**FLORIDA CONSTRUCTION LAW MANUAL 2015-16 EDITION**

**NEW IN THIS EDITION**

New case distinguishing ability of a dissolved corporation to maintain an action if dissolved for failure to file annual report, or otherwisedissolved.

New case clarifying that the time when a business organization must be licensed as a contractor within the meaning of §489.128 is the effective date of the contract.

Update on effect of an architect’s license.

New case holding that the statute barring a person who provides lawful residential interior-design services without a license from advertising herself as an “interior designer” violates the First Amendment.

New section on new Master Permit statute.

Florida Supreme Court clarification of what categories of statutory or code violations would result in negligence per se.

New case holding that a court should not rely on a preamble to a statute to contradict unambiguous words of the statute.

2015 amendments to Chapter 558, Florida Statutes.

New form final response from recipient of notice of defect under Chapter 558 Fla. Stats.

New statute requiring specification of Florida lumber for Florida public jobs.

Treatment of changed statute addressing prequalification of FDOT contractors.

New cases on contract interpretation.

New case holding that the construction against the drafter rule of interpretation is a secondary rule, which should be used only if the parties' intent cannot be ascertained by other means.

New section addressing the application of the UCC in construction contracts.

New case addressing incorporation by implication.

New Florida Supreme Court case addressing exculpatory clauses.

New case addressing the impact of inequality of bargaining power in exculpatory clauses.

New case distinguishing between mandatory and permissive venue clauses.

Discussion of three pertinent factors when deciding whether a venue transfer under Fla. Stat. 47.122 is appropriate.

New Florida Supreme Court case adopting the four-step federal standard to address forum non conveniens challenges.

New case addressing the significance of a Plaintiff's choice of venue in assessing convenience of the parties.

New case addressing the rate of interest where interest was agreed to with respect to both pre-judgment and post judgment interest.

Discussion of agreement to arbitrate among several documents and oral agreement.

Case discussing the opportunity to assign insurance proceeds.

New Florida Supreme Court case holding that the preparation of a notice of commencement and the preparation of releases by a community association manager is the unlicensed practice of law.

Discussion of fees for U.S. Marshall’s sale and judicial sale.

New case showing the need to file a claim with the clerk for the surplus funds within the 60 day period from a foreclosure sale.

New case showing the consequences of a stipulation for the court to determine prevailing party with no proof of amount of attorney fees.

New Florida case holding that Fla. Stat. 713.3471 precluded “(a contractor’s) common law claims of equitable lien and unjust enrichment against the lender.

New case addressing surety claims against its bonded contractor where the contractor takes the funds and does not apply them to the job.

New case identifying the elements of a cause of action for a breach of warranty with respect to sale of goods under Florida law.

New case addressing where an owner is deprived of the complete use of property during a period of delay, the owner may recover damages for such loss of use (reasonable rental value of the property where use is deprived) whether or not the owner obtains substitute property for the period of loss.

New case holding that a property owner is permitted to testify as to the value of his or her property, particularly in regard to loss of use of residential property for a period of delay.

New cases on the rule against splitting causes of action.

New cases on the economic loss rule.

New caseholding that a professional engineer may not avoid liability for negligent design plans based solely on the signing and sealing of a subsequent set of design plans by a successor professional engineer.

New cases discussing the *Slavin* doctrine.

New section on the Inherently Dangerous Activities Doctrine.

New case defining a fiduciary or confidential relationship.

New case interpreting strict liability.

New case holding that whether conduct constitutes an unfair or deceptive trade practice is a question of fact.

New case holding that a court is without jurisdiction to issue an injunction which would interfere with the rights of those who are not parties to the action.

New case holding that as a general rule, a wrongfully-enjoined party's damages are limited to the amount of the posted bond; unless the injunction is sought in bad faith or when the injunction bond is set without an evidentiary hearing on foreseeable damages.

New case holding that it would be wise for the injunction order to specify when the bond is to be posted.

New case stating the elements for a claim of conversion.

New cases on copyrights that apply to creative works, derivative works, and compilations.

Updated case on the failure to file a separate motion for attorney fees on appeal will preclude recovery of attorney fees on appeal.

New case holding that *Stockman* does not require a specific pleading of the statutory or contractual basis of a claim for attorney's fees.

New case holding that a notice of voluntary dismissal filed by a party reciting that the dismissal is conditioned upon the other party paying its own fees and costs is not binding on the other party with respect to recovery of fees and costs.

New case holding that where attorney fees are an element of damages, (e.g., fees incurred to address the cloud in a claim of slander of title) rather than an add-on as costs for bringing or defending the action (e.g., prevailing party or lien enforcement), then absent stipulation the fee evidence should be adduced as part of the case in chief.

New case holding that a motion to set aside a final default judgment does not toll the 30 day period within which a motion to tax fees must be filed.

New case holding that a charging lien is enforced in the same court and action where the legal services were rendered. There is no authority for a separate action declaring the validity of a charging lien.

Cases holding that In Florida state courts where a party seeks to have the opposing party in a lawsuit pay for attorney's fees incurred ... independent expert testimony is required. However in federal court, the judge can determine the reasonableness of attorney's fees and an independent expert is not required.

New case holding that courts are obligated to cut the amount of hours for which payment is sought, pruning out those that are excessive, redundant, or otherwise unnecessary.

New case holding that where a plaintiff has obtained excellent results or exceptional success, an award of attorney's fees to the plaintiff should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit

New Florida Supreme Court case holding that that a trial court has the inherent authority to impose attorneys' fees against an attorney for bad faith conduct. However, this sanction must be based on an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees.

The Florida Fourth District held that absent compelling circumstances, one party must prevail in a breach of contract action for purposes of prevailing-party award of attorney fees. While there are cases that say that a court may decline to name a prevailing party, a trial court lacks the discretion to decline to enforce a prevailing party attorney's fees award once one party is deemed to have prevailed under the contract.

New case holding that an order awarding attorney fees without quantification is not appealable.

New case holding that were the court determines to enter a monetary sanction a party or counsel, the court cannot just pick a sanction amount out of the air, but must have evidentiary support for the amount of the monetary sanction.

New case holding that a motion for §57.105 fees as a sanction may not be made after the case is dismissed since the court would lack jurisdiction to address the motion.

New case holding that to impose §57.105 (1) sanctions the court need only find that: the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts.

New case holding that a trial court's denial of a motion for attorney's fees under section 57.105 is reviewed for abuse of discretion.

New case defining spoliation.

New section on a cause of action for an accounting.

New case defining that the five year limitations period for an action for breach of a property insurance contract runs from the date of loss.

New case holding that where a judgment was entered by a federal court in another state, but the judgment was recorded in Florida under the Florida Enforcement of Foreign Judgments Act, the five-year limitation period for a foreign judgment was inapplicable. Instead the 20 year limitations period for a Florida judgment applied.

New case holding that asking the legal basis for defenses in interrogatories is not appropriate.

New subsection on business records.

New case holding that an objection that response to a request for production is burdensome or overly broad requires a factual showing that the volume of documents or time required to comply is actually problematic. A conclusion that the discovery sought is burdensome is insufficient.

New discussion about corporate representative depositions.

Several new cases on discovery issues.

New discussion of *Daubert* test.

New cases addressing attorney-client privilege.

New cases on proposals for settlement.

New cases on class actions, state and federal court.

New cases on recovery of costs.

New section on stay and abatement.

Discussion of new AAA Construction Industry Arbitration Rules effective 7/1/15.

Many new cases addressing arbitration issues.

New section on MEDALOA.

New subsection on assignment of arbitrable claims.

New discussion of categories of arbitration awards.

New subsection on insurance broker liability

New case that holds that the damage repair claims may be estimates and the insured is not obliged to go perform the work.

New section on CGL carrier duty to defend.

New subsection on multiple causes of loss,

More than 330 new case citations for new and updated points of law.