



OWNER

BUILDERS

IN THE

CITY OF
MELBOURNE, FLORIDA

GENERAL DISCUSSION

As required by State Law, all construction in the State of Florida requires a licensed “Contractor”. The “Owner/Builder” permit is an exception allowed by law under limited conditions. The following discussion is meant to clarify those conditions:

1. Before an owner/builder application will be considered by the City, an “Owner/Builder Affidavit” must be completed.
2. The City of Melbourne will issue Owner/Builder permits for building or improving commercial buildings at a cost of under \$75,000.00 , so long as the building is used for the occupancy or use of such owner and not offered for sale or lease.
3. The City of Melbourne will issue Owner/Builder permits for building or improving residential buildings for the occupancy or use of such owner and not offered for sale or lease.
4. An Owner/Builder may hire an individual(s) to accomplish a segment(s) of work pertaining to the construction of a single-family residence or duplex as long as the individual(s) is considered as a direct employee of the Owner/Builder and such Owner/Builder materially provides supervision and is not interested in a final product only.
5. In determining whether or not any given person is really acting as a contractor (without benefit of a license), you need to examine who is doing the typical contractor-type work (i.e. the Owner/Builder or person he hired to do the work). Who decides on materials? Who arranges for additional workers? Who supervises the work being done?

Basically, the more items, duties, decisions, etc., that are taken care of by the person who the owner hires, then the more likely it is that the person the owner hired is really acting as a contractor. Method of payment is a small factor which can be examined to determine if the owner or the employee is the contractor. These provisions all indicate that if the employee receives any type of compensation and in other respects acts like a contractor, then he/she is subject to regulation under State Statute and County Ordinances.

6. If an individual submits a proposal or purports to have the capability to perform work items (i.e. has a work crew, etc.) then that individual is essentially clothing himself in the authority of a contractor and is required to be licensed as such regardless of any written or verbal disclaimer such as “I am not a licensed contractor but I will perform the proposed work items at an hour rate.”

STATE LAW

Unlicensed Practice of a Profession: Cease and Desist Notice: Civil Penalty; Enforcement Chapter 455.228 FSS

- (1) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. 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 provisions of such order. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection. If the department is required to seek enforcement of the order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.
- (2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.
- (3) The provisions of this section only apply to the professional practice acts administered by the Department of Business and Professional Regulation.

STATE LICENSING LAW

Definition of Owner/Builder - Chapter 489.103 (7) FSS

Owners of property when acting as their own contractor and providing direct, onsite supervision themselves 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.

Definition of Contractor - Chapter 489.105 (3) FSS

Contractor" means the person who is qualified for, and shall only be responsible for, the project contracted for and means, except as exempted in this part, 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.

OWNER/BUILDER DISCLOSURE STATEMENT

NOTICE: State Law requires that all permitting agencies provide individuals the following information for submitting applications as Owner/Builder.

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 850.487.1395 or Call.Center@dbpr.state.fl.us 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 the City of Melbourne 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.

I (we) hereby acknowledge that I (we) have thoroughly read and completely understand the above Owner/Builder Disclosure Statement on this _____ day of _____, 20__.

Property Owner's Signature: _____

State of Florida
 County of Brevard

The foregoing instrument was acknowledged before me this _____ day of _____, 20__.

by _____, who has produced _____ as

identification or is personally known to me and who did / did not take an oath.

 Notary Public

PRINT:
 TITLE:
 COMMISSION: