



**CONDITIONS BEYOND CONTRACTOR'S CONTROL** Umbare Pools, Inc. ("Contractor") is not responsible, and Customer (hereinafter the terms "Customer" and "Owner" are used interchangeably) waives all claims, for damage or delays which results from natural causes or acts of God, rain, storms, flooding, ground swells, terrain drainage, root drainage, erosion of earth or hill, undermining of structures caused by rain flooding, washouts, or the like, nor is Contractor responsible for flotation or caving of pool due to external water, weather during construction or thereafter. If it is required to redesign and/or relocate your pool and/or deck in order to maintain city and/or state setback requirements. Contractor will do so at their discretion with no redesign fee to Owner as long as additional costs are not incurred. Additional costs will be Owner's responsibility. Redesign and/or pool relocation is not a condition of this contract. It is the sole responsibility of the Owner to secure all materials and/or equipment delivered and/or installed.

**ACCESS:** Owner expressly agrees to provide adequate and unrestricted access to the pool site at all times, as required for accomplishment of work under this contract by the Contractor. Owner shall be responsible to confine livestock, animals and pets as may be required, to prevent interference with construction and/or restriction of access to pool site. Owner expressly agrees to obtain permission and shall be solely responsible for repair of any damage. If access across another's property is required by the Contractor, Owner agrees to pay for the removal and/or replacement of any items obstructing required access to pool site in addition to the contract price herein stated. It is solely the responsibility of the owner to obtain access through a neighbor's property if required. Contractor is not responsible for damage to fencing, sod, sprinklers, landscaping or other items impeding or in the path of Contractor's access. Owner is solely responsible for all repairs and replacement of sprinklers, sod, landscaping, curbing, driveways, bushes, trees, or any appurtenance or obstacle anywhere on the owner's or neighbor's property.

**UTILITIES:** Owner agrees to provide adequate water and electrical service, as will be required for construction, filling and operation of swimming pool. Gas supply fuel line connections to equipment requiring bottled or natural gas for operation shall be the responsibility of the Owner. If generators or water supply must be supplied by Contractor, owner will assume all charges for this service.

**ADDITIONAL ITEMS:** Items that are not specifically check marked/specified and/or mentioned on the front of this contract are not included and you have not been charged for them. Any and all additional items will result in additional costs to Owner/Customer. All sales are final and deposits are non-refundable.

**KNOWN AND UNKNOWN OBSTRUCTIONS:** No planting or sodding shall be done by Contractor. Any trees or other planting to be saved shall be removed, cared for, and replanted by the Owner. This contract does not include the cost for removal, replacement or relocation of any objects, trees, fences, lines, cables or utilities in the pool, deck or access areas all of which are the responsibility of the Owner. Owner expressly agrees that, the Contractor shall not be responsible for damage to any seawalls or tiebacks, sidewalks, trees, shrubbery, fences, driveways, sprinkler systems, septic tanks, drain fields, sewer lines, water lines, gas lines, wells, underground fuel tanks, telephone lines, electrical lines, TV cables, or any underground utility, which are all the responsibility of the Owner.

**UNDERGROUND CONDITIONS:** It is expressly understood and agreed that the parties have established no contingent allowance for the elimination of muck and/or water, which cannot be found prior to excavation, but which must be eliminated prior to construction. Upon discovery, Contractor shall notify Owner, and within seventy-two (72) hours thereafter, Owner shall have either caused the completed elimination of the conditions in a manner satisfactory to Contractor, and at Owner's expense, or call upon Contractor to eliminate same, again, at Owner's expense. If so requested, or if Owner has not otherwise completed the work as required, Contractor shall complete the work, as the case may be. In the event that the Contractor performs or completes the underground de-watering or de-mucking, Owner shall pay Contractor for same at Contractor's normal rates within five (5) days from the time work has begun. There are no rock formations, hard pan conditions, subterranean water, boulders, cesspools, septic tanks, gas line, water pipes, sewer pipes, drain pipes, irrigation pipes, underground electrical conduit or other underground obstructions, which would require blasting, jackhammer work, larger than normal excavation equipment or which would otherwise require work and give rise to costs in excess of what would normally be required. Normal excavation time is six (6) hours within pool site. **BACKFILLING WHEN DECK BY OTHERS:** Removal of forms, backfilling and pre-grade site work shall be the responsibility of the Owner. If decking has not been included in this contract, Owner shall be solely responsible for any damage resulting from backfilling, if rock is used for backfilling, or if structural damage occurs during the backfilling process. In addition, all permits, electrical bonding, inspections, required fill, grading and compaction, and pest treatments for the deck work is the owner's responsibility if the deck is not being done by Contractor

**CHANGE ORDERS:** Both parties agree that the contract completion date(s), if any, shall become null void upon the request of a change order. All addenda and change order costs are due in full upon signing by the Owner for the change order or addenda.

**POOL SITE:** The term pool site means all areas required plus an additional three (3) feet. Unless specified on the face of the contract herein, none of the following is Contractor's responsibility; grading and drainage beyond pool site, decking, retaining walls and fencing. If Owner's project is a renovation of an existing pool, then no grading or drainage work will be done by Contractor unless otherwise specified on the front of this contract.

**RESPONSIBILITIES OF CONTRACTOR, CONDITIONS AND LIMITATIONS:** The exact completion date is unknown; however, Contractor will perform the work hereunder within a reasonable time and in a workmanlike manner. Contractor shall not be responsible for delay or failure to perform work when such delay or failure is due to: Acts of God, pandemics, epidemics, COVID-19 or similar viruses/illnesses or delays caused by Customer or any person other than Contractor, delays in obtaining materials, equipment, labor or the transportation of materials or equipment, inclement weather, war, riot or other civic disturbance, labor disputes, government prohibition, non-issuance of all required permits affecting the swimming pool and adjacent areas, unavailability of materials or equipment, failure of Customer to perform any obligations to be performed by Customer hereunder, or other reason beyond Contractor's control. Contractor reserves the right if necessary to subcontract any or all part of the work contemplated herein. Contractor shall be granted an extension of at least five (5) additional calendar days for each calendar day of delay caused by any or all of the events referred to in this paragraph. All completion time agreements, if any, will be void if Owner fails to make progress payments within 24 hours of payment becoming due. All completion time quotes or agreements, if any, will be void if a change order or addenda is executed.

**WARRANTIES:** Unless otherwise provided: **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** All warranties/guarantees provided by Contractor, if any, shall be deemed null and void if Customer fails to strictly adhere to the payment terms contained in the Agreement. All warranties and guarantees, if any, provided under the Agreement are solely for the original Customer and are non-transferable, unless otherwise agreed to by Customer and Contractor in writing. Any express warranty provided, if any, by Contractor is the sole and exclusive remedy for alleged construction defects, in lieu of all other remedies, implied or statutory. Warranties to be issued upon completion and full payment of this Agreement. If there is a breach in the applicable Manufacturer's warranty according to the stated terms and conditions of the warranty supplied, at that moment, this would simultaneously void Contractor's warranty and all of Contractor's responsibility and liability to correct, supplement, rectify, fix, etc. any and all issue(s) as a result of such breach. No warranties for repair work.

**ARBITRATION/DISPUTE RESOLUTION:** This Agreement shall be governed by the laws of the State of Florida, and the venue of any action brought to enforce the provisions of this Agreement shall be Manatee County, Florida, or the United States District Court for the Middle District of Florida, for a federal district court proceeding. Any action brought to enforce the provisions of this Agreement may, at Contractor's sole discretion, be brought in the appropriate court in the venue previously identified, or through arbitration proceedings subject to the rules and regulations of the American Arbitration Association in Manatee County, Florida.

**CREDIT CARD CHARGES:** All credit card charges pursuant to contract are final and nonrefundable; Owner/Customer agrees all work has been completed to Owner's satisfaction when paying by credit card, and waives the right to dispute any charges. Credit cards are not accepted for payments beyond the initial deposit. Owner agrees that their contract includes a 3% discount for paying by cash or check. If any payment is made or accepted via credit, the 3% discount will be waived and will no longer apply. If any credit card payment is disputed or declined, the owner forfeits all warranty coverage and further penalties, liens, or surcharges may apply.

**DIMENSIONS:** All pool dimensions are approximate within reasonable tolerances either way. The parties agree that Contractor shall have substantially completed performance in a good and workmanlike manner if all final surface dimensions are within five (5%) percent of the specified surface dimensions, and all final vertical dimensions are within five (5%) percent of the specified vertical dimension. Customer and Contractor agree that it is difficult and impractical to compute the actual damages in the events of deviation in pool dimensions. Buyer and Contractor agree that liquidated damages for errors by Contractor shall be computed as follows: three (\$3.00) per square foot multiplied by the difference between the water surface and the square foot area of the pool specified herein, (less the five (5%) percent variance) and the actual water surface of the pool as constructed, twenty (\$20.00) dollars an inch for variance of more than five (5) percent of the vertical dimension of the pool specified herein (less the five (5) percent variance). However, in the event the specified pool depth is not attainable with normal excavation equipment, due to underground water, sand, rock, or other unusual subsurface condition, beyond Contractor's control, then Contractor and Customer shall agree upon attained depth with no penalty to Contractor.

**RESPONSIBILITIES OF OWNER:** If Owner authorizes access to adjacent properties for Contractor's use during construction. Owner is required to obtain permission from owners of adjacent properties for such use, and Owner agrees to be responsible and to hold Contractor harmless from any risks thereof. Owner is required at his expense to do all construction and other acts necessary, and to meet all conditions necessary, to allow Contractor to complete the work as provided in the contract. Owner to furnish all soil reports at Owner's expense. Owner has directed the location of the pool and other improvements and equipment as shown on the approved pool drawing(s) and where such location (or other location approved or directed by Owner) is used there shall be no liability on the part of Contractor for incorrect location of such pool, other improvements and equipment, or for encroachment or interface thereby upon

the property, easements or rights of any third parties. Owner shall furnish any necessary zoning, variance and association permits or fees. Drainage beyond the pool site is to be provided by Owner and is to meet local, state and federal requirements. No grading, other than pool site preparation, will be done by Contractor unless specified on the first page of this contract. Owner agrees to make payment called for by this contract on time, even though repairs under this contract may have been scheduled but not yet performed. All payments received later than four (4) hours from the time due extend the completion date hereunder an additional three (3) days for each late day. If completion of swimming pool is delayed by causes under Owner's control for a period of more than 30 days or if payments become more than 30 days delinquent, all incentives will no longer apply and any such incentive will be added back to the contract balance. Owner agrees to pay the increased labor, material, and equipment costs resulting from Owner's delay. Contractor retains title to all pool equipment until contract price and any extras are paid for in full. Approval of work by an inspecting government agency shall be deemed to be completion of that work in a workmanlike manner. The pool is deemed complete when plastered. Owner is responsible for bringing any existing or new fences up to code as a pool barrier. It is the Owner's sole responsibility to ensure all safety items are in place, operational, and up to code at all times. This includes after construction is complete, and after final inspection has taken place. If equipment location or configuration must be altered to comply with homeowner association regulations, Owner agrees this will be completed at an additional cost.

**MATERIALS SELECTION:** The finish of materials such as tile, brick and the like may vary from sample to sample as to color, texture and other features. However, materials are incorporated subject to availability and Contractor may make reasonable substitutions at its discretion. Owners obligations hereunder are not reduced by virtue of any such variations or any such substitutions. Contractor is not responsible for variations between sample colors and color of provided material. Pitting and variation in texture and color of travertine is natural and not considered a defect and is not warranted.

**WORK NOT INCLUDED IN THIS CONTRACT:** The following items have not been charged for and shall be sole responsibility of the Owner if required or requested subsequent to the date of this agreement. Corrections of existing building code violations, electrical service increase, electrical service relocation, soil load bearing testing, pilings, grade beams, retaining walls, railings, barriers, changes to existing terrain grading, applications made to municipalities, associations, boards, committees, and the like, as may be required for approval of construction of the swimming pool described herein Owner agrees to furnish or pay cost for an engineered survey (plot plan) and soil testing of the subject property. Federal, state, and or local laws and regulations may govern the use of specified safety equipment, including fences, child proof fences, alarm systems on doors and windows or in the pool, safety covers and the like. Compliance with these regulations is Customer's responsibility, not Contractor. However, we cannot and will not apply the final interior finish of the pool and that work will not be scheduled or completed until you certify in writing to us that you have satisfied the applicable legal requirements for these devices, unless specified. Contractor is not grading outside pool and deck location. If any items are not written on the front of this contract, they are not included. Owner will be responsible for costs to add any items. If Owner must complete any of these items to progress with the project, it is not grounds for cancellation, renegotiations of agreement or delays in payment. Customer agrees if any of these items are required, Customer will proceed with the project as agreed to and complete any items required to proceed. Any surveying, whether required before, during or after construction is the sole responsibility of the Owner. Any retaining walls or footers, unless otherwise specified, will not have a stucco or painted finish. This is considered cosmetic and is to be applied by Owner.

**PROGRESS PAYMENT AND INTEREST:** The failure to pay the full amount of progress payment or other sum stipulated to be paid hereunder when the same is due shall cause the unpaid sum to accrue interest at the annual rate of eighteen (18%) percent per annum (1.5% per month) or the maximum rate at which is permitted by law. Unless otherwise provided, each payment hereunder shall be made no later than 24 hours after invoicing. Final payment is to be made prior to the interior plaster finish. Deck layout is defined as the forming for the pouring of the footers or deck. If no footers or concrete deck are to be completed, this payment is due upon installation of pool equipment or delivery of deck materials, whichever happens first. Cancellation of any payment(s) will void any warranty coverage.

**COSTS AND ATTORNEY'S FEES:** In the event of any litigation or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, including fees and costs incurred pre-suit or pre-arbitration, including collection activities, and during judicial proceedings through and including the trial or final hearing, on appeal, to establish entitlement to fees hereunder and the reasonable amount, and in any post-judgment collection proceedings.

**WAIVER OF JURY TRIAL: EACH PARTY AGREES THAT AS A MATERIAL PART OF THE CONSIDERATION HEREUNDER AND AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT, EACH PARTY HEREBY WAIVES THE RIGHT TO A JURY TRIAL.**

**INDEMNIFICATION:** For good and valuable consideration, which Customer hereby acknowledges receipt, Customer shall defend, indemnify, and hold the Contractor, their officers, directors, agents, and employees (individually the "indemnitee," collectively, the "indemnitees") harmless from and against any and all claims, demands, losses, damages, liabilities, expenses, or costs, including reasonable attorney's fees, costs and expenses of investigation, penalties, interest and amounts paid in settlement (collectively "Losses") incurred or to be incurred by Contractor, arising out of, relating to, or resulting from any negligence, personal injury, wrongful death or property damages which is caused or occasioned by the acts of Customer; including claims for those damages caused partly or wholly as a result of the negligence or wrongful acts of any of the indemnitees if the damages claimed relate to or arise out of, or are connected with the Agreement or the actions necessary to perform same. Customer's duty under this provision is limited to a total of ONE MILLION AND NO/100 (\$1,000,000) DOLLARS for all damages, including costs and attorney's fees per occurrence for any single claim or suit. The parties further agree that this provision satisfies the requirements of Florida Statute §725.06 so that the indemnification provisions are valid and binding upon Customer. To the fullest extent permitted by law, in addition to the express duties to indemnify, defend, protect and hold harmless Contractor when there is any causal connection between Customer and any injury, loss, damage, death or property damage, Customer expressly undertakes a duty to defend Contractor as a separate duty, independent of and broader than the duties to indemnify, protect and hold harmless. The duty to defend agreed to by Customer herein expressly includes all costs of litigation, attorneys' fees, expert's and consultant's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of Contractor is maintained by Contractor or assumed by Customer as long as the claims made could be causally connected to Customer (Claims) as reasonably determined by Contractor. Customer's duty to defend Contractor is as follows: (1) Contractor, in its sole discretion and at its sole option, may defend any or all of the Claims (at Customer's sole expense) or tender to Customer the defense of any or all of the Claims. Upon such tender by Contractor to Customer, Customer shall be bound and obligated to assume the defense of Contractor in the Claims, including the settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards or expenses resulting from or arising out of the Claims without reimbursement from Contractor. (2) It is understood and agreed by Customer that if Contractor tenders the defense of a Claim to Customer and Customer fails or neglects to assume the defense thereof, Contractor may defend, compromise and/or settle any such suit or action, and Customer shall be bound and obligated to reimburse Contractor for the amount expended by it in settling or compromising any such claim, or in the amount expended by Contractor in paying any judgment rendered therein, together with all reasonable attorneys' fees and costs of litigation incurred by Contractor by reason of its defense, settlement or compromise of such Claims.

**SERVICE:** Routine maintenance, including proper chemical balance, conditioning of pool water and periodic cleaning of equipment, as required, are all the responsibility of the Owner. Requests for unnecessary warranty service will be charged for at the rate of seventy-five (\$75.00) per hour, with a two (2) hour minimum including travel time and warranty deductible.

**MARKETING:** By entering into this agreement Customer agrees to allow Contractor to use the pool, Customer's property, and likeness, in any and all marketing campaigns. This includes but is not limited to brochures, catalogs, web sites, video, social media, advertisements etc. Customer shall allow Contractor to post its sign and advertise at the project location during construction.

**Customer agrees by signing this contract, client is entering into a legally binding contract, and Customer has read, understands and agrees to this contract and all terms and conditions of the contract.**

**STATUTORY WARNINGS**

**LIEN LAW:** ACCORDING TO FLORIDA’S CONSTRUCTION LIEN LAW (SECTIONS 713.001 - 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A “NOTICE TO OWNER.” FLORIDA’S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

**CHAPTER 558 NOTICE OF CLAIM:** ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

**RADON GAS WARNING:** RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY HEALTH DEPARTMENT.

**FLORIDA HOMEOWNERS’ CONSTRUCTION RECOVERY FUND:** PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS’ CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS: (850) 487-1395, 2601 BLAIRSTONE ROAD, TALLAHASSEE, FL 32399-1039.

**SWIMMING POOL DISCLOSURE.** PURSUANT TO §515, FLORIDA STATUTES: CUSTOMER ACKNOWLEDGES RECEIPT OF A COMPLETE COPY OF §515, FLORIDA STATUTES, KNOWN AS THE PRESTON DE IBERN/MCKENZIE MERRIAM RESIDENTIAL SWIMMING POOL SAFETY ACT, AND A COPY OF THE PUBLICATION PRODUCED BY THE FLORIDA DEPARTMENT OF HEALTH THAT PROVIDES INFORMATION IN DROWNING PREVENTION AND THE RESPONSIBILITIES OF POOL OWNERSHIP. BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THE AFOREMENTIONED STATUTORY LANGUAGE AND PUBLICATION(S).

**CUSTOMER(S) SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

\_\_\_\_\_

**DATE:** \_\_\_\_\_

**§515, FLORIDA STATUTES**

**CHAPTER 515**

**RESIDENTIAL SWIMMING POOL SAFETY ACT**

515.21 Short title.

515.23 Legislative findings and intent.

515.25 Definitions.

515.27 Residential swimming pool safety feature options; penalties.

515.29 Residential swimming pool barrier requirements.

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515.37 Exemptions.

**515.21 Short title.**—This chapter may be cited as the “Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act.”

**History.**—s. 1, ch. 2000-143.

**515.23 Legislative findings and intent.**—The Legislature finds that drowning is the leading cause of death of young children in this state and is also a significant cause of death for medically frail elderly persons in this state, that constant adult supervision is the key to accomplishing the objective of reducing the number of submersion incidents, and that when lapses in supervision occur a pool safety feature designed to deny, delay, or detect unsupervised entry to the swimming pool, spa, or hot tub will reduce drowning and near-drowning incidents. In addition to the incalculable human cost of these submersion incidents, the health care costs, loss of lifetime productivity, and legal and administrative expenses associated with drownings of young children and medically frail elderly persons in this state each year and the lifetime costs for the care and treatment of young children who have suffered brain disability due to near-drowning incidents each year are enormous. Therefore, it is the intent of the Legislature that all new residential swimming pools, spas, and hot tubs be equipped with at least one pool safety feature as specified in this chapter. It is also the intent of the Legislature that the Department of Health be responsible for producing its own or adopting a nationally recognized publication that provides the public with information on drowning prevention and the responsibilities of pool ownership and also for developing its own or adopting a nationally recognized drowning prevention education program for the public and for persons violating the pool safety requirements of this chapter.

**History.**—s. 1, ch. 2000-143.

**515.25 Definitions.**—As used in this chapter, the term:

(1) “Approved safety pool cover” means a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM) in compliance with standard F1346-91.

(2) “Barrier” means a fence, dwelling wall, or nondwelling wall, or any combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool, especially access from the residence or from the yard outside the barrier.

(3) “Department” means the Department of Health.

(4) “Exit alarm” means a device that makes audible, continuous alarm sounds when any door or window which permits access from the residence to any pool area that is without an intervening enclosure is opened or left ajar.

(5) “Indoor swimming pool” means a swimming pool that is totally contained within a building and surrounded on all four sides by walls of or within the building.

(6) “Medically frail elderly person” means any person who is at least 65 years of age and has a medical problem that affects balance, vision, or judgment, including, but not limited to, a heart condition, diabetes, or Alzheimer’s disease or any related disorder.

(7) “Outdoor swimming pool” means any swimming pool that is not an indoor swimming pool.

(8) “Portable spa” means a nonpermanent structure intended for recreational bathing, in which all controls and water-heating and water-circulating equipment are an integral part of the product and which is cord-connected and not permanently electrically wired.

(9) “Public swimming pool” means a swimming pool, as defined in s. 514.011(2), which is operated, with or without charge, for the use of the general public; however, the term does not include a swimming pool located on the grounds of a private residence.

(10) “Residential” means situated on the premises of a detached one-family or two-family dwelling or a one-family townhouse not more than three stories high.

(11) “Swimming pool” means any structure, located in a residential area, that is intended for swimming or recreational bathing and contains water over 24 inches deep, including, but not limited to, in-ground, aboveground, and on-ground swimming pools; hot tubs; and nonportable spas.

(12) “Young child” means any person under the age of 6 years.

**History.**—s. 1, ch. 2000-143.

**515.27 Residential swimming pool safety feature options; penalties.**—

(1) In order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet at least one of the following requirements relating to pool safety features:

(a) The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirements of s. 515.29;

(b) The pool must be equipped with an approved safety pool cover;

(c) All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet;

(d) All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor; or

(e) A swimming pool alarm that, when placed in a pool, sounds an alarm upon detection of an accidental or unauthorized entrance into the water. Such pool alarm must meet and be independently certified to ASTM Standard F2208, titled “Standard Safety Specification for Residential Pool Alarms,” which includes surface motion, pressure, sonar, laser, and infrared alarms. For purposes of this paragraph, the term “swimming pool alarm” does not include any swimming protection alarm device designed for individual use, such as an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water.

(2) A person who fails to equip a new residential swimming pool with at least one pool safety feature as required in subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, except that no penalty shall be imposed if the person, within 45 days after arrest or issuance of a

summons or a notice to appear, has equipped the pool with at least one safety feature as required in subsection (1) and has attended a drowning prevention education program established by s. 515.31. However, the requirement of attending a drowning prevention education program is waived if such program is not offered within 45 days after issuance of the citation.

**History.**—s. 1, ch. 2000-143; s. 14, ch. 2016-129.

**515.29 Residential swimming pool barrier requirements.**—

(1) A residential swimming pool barrier must have all of the following characteristics:

(a) The barrier must be at least 4 feet high on the outside.

(b) The barrier may not have any gaps, openings, indentations, protrusions, or structural components that could allow a young child to crawl under, squeeze through, or climb over the barrier.

(c) The barrier must be placed around the perimeter of the pool and must be separate from any fence, wall, or other enclosure surrounding the yard unless the fence, wall, or other enclosure or portion thereof is situated on the perimeter of the pool, is being used as part of the barrier, and meets the barrier requirements of this section.

(d) The barrier must be placed sufficiently away from the water's edge to prevent a young child or medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

(2) The structure of an aboveground swimming pool may be used as its barrier or the barrier for such a pool may be mounted on top of its structure; however, such structure or separately mounted barrier must meet all barrier requirements of this section. In addition, any ladder or steps that are the means of access to an aboveground pool must be capable of being secured, locked, or removed to prevent access or must be surrounded by a barrier that meets the requirements of this section.

(3) Gates that provide access to swimming pools must open outward away from the pool and be self-closing and equipped with a self-latching locking device, the release mechanism of which must be located on the pool side of the gate and so placed that it cannot be reached by a young child over the top or through any opening or gap.

(4) A wall of a dwelling may serve as part of the barrier if it does not contain any door or window that opens to provide access to the swimming pool.

(5) A barrier may not be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.

**History.**—s. 1, ch. 2000-143.

**515.31 Drowning prevention education program; public information publication.**—

(1) The department shall develop a drowning prevention education program, which shall be made available to the public at the state and local levels and which shall be required as set forth in s. 515.27(2) for persons in violation of the pool safety requirements of this chapter. The department may charge a fee, not to exceed \$100, for attendance at such a program. The drowning prevention education program shall be funded using fee proceeds, state funds appropriated for such purpose, and grants. The department, in lieu of developing its own program, may adopt a nationally recognized drowning prevention education program to be approved for use in local safety education programs, as provided in rule of the department.

(2) The department shall also produce, for distribution to the public at no charge, a publication that provides information on drowning prevention and the responsibilities of pool ownership. The department, in lieu of

developing its own publication, may adopt a nationally recognized drowning prevention and responsibilities of pool ownership publication, as provided in rule of the department.

**History.**—s. 1, ch. 2000-143.

**515.33 Information required to be furnished to buyers.**—A licensed pool contractor, on entering into an agreement with a buyer to build a residential swimming pool, or a licensed home builder or developer, on entering into an agreement with a buyer to build a house that includes a residential swimming pool, must give the buyer a document containing the requirements of this chapter and a copy of the publication produced by the department under s. 515.31 that provides information on drowning prevention and the responsibilities of pool ownership.

**History.**—s. 1, ch. 2000-143.

**515.35 Rulemaking authority.**—The department shall adopt rules pursuant to the Administrative Procedure Act establishing the fees required to attend drowning prevention education programs and setting forth the information required under this chapter to be provided by licensed pool contractors and licensed home builders or developers.

**History.**—s. 1, ch. 2000-143.

**515.37 Exemptions.**—This chapter does not apply to:

- (1) Any system of sumps, irrigation canals, or irrigation flood control or drainage works constructed or operated for the purpose of storing, delivering, distributing, or conveying water.
- (2) Stock ponds, storage tanks, livestock operations, livestock watering troughs, or other structures used in normal agricultural practices.
- (3) Public swimming pools.
- (4) Any political subdivision that has adopted or adopts a residential pool safety ordinance, provided the ordinance is equal to or more stringent than the provisions of this chapter.
- (5) Any portable spa with a safety cover that complies with ASTM F1346-91 (Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs).
- (6) Small, temporary pools without motors, which are commonly referred to or known as “kiddie pools.”

**History.**—s. 1, ch. 2000-143.