Roof-Integrated Solar



NEWS ISSUES IN CONTRACTING



- Released in May 2017 – Available October 2017
- Blends Roofing, Electric and Solar
- CILB workshop in July 2017 to address

CONNECT WITH US

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