

## **Why Should Contractors Consult a Lawyer to Assist in the Drafting of Construction Agreements**

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If you are a Florida contractor, you should use a lawyer to assist in the drafting of construction agreements. The law is complex, especially in areas such as construction. As a contractor, you want to make sure that your agreements comply with all the requirements of the law. The last thing you want is to be left without the ability to collect what is owed to you because you failed to comply with statutory requirements.

Below are some examples of certain statutes that contractors must comply with in order to avoid issues associated with their construction agreements. Please note that these examples are not all encompassing and that in order to ensure that you comply with all legal requirements, you should always consult with a lawyer. Using a form that you obtained from others could be a costly mistake.

You need contracts that:

1. Include the notices and disclosures required by Florida statutes.
2. Fit your projects. Boilerplate agreements reflect a lack of professionalism.
3. Comply with Florida law. Do not get caught with an unenforceable agreement which could cost you money.
4. Anticipate the most likely disputes. Protect yourself.
5. Resolve key issues in your favor by adjusting the agreements bias.

Does your construction agreement contain the following statutory languages. Below are some examples of certain statutorily required language in certain construction contracts.

Chapter 558, Florida Statutes:

**CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY CONSTRUCTION CONDITIONS**

YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

Sections 501.021 through 501.055, Florida Statutes requires the following language to be in an agreement, among other required statutory language:

This is a home solicitation sale, and if you do not want the goods or services, you may cancel this agreement by providing written notice to the seller in person, by telegram, or by mail. This notice must indicate that you do not want the goods or services and must be delivered or postmarked before midnight of the third business day after you sign this agreement. If you cancel this agreement, the seller may not keep all or part of any cash down payment.

Section 713.015, Florida Statutes provides as follows:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

Section 489.1425, Florida Statutes states in pertinent part as follows:

FLORIDA HOMEOWNERS' CONSTRUCTION  
RECOVERY FUND

PAYMENT 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:

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Section 520.73, Florida Statutes requires the following notice:

Notice To Owner

- a. Do not sign this home improvement contract in blank.
- b. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.
- c. This home improvement contract may contain a mortgage or otherwise create a lien on your property that could be foreclosed on if you do not pay. Be sure you understand all provisions of the contract before you sign.

In addition, if you work in Miami-Dade County, Florida, the Miami-Dade County Code requires certain additional disclosures and notices to be placed in any contract for home improvements and the like. As such, it is very important that any contract for home improvement contain all such disclosures and notices, otherwise, you may be precluded from enforcing such contracts.

As can be seen by this article, legal compliance for construction contracts is very complex and it is not something that should be taken lightly. Failure to ensure that the contract contains all required language, notices, disclaimers and disclosures may be costly. As such, it is best to consult with an experienced attorney who can advise you on these matters. Going through the process alone is not recommended as it could be much more expensive than consulting with an attorney.