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Construction Contracts and Contractors: Hurricane Andrew Reteaches Consumers

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Abstract

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KEYWORDS: contracts, hurricane, consumers

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I. INTRODUCTION

In the early morning hours of August 24, 1992 the landscape of a large portion of South Florida changed. The awesome power of Hurricane Andrew ripped through South Florida leaving thousands of people frightened and homeless. The battle cry in the wake of the destruction wrought by Hurricane Andrew was "Relief, Recover and Rebuild!" Thousands of people, either spared by Hurricane Andrew or moved by the pictures of devastation, responded with help for victims. Public agencies eventually delivered relief too. At the same time, victims and government agencies mapped out plans to speed relief and recovery to the effected area. Those efforts will need to continue for a long time. As the relief and recovery efforts moved forward, the victims of Hurricane Andrew, private citizens, businesses and government agencies began the long process of rebuilding.

Nothing was safe from Hurricane Andrew. High priced homes, luxury condominiums, commercial structures, government buildings and other kinds of shelters were blown apart or flooded by the force of the storm. Yet not all of the homes or buildings in the path of Hurricane Andrew were destroyed. Whole subdivisions of houses remained standing with roofs intact. Homes on one side of some residential streets sustained minor

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damage while homes on the opposite side of the same street were completely leveled. Some of this randomness in the destructive path of Hurricane Andrew can be attributed to the unpredictability of the storm—but not all! Hurricane Andrew exposed the poor workmanship and incompetence of many construction contractors. The question posed by Hurricane Andrew is what assurances do the victims of Hurricane Andrew or any person or business have that their construction contractor is a skilled craftsman who will competently perform the work? In addition, what can a person or a business do to insure that they get the high quality building they pay for?

The purpose of this article is to answer these two questions with particular reference to the victims of Hurricane Andrew by first, reviewing the Florida Contracting statute¹ and the requirements for a construction contractor to work in this state² and second, by offering some tips for selecting a construction contractor, drafting a construction contract and remedying defects in construction work.

II. FLORIDA'S CONTRACTOR REGISTRATION STATUTE

The Florida Legislature enacted Florida Statute Chapter 489 which regulates the construction industry out of fear.³ The Legislature reasoned that unsafe or unstable construction pose a danger to the public.⁴ Therefore, the purpose of the Florida contracting law is to eliminate the danger from incompetent and dishonest contractors by establishing minimum qualifications and requirements for construction contractors.⁵ The Florida contractors statute classifies construction contractors into two groups: certified contractors and registered contractors.⁶ Although the requirements for a certified and a registered contractor differ, the bottom line remains that Florida law prohibits anyone from engaging in construction contracting work without being licensed as a certified or registered contractor.⁷ The contractor statute subdivides certified and registered contractors into three types of construction contractors.⁸ The general contractor is a contractor

1. FLA. STAT. §§ 489.101-.559 (1991 & Supp. 1992).

2. *Id.* §§ 489.109(1)(a)-(b), (7), .111, .113(1)-(2), .115, .117.

3. *Id.* § 489.101.

4. *Id.*

5. *Id.*

6. FLA. STAT. § 489.105(8), (10) (Supp. 1992).

7. *Id.* § 489.113(2).

8. *Id.* § 489.105.

who is unlimited in the type of construction work that may be performed.⁹ The building contractor, however, is limited to the construction of commercial buildings and single and multiple dwelling residential buildings which do not exceed three stories in height.¹⁰ In addition, a building contractor is permitted to remodel, repair or improve any size building as long as the construction work does not affect the structure of the building.¹¹ The residential contractor is limited to the construction, remodel, repair or improvement of one, two or three family residences and other connected structures which do not exceed two stories in height.¹² Aside from these general classes of certified and registered contractors, Florida law specifies various kinds of certified specialty contractors who are limited to a particular kind of construction work.¹³ Specialty contractors include sheet metal contractors,¹⁴ roofing contractors,¹⁵ air conditioning contractors,¹⁶ mechanical contractors,¹⁷ commercial and residential pool/spa contractors,¹⁸ swimming pool/spa servicing contractors¹⁹ and underground utility contractors.²⁰ The license requirements differ for certified contractors than for registered contractors. These differences can best be illustrated by comparing the requirements for a certified contractor with those of a registered contractor.

The applicant for a certified contractor license must file a written application and pay an application and examination fee not to exceed \$350.²¹ In addition, the applicant must pay an initial certification fee not to exceed \$200.²² Upon filing of the application and payment of the application and examination fee, the applicant must apply in writing to the Florida Department of Professional Regulation to take the certification

9. *Id.* § 489.105(3)(a).
 10. *Id.* § 489.105(3)(b).
 11. FLA. STAT. § 489.105(3)(b) (Supp. 1992).
 12. *Id.* § 489.105(3)(c).
 13. *Id.* § 489.105(12).
 14. *Id.* § 489.105(3)(d).
 15. *Id.* § 489.105(3)(e).
 16. FLA. STAT. § 489.105(3)(f)-(h) (Supp. 1992).
 17. *Id.* § 489.105(3)(i).
 18. *Id.* § 489.105(3)(j), (k).
 19. *Id.* § 489.105(3)(l).
 20. *Id.* § 489.105(3)(n).
 21. FLA. STAT. § 489.109(1)(a) (Supp. 1992).
 22. *Id.*

examination.²³ The certification examination is a competency test.²⁴ An applicant for the certification examination must be at least eighteen years of age, of good moral character and satisfy certain eligibility requirements.²⁵ The eligibility requirements are:

1. The applicant must have received a baccalaureate degree from an accredited four year college in the appropriate field of engineering, architecture or building construction and have one year of experience in the category for which the applicant seeks certification,²⁶ or

2. The applicant must have a total of at least four years of active experience as a worker who learned the trade by serving an apprenticeship for a skilled worker, who can command the pay rate of a mechanic in the particular trade, or as a foreperson who is in charge of a group of workers and usually responsible to a job superintendent or a contractor or the equivalent, provided, however, that the applicant must have at least one year of active experience as a foreperson,²⁷ or

3. The applicant must have a combination of not less than one year of experience as a foreperson and not less than three years college level course credits from an accredited college; must have a combination of not less than one year of experience as a skilled worker, one year of experience as a foreperson and not less than two years of college level course credits from an accredited college; or must have a combination of not less than two years of experience as a skilled worker, one year of experience as a foreperson and not less than one year of college level course credits from an accredited college.²⁸

In addition to paying the required fees, passing the competency examination and satisfying the eligibility requirements, the applicant must satisfy the following minimum financial responsibility criteria:

1. The applicant must submit an affidavit attesting to the procurement of public liability and property damage insurance;²⁹

2. The applicant must furnish proof of financial responsibility, satisfactory credit and business reputation;³⁰ and

3. The applicant must submit a credit report from a nationally

23. *Id.* § 489.111(1).

24. *Id.* § 489.113(1).

25. *Id.* § 489.111(2)(a)-(c).

26. FLA. STAT. § 489.111(2)(c)1 (1991).

27. *Id.* § 489.111(2)(c)2.

28. *Id.* § 489.111(2)(c)3.

29. FLA. STAT. § 489.115(4) (Supp. 1992).

30. *Id.*

recognized credit agency.³¹

Upon fulfillment of all of the stated requirements, the Florida Department of Professional Regulation will issue a certified contractor license to the applicant.³² The certified contractor's license is valid for two years unless the Department of Professional Regulation opts to issue a three year license³³ and may be renewed upon the payment of a renewal fee not to exceed \$200.³⁴ Upon issuance of a certified contractor license, the certificate holder may engage in the certified construction work anywhere in Florida.³⁵ However, the certified contractor needs to present the certificate to the local building official, tax collector or other person authorized to issue local building permits and occupational licenses and pay the required local fees before beginning work.³⁶ The certified contractor does not have to satisfy any local competency or financial responsibility requirements.³⁷ The local construction regulation board may refuse to issue a building permit to a certified contractor if, after a public hearing with notice to the certified contractor, the certified contractor has been found guilty of fraud or a willful violation of the local building code or within the past twelve month period the certified contractor has been found guilty of fraud or a willful violation of any other local building codes which would have also constituted a violation of the local building code.³⁸ The local construction regulation board's denial of a building permit to a certified contractor must be reported to the Florida Department of Professional Regulation within fifteen days.³⁹

The requirements for a registered contractor parallel, but are more lenient, than the requirements for a certified contractor. The applicant for registered contractor status must file an application and pay an application fee not to exceed \$50,⁴⁰ and also pay an initial registration fee not to exceed \$200.⁴¹ The applicant must submit the application, pay the required application and registration fee and file proof of a valid local occupational

31. *Id.* § 489.115(5).

32. *Id.* § 489.115(1)(a).

33. *Id.* § 489.115(3)(a).

34. FLA. STAT. § 489.109(1)(a) (Supp. 1992).

35. *Id.* § 489.113(1).

36. *Id.* § 489.113(4).

37. *Id.* §§ 489.105(8), .113(4).

38. *Id.* § 489.113(4).

39. FLA. STAT. § 489.113(4) (Supp. 1992).

40. *Id.* § 489.109(1)(b).

41. *Id.*

license for the type of construction work that the applicant seeks registration.⁴² An applicant must then satisfy the competency and eligibility criteria for the type of construction work the applicant wants to perform as required by the county, municipality or development district within which the construction work will be performed.⁴³ Unlike a certified contractor, a competency test is not required by Florida law for registration of a contractor.⁴⁴ In addition to the various local requirements, the applicant must submit an affidavit attesting to the procurement of public liability and property damage insurance and submit a credit report from a nationally recognized credit agency.⁴⁵ However, the applicant for contractor registration need not provide the proof of financial responsibility, satisfactory credit and business reputation required for a certified contractor.⁴⁶

Upon satisfying the stated requirements, the Florida Department of Professional Regulation will issue a registered contractor license to the applicant.⁴⁷ The registered contractor license is valid for two years unless the Department of Professional Regulation opts to issue a three year license⁴⁸ and may be renewed upon the payment of a renewal fee not to exceed \$200.⁴⁹

In contrast to the certified contractor, registration of a contractor only entitles the contractor to engage in the particular type of construction work covered by the registration in the county, municipality or development district for which the registration applies.⁵⁰

Any person who fails to comply with the requirements for certification or registration as a contractor may be subject to sanctions administered by the Florida Department of Professional Regulation.⁵¹ The Department has the power to issue a cease and desist order to prohibit a person from acting as an unlicensed contractor and may enforce a cease and desist order in court.⁵² Alternatively, Florida law grants to local government the power to enforce the contractor certification requirements through the issuance of a non-criminal citation and assessment of a civil penalty not to exceed \$500

42. *Id.* § 489.117(1).

43. *Id.* § 489.117(2).

44. FLA. STAT. § 489.117(1) (Supp. 1992).

45. *Id.* § 489.115(4), (5).

46. *Id.* § 489.115(4).

47. *Id.* § 489.115(1)(a).

48. *Id.* § 489.115(3)(a).

49. FLA. STAT. § 489.109(1)(b) (Supp. 1992).

50. *Id.* § 489.117(2).

51. *Id.* § 489.113(2).

52. *Id.* § 489.113(2)(a).

per day if the violating contractor fails to pay the initial amount of any fine.⁵³ In addition, Florida law states that certain kinds of contractor conduct may constitute a first degree misdemeanor and subject the contractor to criminal penalties.⁵⁴ For example, falsely impersonating, advertising, or otherwise fraudulently taking on the status of a certified or registered contractor or forging or otherwise using an invalid contractor certification or registration is subject to criminal sanction.⁵⁵ Finally, the Construction Industry Licensing Board, a subdivision of the Florida Department of Professional Regulation, has the authority to discipline wayward contractors.⁵⁶ The Construction Board has the power to revoke, suspend or deny issuance or renewal of a contractor's certification or registration, require financial restitution to any consumer injured by the practices of the contractor and impose a fine of up to \$5,000 if the contractor engaged in fraud, deceit, gross negligence or incompetence as a contractor.⁵⁷ It is important to note that none of the sanctions or remedies provided as part of the contractor law limit in any way the owner of a home or other building, from suing the contractor in court for faulty construction work.⁵⁸

Spearheaded by the construction deficiencies uncovered by the devastation resulting from Hurricane Andrew, the Florida Department of Professional Regulation proposed⁵⁹ and on April 10, 1993 the Florida Legislature passed significant revisions to the Florida construction contractor licensing statute.⁶⁰ The highlights of the legislative amendments include the following:

1. The amendments do not substantially alter the licensing requirements for certified contractors. However, the amendments do permit the Department of Professional Regulation to withhold issuance of new registered contractor licenses if the local licensing board does not possess and exercise "adequate" disciplinary control over registered contractors.⁶¹

53. *Id.* § 489.127(3).

54. FLA. STAT. § 489.127(1) (Supp. 1992).

55. *Id.* § 489.127(2).

56. *Id.* § 489.129(1).

57. *Id.* § 489.129(1)(m).

58. See, e.g., *Finkle v. Mayerchak*, 578 So. 2d 396 (Fla. 3d Dist. Ct. App. 1991); *Gatwood v. McGee*, 475 So. 2d 720 (Fla. 1st Dist. Ct. App. 1985); *County of Seminole v. Sentry Indemnity Co.*, 316 So. 2d 645 (Fla. 4th Dist. Ct. App. 1975).

59. FLORIDA DEP'T OF PROF. REG. (Draft No. 4, 1993) (proposed amendments to FLA. STAT. ch. 489).

60. Fla. CS for SB 1552, §§ 1-36 (1993) (Second Engrossed).

61. Fla. CS for SB 1552, § 12 (proposed FLA. STAT. § 489.117(2)).

Although not eliminating the "two-tier" system of licensing construction contractors as either certified or registered contractors as proposed by the Department of Professional Regulation,⁶² the amendments grant more power to the Department of Professional Regulation to force local licensing boards to insure construction contractor competence.⁶³

2. The amendments create the requirement that a business entity applying for a state certified contractor license must apply through a "qualifying agent" who will be responsible for the supervision of the construction work and the financial aspects of the contracting business.⁶⁴

3. The amendments create the Florida Construction Industries Recovery Fund.⁶⁵ The purpose of this fund is to reimburse consumers who have obtained a court judgment against a state certified contractor for any loss suffered by the consumer resulting from a violation of any provision of the construction contractors statute.⁶⁶ The money for this fund will be collected from a one-half cent per square foot surcharge on building permits⁶⁷ and consumer recovery is limited to \$25,000 per transaction.⁶⁸

4. The amendments permit the Department of Professional Regulation to set up an arbitration process to resolve money disputes between state certified contractors and their consumers, and mandates binding arbitration for money disputes of less than \$2,500.⁶⁹

5. The amendments require fourteen hours of continuing education as a prerequisite for state certificate renewal.⁷⁰

6. The amendments raise the criminal penalties against unlicensed contractors who have a prior conviction or who act as an unlicensed contractor in a declared emergency to a third degree felony⁷¹ and authorize the Department of Professional Regulation to issue stop-work orders.⁷²

7. The amendments provide for the state certification of building code inspectors.⁷³ The certification process for building inspectors would

62. FLORIDA DEP'T OF PROF. REG. §§ 489.113, .115, .117, .131.

63. Fla. CS for SB 1552, § 12, at 37, line 28 (proposed FLA. STAT. § 489.117(2)).

64. *Id.* § 13, at 40, line 11 (proposed FLA. STAT. § 489.119(2)); FLA. STAT. § 489.119(1)(a) (1991).

65. Fla. CS for SB 1552, § 21, at 73 (proposed FLA. STAT. § 489.140).

66. *Id.* § 21, at 73, line 5 (proposed FLA. STAT. § 489.140(1)).

67. *Id.* § 21, at 73, line 17 (proposed FLA. STAT. § 489.140(2)).

68. *Id.* § 21, at 76 (proposed FLA. STAT. § 489.143).

69. *Id.* § 18, at 61, 62-63 (proposed FLA. STAT. § 489.129(11)(a), (c)).

70. Fla. CS for SB 1552, § 10, at 33, line 9 (proposed FLA. STAT. § 489.115(4)(b)).

71. *Id.* § 16, at 49, (proposed FLA. STAT. § 489.127(2)(b), (c)).

72. *Id.* § 16, at 50, line 3 (proposed FLA. STAT. § 489.127(3)).

73. *Id.* § 24, at 82-97 (proposed FLA. STAT. §§ 468.601-.633).

be administered through the Department of Professional Regulation which will set minimum competency standards.⁷⁴

The design of the revisions and additions to the construction contractors licensing scheme seems to be three fold. First, the amendments further consolidate the regulation of construction contractors with the Department of Professional Regulation. Consolidation of the regulatory function in one state government agency always presents the danger of bureaucratic overkill. However, assuming adequate staffing and funding, consolidation of construction contractor regulation is an improvement over the existing maze of different local licensing regulations. Such a change has a chance to succeed in providing consistent and even handed regulation of contractors and construction work.

Second, the amendments offer consumers some relief from unscrupulous contractors and shoddy construction work through the Florida Construction Industries Recovery Fund. The repetitive horror story of the consumer stuck with a poorly constructed residence or commercial building, partially or totally destroyed by Hurricane Andrew and a vanished or vanquished construction contractor is one of the legacies of Hurricane Andrew. Furthermore, unlike public construction projects in Florida⁷⁵ or private construction projects in some other states,⁷⁶ a contractor in Florida is not required, unless by local ordinance,⁷⁷ to obtain a payment or performance bond to cover any amount of the cost of the construction project. Consequently, the Florida Construction Industries Recovery Fund provides the victim of faulty construction work with some recourse. The Recovery Fund is not a substitute for a payment and/or performance bond to cover construction projects costing more than \$25,000. However, the amendment creating the Recovery Fund is a significant step towards recognizing that consumers need protection from incompetent construction contractors.

Third, the amendments afford consumers a hedge against faulty construction work by requiring the licensing of public and private building inspectors. Key to this licensing requirement is the development and implementation by the Department of Professional Regulation of strict competency standards for building inspectors. This competency based licensing scheme for building inspectors will help to eliminate collusion

74. *Id.* § 24, at 86, 87 (proposed FLA. STAT. §§ 468.605, .607).

75. FLA. STAT. § 225.05 (1991).

76. For example, see IOWA CODE § 910.7 (1991) (a bond of \$1,000 or five per cent of the contract price whichever is greater) and UTAH CODE ANN. § 14-2-1 (1992) (any construction contract exceeding \$2,000 requires a payment bond equal to contract price).

77. FLA. STAT. § 489.131(3)(e) (Supp. 1992).

between contractors and building inspectors and to insure consumers receive building code quality construction work.

Based on the foregoing synopsis and the perceived purposes of the proposed amendments to the contractor licensing statute in Florida, the amendments are a worthy effort to salvage something good from the destruction left by Hurricane Andrew.

III. CONSTRUCTION CONTRACTING TIPS

Whether a contractor is properly licensed is just one of the questions every consumer or commercial business should ask before beginning any type of construction work. The certification or registration of the construction contractor does not by itself, insure the consumer or commercial business will receive top quality construction work. The following is a list of tips regarding the selection of a construction contractor, the contents of a construction contract and the remedies for poor construction work. Included with these tips is specific addresses and telephone numbers for various public and private agencies that may be useful to any consumer and of special assistance to Hurricane Andrew victims.

A. Choosing a Building Contractor

1. Make sure the contractor has a valid and current local business license. Do not believe what the contractor says, check it out yourself. In Dade County, contact Dade Occupational Licenses at (305) 375-5064. In Broward County, contact Broward County Occupational Licenses at (305) 468-3480.
2. Make sure the contractor is properly licensed with the State of Florida to perform the type of construction work that you want. Florida law requires that any person who wants to work as a construction contractor statewide must first be certified by the State of Florida.⁷⁸ In addition, Florida law requires that any person who wants to work as a construction contractor locally within a city or county but not on a statewide basis, must first be registered by the State of Florida.⁷⁹ It is illegal for any person to perform construction contracting work for a private home or business without being a licensed contractor.⁸⁰ Be sure to check the contractor's

78. *Id.* § 489.113(1).

79. *Id.*

80. *Id.* § 489.113(2).

licensing status before you hire that contractor by contacting the Florida Department of Professional Regulation at 1-800-342-7940.

3. Do not try to be your own contractor unless you have construction experience. Your best bet is to hire a reputable construction contractor.

4. Make sure the contractor is bonded. Florida law does not require every certified and registered construction contractor to obtain a construction performance and/or payment bond to cover the contractor's work. Some cities or counties may require a registered contractor to obtain a performance bond, which usually is not for more than \$5,000.⁸¹

A performance bond is meant to provide a safety net of money for the consumer if something goes wrong with the construction work. If the contractor fails to perform or poorly performs the construction work, then the consumer may request that the bond money be used to finish or correct the contractor's work.⁸² These kinds of performance bonds are especially used in large public and private construction projects.⁸³ A payment bond is meant to provide protection to the consumer by way of insuring that all of the subcontractors and any other person working on the construction project is paid for their work before the consumer pays the contractor for the completed construction work.⁸⁴

Because of the tremendous amount of construction work in Florida, not to mention the rebuilding required in South Florida, a \$5,000 performance bond or even the proposed Florida Construction Industries Recovery Fund with a \$25,000 cap on claims, is not much of a cushion for a consumer. Therefore, Florida law permits, and it is a good idea for you to request, the contractor to obtain a specific performance and/or payment bond in the amount of the cost of your construction work.⁸⁵ Part or all of the cost of these bonds may be passed on to you by the contractor. However, this kind of bond may be well worth the extra cost should the contractor leave the area before starting or finishing your project, perform shoddy work, fail to pay off the subcontractors or file bankruptcy. A reputable contractor will stand behind his work. Some, but not all, contractors will agree to provide a specific performance and/or payment bond to cover your construction work. Some contractors may not be able to qualify for a bond. If a contractor will not agree to obtain or does not qualify for a performance

81. *Id.* § 489.131(3)(e).

82. See generally LARRY R. LEIBY, FLORIDA CONSTRUCTION LAW MANUAL § 10.03 (2d ed. 1988).

83. FLA. STAT. § 489.131(2) (Supp. 1992).

84. LEIBY, *supra* note 82, § 10.07.

85. See 70 Op. Att'y Gen. 249 (1970).

and/or payment bond, you should consider other contractors. If you cannot find a contractor who will provide a specific performance and/or payment bond to cover the construction work, you should contact a lawyer to help you obtain a bond on your own before signing any construction contract.

5. You should contact the following agencies before deciding which contractor to hire.

- a. The Florida Attorney General's Office
4000 Hollywood Boulevard
Suite 505 South
Hollywood, FL 33021
(305) 985-4780
- b. Florida Division of Consumer Services
Mayo Building
Tallahassee, FL 32399
1-800-435-7352
- c. Broward County Consumer Affairs Division
201 South Andrews Avenue
Suite 201
Fort Lauderdale, FL 33301
(305) 765-5355
- d. Dade County Consumer Services Department
Consumer Protection/Advocate Division
140 West Flagler Street
Miami, FL 33130
For General Information (305) 375-1250
Consumer Advocate's Office (305) 375-4222
- e. Better Business Bureau of South Florida
16291 Northwest 57th Avenue
Miami, FL 33014
(305) 625-0307

Be patient when contacting these agencies. If the telephone line is busy or you get no answer, hang up and try again later. When you do get through to these agencies, ask if there have been any consumer complaints against your prospective contractor and if so, what the complaints were about and if the complaints remain unresolved. Also ask if the contractor is under investigation by the agency. A contractor with a history of consumer complaints should be avoided.

1. Ask the contractor for at least three references. You should try to get references that match, as closely as possible, the kind of work you want done. If you want a new roof on your garage or new storm shutters, then do not accept references about kitchen cabinets. Most importantly, check

out the references to see if the contractor's former customers are satisfied with the contractor's work.

2. Shop around for contractors. A great number of contractors are looking for work, not only in South Florida but throughout Florida. Take your time and do not select the first contractor you talk to. Ask neighbors, relatives, and friends for the names of contractors. Talk to as many different contractors as you can. If the contractor is working on another job, go visit the job site and look at his crew, equipment and work. You might even walk through the project during off-work hours to examine the contractor's work.

3. Avoid "work gangs." With the massive amount of construction work needed in South Florida, local and out of state work gangs will come to Florida, especially South Dade county, to get work. A lot of compassionate and caring people have freely given their time to help many people temporarily repair homes and buildings after Hurricane Andrew. These groups of people are not work gangs. The work gangs usually pose as experienced contractors or construction workers from another job with leftover or extra materials. These gangs usually offer to do a specific job (i.e., roof repair, landscaping, windows, carpeting). These gangs often do shoddy, overpriced work and leave the area before any complaints are filed against them. Avoid these door-to-door work gangs no matter how good they sound.

B. *Signing a Construction Contract*

1. Get a number of written estimates. Most reputable contractors provide a written estimate of the cost of the construction work. If a contractor does not volunteer to provide a written estimate - demand one. Make sure the contractor signs the written estimate. The written estimate should contain a full description of the construction work, the materials required and an itemization of the cost. You are not required to and should not sign the contractor's written estimate. Do not confuse the written estimate with the construction contract. You should keep an extra copy of every written estimate.

a. Compare written estimates. Get at least three written estimates. Be sure all of the written estimates cover the exact same type of construction work and materials. Compare the written estimates on the basis of price, reliability of the contractor, and quality of the contractor's work. Remember, if the deal appears to good to be true, it probably is. If you suspect price gouging by one or a number of contractors offering work in the area affected by Hurricane Andrew, notify the Florida Attorney General

at the telephone number previously listed for the office of the Florida Attorney General.

b. Never sign a construction contract until you have read and understood all of the things written in the contract. Do not be bullied into signing a "standard" or pre-printed form contract without carefully reading every word of the contract. After all, it is your home or business and your money. You can add to or change any part of a standard or pre-printed contract before you sign it. Prior to signing a construction contract be sure to check the following:

1. Be sure that every promise or statement made by the contractor concerning the type and quality of the materials and other products to be used in the construction work is restated in writing in the contract.
2. Be sure that all product, materials, and performance warranties are included in writing in the contract.
3. Be sure that every promise or statement made by the contractor concerning the contractor's performance of the construction work is restated in writing in the contract.
4. If the construction contract contains information about financing the payment for the construction work, contact a lawyer to review this information before signing the construction contract. If you do not know a lawyer, you should contact a local legal services office, the local bar association referral service or the Florida Bar Association. In Dade County you can contact Dade County Legal Services at (305) 576-0080 and in Broward County you can contact Broward County Legal Services at (305) 765-8950 to see if you qualify for free legal services. Otherwise, in Dade County contact the Dade County Bar Association Attorney Referral at (305) 371-2220 and in Broward County contact the Broward County Bar Association Attorney Referral at (305) 764-8040 for assistance in finding a lawyer. You can contact the Attorney Referral Service of The Florida Bar at 1-800-342-8011 or Attorney Referral Service at 1-800-834-8077 for further assistance in finding a lawyer.
5. If the construction contract requires an "up front" deposit, make sure the contract states in writing what bank or other institution your money will be deposited with, when and how you can get a refund of the deposit and that the contract requires the contractor to provide an itemized accounting of how your deposit money is spent. It is also a good idea to make sure that any check written to the contractor is marked "for deposit only" so that the contractor is less likely to cash

- your check and leave town. Finally, make all payments by check; do not pay a contractor in cash.
6. Be sure that the construction contract states in writing that all of the construction work will be completed to the *customer's satisfaction before any payment* will be made.
 7. The payment schedule for the construction work should be contained in the written contract. Never pay the full price for the construction work up front. Spread your payments out into at least three equal "progress" payments: one-third at the beginning of work; one-third when the work is two-thirds complete; and one-third upon completion of the work. Do not let the contractor convince you to pay more money than you agreed to pay. Check out the progress of the contractor's work. Be sure the construction contract states in writing that you will not be obligated to make any payment to the contractor before inspecting the contractor's work and before receiving an itemized accounting of the cost of the construction work performed up to that time. Finally, do not make your last payment to the contractor until the contractor provides you with proof that all of the subcontractors and any other construction liens have been paid.
 8. Be sure that the start date and completion date for the construction work is written in the contract. In addition, be sure that all of the blank spaces in a pre-printed form contract are filled in or crossed out.
 9. Be sure the contractor agrees in writing to perform the construction work to conform to all city, county and state laws and regulations including but not limited to building codes, fire and other safety regulations and zoning ordinances.
 10. Be sure that the contractor agrees in writing to do all of the clean up after the construction work is completed.
 11. Be sure to inspect the contractor's work. You should not be afraid to periodically check on the progress of the contractor's work at any time. Upon the completion of the construction work, you should carefully inspect the work. You may not be an expert, but you can make a list of things that do not look right to you. Do not be afraid to flush toilets, open cabinets, check roof tile, turn on the air conditioner, etc. Finally, do not be afraid to ask the contractor questions; it may be your last chance.

C. Remedies for Faulty Construction Work

Sometimes, no matter how careful you are in selecting a contractor and in reviewing a construction contract, the construction work may be

defective. Here is what to do if the contractor's work is not satisfactory:

A. Contact the contractor and demand the contractor fix his work. Remind the contractor of the performance, product, and material warranties contained in the written contract.

B. If the contractor will not fix his work, then you should do the following:

1. File a written consumer complaint with the Florida Attorney General's Office, Florida Division of Consumer Affairs, local consumer affairs agencies which include Broward County Consumer Affairs Division, Dade County Consumer Services Department, and the Better Business Bureau. You may also want to file a written complaint with the Florida Department of Professional Regulation located at 1940 North Monroe Street, Tallahassee, Florida, 32399-0750.

The written complaint needs to identify the contractor and specify the exact nature of your complaint. Attach copies of your construction contract and all other documents, including payment receipts, canceled checks, work orders, and warranties to the written complaint. You should sign the complaint, include your address and telephone number(s), and mail the complaint to the various offices.

2. Consult a lawyer about filing a lawsuit. Check with the legal service organizations and the attorney referral services previously mentioned if you cannot find a lawyer on your own.

Hopefully by understanding the Florida contractors law and by following these tips, you can be sure that the construction or reconstruction of a home or business does not become another disaster like Hurricane Andrew. Remember, an alert and informed consumer is the best protection against fraud.



FLORIDA'S PATH OF DESTRUCTION—HURRICANE ANDREW (Historic Publications, Aug. 1992).