

LICENSED OR UNLICENSED?
THAT IS THE QUESTION

By: Harry Malka, Esq. and Larry Leiby, Esq.

As anyone engaged in the construction industry in Florida knows, Florida law requires a "Contractor" to have a construction license. Most, but not all, statewide contractor licenses are found in Fla. Stat. §§ 489.101, et seq., including the registration of local licenses. A "Contractor" is defined as:

the person who is qualified for, and shall only be responsible for, the project contracted for and means, ..., 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;

Florida's Construction Licensing laws are too complex to fully discuss in this article. However, it is essential to note that the failure to have a proper contractor license (where such a license is required) may have numerous adverse consequences to the party performing the work. First, where an unlicensed contractor enters into a contract, the contract is void and unenforceable for illegality. This means that the unlicensed contractor may not be able to collect for the work performed. Also, the unlicensed contractor will not have any lien rights or bond rights. In some cases, the unlicensed contractor may even be liable for treble damages where there is an injury arising out of the unlicensed work performed.

Florida law also provides for criminal penalties for those engaging in contracting without a license. An unlicensed person found guilty of unlicensed contracting may be assessed an administrative fine of up to \$10,000, plus reasonable investigative and legal prosecution costs. Persons holding themselves out as contractors, or offering to contract, without a license are guilty of a first-degree misdemeanor in Florida (for a first offense). If the violation occurs during the existence of a state of emergency declared by the governor, the violator may be guilty of a felony of the third degree.

It is also important to recognize that not all construction work requires a state or local license. Recently, a Florida Court of Appeals recognized that a person is not considered unlicensed if no state or local license is required for the scope of work being performed. In A-1 Quality Corp. vs. Oak Park Terrance, Inc., 2010 WL 1050026 (Fla. 4th DCA, March 24, 2010), the trial court held that A-1 Quality Corp. ("Contractor") could not enforce its contract (i.e. could not get paid for the work performed) because Contractor did not have a construction license. The trial court rejected Contractor's claim that the work required under the contract did not require a license. The Court of Appeals reversed the Trial Court's entry of summary judgment against Contractor, citing Fla. Stat. § 489.128(1)(a) ("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.")

The moral of the story for anyone contracting, or even offering to contract, for construction work within the State of Florida is that prior to offering to furnish any construction work, that person should obtain legal counsel to determine whether the work to be furnished requires a license, whether the person offering to furnish such work has the necessary license, and if not, what steps should be taken to obtain that licensing prior to offering to furnish that work. Otherwise, the repercussions can be severe.