

LIMITS ON LOCAL CONSTRUCTION REGULATION BOARDS'
AUTHORITY OVER STATE LICENSED CONTRACTORS

FLORIDA BAR
CONSTRUCTION LAW COMMITTEE

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I. Introduction.

A. Local Construction Regulation Boards' authority within Florida's two-tiered licensing system.

1. F.S. § 489.105(1), defines "board" as the "Construction Industry Licensing Board."
2. F.S. § 489.105(12)(b), defines a "local construction regulation board" as:

"...a board, composed of not fewer than three residents of a county or municipality, which the governing body of that county or municipality may create and appoint to maintain the proper standard of construction of that county or municipality."

B. F.S. § 489.113(4)(b), provides in relevant part:

"[A] local construction regulation board may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtaining a permit or permits with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality that the local construction regulation board represents or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice of an opportunity to be heard to the contractor, that such fraud or violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted to the department within 15 days after the local construction regulation board decides to deny the permit."

C. There is a statutory distinction between the Florida Construction Industry Licensing Board and local construction regulation boards. F.S. § 489.101 and F.S. § 489.107.

II. What authority does a local construction regulation board possess when imposing administrative action upon a certified contractor, and which acts or omissions will subject a State licensed (certified) contractor to discipline by a local construction regulation board?

A. Willful Building Code Violations.

1. According to Black's Law Dictionary, an act or omission is willfully done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.
2. A certified contractor must exhibit willfulness in violating a building code and an oversight or inability to address a violation may negate the element of willfulness necessary to find a certified contractor guilty of committing a willful building code violation for purposes of F.S. § 489.113(4)(b).

- B. Fraud. All legal elements must be established to prove fraud.
 - 1. A false statement of material fact.
 - 2. Knowledge on the part of the contractor that the statement is untrue.
 - 3. Intent on the part of the contractor to deceive the victim.
 - 4. The victim's justifiable reliance on the statement.
 - 5. Injury to the victim as a result.
- III. What sanctions is a local construction regulation board authorized to impose upon a certified contractor after a finding of guilt for willful building code violations or fraud?
 - A. Deny, suspend, revoke or limit the ability of the certified contractor to obtain building permits within the local construction regulation board's jurisdiction.
- IV. A local construction regulation board is not authorized to discipline a certified contractor for violations of local ordinances which govern contractors issued certificates of competency by the local construction regulation board and registered with the State.
 - A. What if the local construction regulation board's ordinances are identical to the disciplinary provisions set forth in F.S. § 489.129?
 - 1. Even if the ordinance is identical to the disciplinary provisions of the statutes which govern certified contractors, the local construction regulation board is not authorized to file charges against certified contractors for any violations other than willful building code violations or fraud.
 - B. What if the local construction regulation board's complaint only charges the Certified contractor with violations of the disciplinary provisions set forth in F.S. § 489.129?
 - 1. The local construction regulation board is not authorized to charge and discipline Certified contractors with violations of the licensing law contained in F.S. § 489.129, including but not limited to:
 - a. F.S. § 489.129(1)(d), performing any act which assists a person in the unlicensed practice of the profession.
 - b. F.S. § 489.129(1)(g), committing mismanagement or misconduct in the practice of contracting.
 - c. F.S. § 489.129(1)(j), abandoning a construction project.
- V. Final Orders issued by local construction regulation boards which do not comply with F.S. § 489.113(4)(b).
 - A. What are the potential consequences if the local construction regulation board denies, suspends, revokes or limits the certified contractor's permit privileges after charging the certified contractor with violations other than willful building code violations or fraud?

- B. What are the potential consequences if the local construction regulation board imposes discipline upon a certified contractor that extends beyond a denial, suspension, revocation or limitation on the certified contractor's ability to obtain building permits within the local construction regulation board's jurisdiction?
- C. Municipal ordinances are inferior to State laws and are not permitted to conflict with any controlling provision of State law. Statutes enacted by the State legislature preempt local legislation either expressly, or by implication. The State has preempted the issuance and regulation of certified contractor licenses from local construction regulation boards. *City of Hollywood v. Mulligan*, 934 So.2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc., v. Pinellas County*, 894 So.2d 1011 (Fla. 2nd DCA 2005); *GLA and Associates, Inc. v. City of Boca Raton*, 855 So.2d 278 (Fla. 4th DCA 2003); *Sarasota Alliance for Fair Elections, Inc., v. Browning*, 28 So.3d 880 (Fla. 2010).
1. F.S. § 489.131(1)(g), reads: "Nothing in this subsection shall be construed to allow local jurisdictions to exercise disciplinary authority over certified contractors."
 2. If a local construction regulation board suspends, revokes or limits the certified contractor's permit privileges after finding the contractor guilty of violations other than willful building code violations or fraud, the local construction regulation board has exceeded its authority and may be precluded from enforcing its order.
 - a. An invalid order from a local construction regulation board may not be a valid basis for the Department of Business and Professional Regulation and the Florida Construction Industry Licensing Board to discipline a certified contractor for a violation of F.S. § 489.129(1)(h), by having been disciplined by a county or municipality.
 3. If a local construction regulation board imposes punitive action upon a certified contractor that extends beyond a denial, suspension, revocation or limitation on the certified contractor's ability to obtain building permits within the local construction regulation board's jurisdiction, it has exceeded its authority and the order may not be enforceable by the local auth.
 - a. Local construction regulation boards are not empowered to impose fines, order restitution, or require continuing education upon certified contractors.
 - b. An invalid order from a local construction regulation board may not be a valid basis for the Department of Business and Professional Regulation and the Florida Construction Industry Licensing Board to discipline a certified contractor for a violation of F.S. § 489.129(1)(h), by having been disciplined by a county or municipality.

VI. Is there any other legal basis upon which a local construction regulation board may restrict a certified contractor's permit privileges within its jurisdiction?

A. F.S. § 489.131(3) reads:

“Nothing in this part limits the power of a municipality or county:

(f) To refuse to issue permits or issue permits with specific conditions to a contractor who has committed multiple violations, when he or she has been disciplined for each of them by the board and when each disciplinary action has involved revocation or suspension of a license, imposition of an administrative fine of at least \$1,000, or probation; or to issue permits with specific conditions to a contractor who, within the previous 12 months, has had disciplinary action other than a citation or letter of guidance taken against him or her by the department or by a local board or agency which licenses contractors and has reported the action pursuant to paragraph (6)(c), for engaging in the business or acting in the capacity of a contractor without a license. However, this subsection does not supersede the provisions of s.489.113(4), and no county or municipality may require any certificateholder to obtain a local professional license or pay a local professional license fee as a condition of performing any services within the scope of the certificateholder's statewide license as established under this part.”

- B. F.S. § 489.131(3)(f), provides that local construction regulation boards may refuse to issue a permit to, or issue a permit with conditions, to any contractor (including certified contractors) who have been disciplined by the Construction Industry Licensing Board for multiple violations with each disciplinary action involving either a license revocation, suspension, probation, or an administrative fine exceeding \$1,000.00.
- C. Further, F.S. § 489.131(3)(f), provides that local construction regulation boards may issue a permit with conditions to any contractor who has had disciplinary action imposed by the Construction Industry Licensing Board or the Department of Business and Professional regulation, other than the issuance of a citation or letter of guidance.