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# STEWART LAW

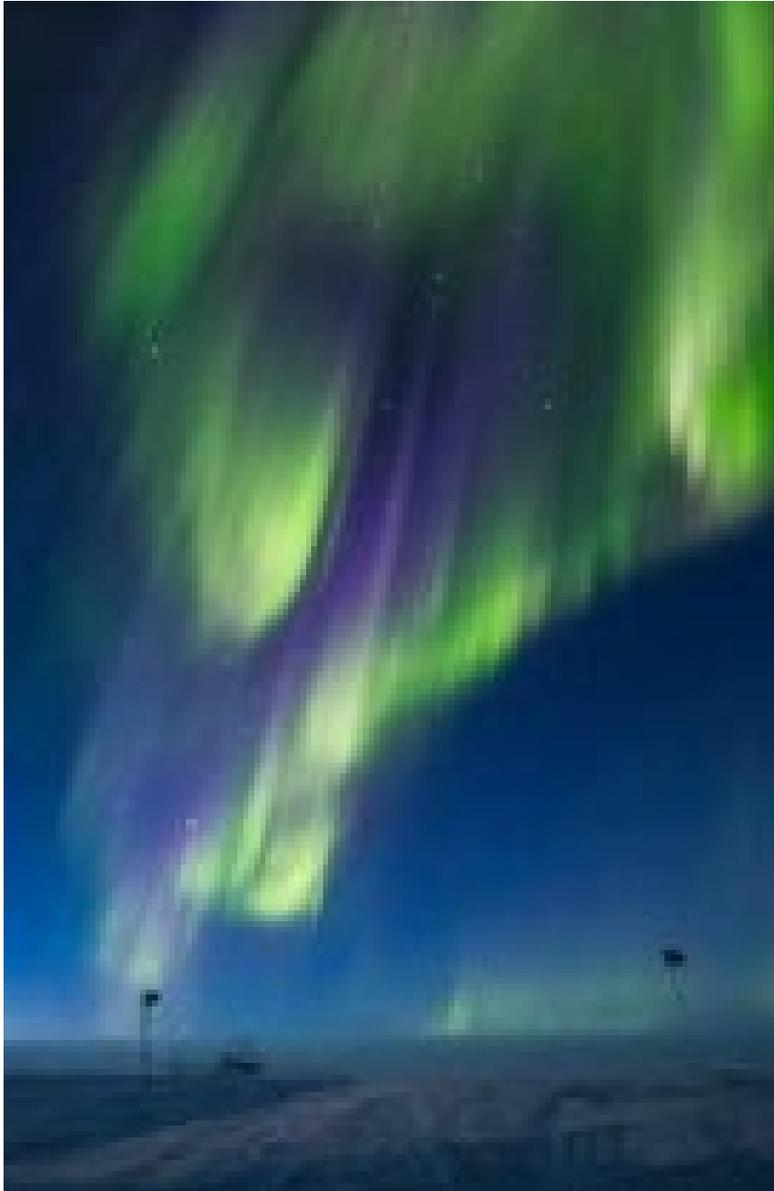
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EDWARD J. KINBERG, ESQ.

BOARD CERTIFIED CONSTRUCTION LAW

FELLOW, NATIONAL CONTRACT MANAGEMENT  
ASSOCIATION

FEBRUARY 28, 2020



# GREEN SKIES THE SOUTH POLE-2017



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# PURPOSE

Help you protect your home:

- Understanding Contractor Licensing
- Understanding Basic Construction Contracting
- Understanding Worker's Comp
- Understanding Basic Lien Law
- Understanding Basic Insurance Law

**The information you obtain in this class is not intended to be, nor should be taken as, legal advice. You should consult an attorney for individual advice regarding your own situation**



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# FLORIDA STATUTES

- Florida Statute 489: Construction Contracting
- Florida Statute 553: Construction Standards
- Florida Statute 713: Construction Liens
- Florida Statute 558: Construction Defects
- Florida Statute 489.140: Homeowners' Construction Recovery Fund



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# LICENSING WEB SITES & PHONE NUMBERS

## Florida Construction Industry Licensing Board:

- [www.state.fl.us/dbpr/pro/cilb/cilb\\_index.shtml](http://www.state.fl.us/dbpr/pro/cilb/cilb_index.shtml)
- (850) 487-1395

## Brevard County Contractor Licensing:

- <http://www.brevardcounty.us/licensing/home/>
- (321) 633-2058



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# CONTRACTOR LICENSING

- State certified: Authorized to provide a specified service anywhere in the State; disciplined by State.
- State registered: Authorized to provide a specified service in a specific county, disciplined by local government; ratified by State.
- County certification means being licensed to engage in a specific trade within the county; disciplined by County.



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# STATE CERTIFIED AND REGISTERED CONTRACTORS

## Division I

- General Contractor - anything
- Building Contractor- up to three stories
- Residential Contractor- only homes, no more than two stories and three family residences



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# STATE CERTIFIED AND REGISTERED CONTRACTORS (CONTINUED)

## Division 2

- Roofing Contractor
- Class A & B Air Conditioning
- Class C Air Conditioning Service
- Mechanical
- Electrical Contractor
- Alarm Contractor



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# STATE CERTIFIED AND REGISTERED CONTRACTORS (CONTINUED)

- Residential Pool/Spa Contractor
- Swimming Pool/Spa Servicing Contractor
- Plumbing Contractor
- Solar Contractor
- Master Septic Tank Contractor
- Septic Tank Service Contractor



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# COUNTY LICENSED CONTRACTORS

Brevard County: Certificate of Competency Required:

- Alarm I and II Contractor
- Aluminum Contractor
- Drywall Contractor
- Electrical Sign Contractor
- Excavating Contractor
- Floor Covering Contractor
- Floor Covering With Tile, Marble and Terrazzo



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# COUNTY LICENSED CONTRACTORS (CONTINUED)

Brevard County: Certificate of Competency Required:

- Framing
- Irrigation Contractor
- limited Energy Systems Contractor
- Marine Contractor
- Painting Contractor
- Storm Shutter Contractor
- Swimming Pool Finishing Contractor
- Window and Door Contractor



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# CONTRACTOR LICENSING

## Contractors as Individuals

- No Exemptions to Worker's Comp.
- Must have license in own name

## Contractors as Companies

- Must be qualified business
- May have up to 3 owners exemptions to Worker's Comp.



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# CONTRACTOR LICENSING (CONTINUED)

## Exceptions to Licensing Requirements

- Bona Fide Employees
- Owner/Builders
  - No more than two family house for own use on own property
  - Must live on property for one year after construction
  - Must do work yourself, use bona fide employees or hire subcontractors



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# CONTRACTOR LICENSING (CONTINUED)

## Exceptions to Licensing Requirements (Continued)

- Casual work (under \$1,000.00 but does not apply to work for disabled, work involving toxic chemicals, structural components or life/safety matters.)
- Habitat for Humanity provided work is supervised by someone with construction experience.
- Really Big Businesses (over 20M and have a licensed contractor on staff.)



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# CONTRACTOR LICENSING (CONTINUED)

## Licensed, Bonded and Insured

- What it sounds like.
- What it really means.



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# CONTRACTOR LICENSING (CONTINUED)

## Contractor Requirements

- License number on business card
- License number on estimate/proposal form
- License number on vehicle advertising, but no requirement to have sign on vehicle.



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# QUESTIONS TO ASK YOUR BUILDING / REMODELER

- What is the legal name of your business?
- Do you have a Florida contractor's license?
- Note: All marketing material, i.e. business proposal forms and signs on vehicles must have license number. While no sign is required for vehicles, If there is a sign, it must have the license number.
- What type?
- If you do not have a license, why not?
- Is your business qualified by Florida Construction Industry Licensing Board to provide the services you are offering?



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# QUESTIONS TO ASK YOUR BUILDING / REMODELER (CONTINUED)

- Can I have a copy of your license and/or qualification to do business?
- Has the Florida Construction Industry Licensing Board ever taken disciplinary action against you? If so, what happened?
- Do you have worker's compensation for your self and each of your employees?
  - If so, can I have a copy of your certificate?
  - If not, can I have a copy of your exemption? ·
  - Do you withhold taxes and FICA from your employees' pay?



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## QUESTIONS TO ASK YOUR BUILDING / REMODELER (CONTINUED)

- What kinds of insurance other than worker's comp do you carry? Can I have a copy of the declaration page?
- Do you use subcontractors? If so, what do you do to ensure each of your subcontractors are properly licensed and have worker's compensation or an exemption for each employee?
- How can I confirm your subcontractors and/or suppliers are being paid timely?



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# QUESTIONS TO ASK YOUR BUILDING / REMODELER (CONTINUED)

- Will I get a list of subcontractors and suppliers when you start the job?
- Will you provide me a partial release of lien from each subcontractor and supplier before I issue payment for each draw?



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# QUESTIONS TO ASK YOUR BUILDING / REMODELER (CONTINUED)

- Can you show me where in your contract is the required lien law notification? (note: must be in 12 point, capitalized, bold face type on the first page or a separate page which you must sign and date.)
- Can you show me where in your contract you include the Florida Homeowner's Construction Recovery Fund Notice? (Division I Contractors only)
- Does your contract include the Construction Defect Notice provided for by Florida Statute?



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# QUESTIONS TO ASK YOUR BUILDING / REMODELER (CONTINUED)

## General Rules:

- All changes in writing
- Written confirmation of all discussions
- Monitor progress
- Understand what is to be built
- The 10% Rule



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# CONSTRUCTION LIENS

GENERAL PURPOSE OF LIEN LAW



# CONSTRUCTION LIENS

There can be no more confusing statute in Florida than the one on liens under Chapter 713. The frequent **impracticability** of its application in the field coupled with **ill conceived**, confusing, patchwork amendments topped off by **conflicting** appellate decisions, have all combined to make **life miserable** for judges, **lawyers**, legislators and vitally affected construction and lending industries.

Judge Gavin IC. Letts (1978)



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# CONSTRUCTION LIENS (CONTINUED)

- What is a Lien?
- Who can Lien your property?
- Those with Privity
- Those without Privity
- How do you know if a lien has been placed against a property?



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# CONSTRUCTION LIENS (CONTINUED)

- Do I need a building permit?
- What is a Notice of Commencement (NOC)?
- How long is a NOC effective?
  - The 90 day rule
  - The 1 year rule



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# CONSTRUCTION LIENS (CONTINUED)

- Who is responsible for signing, completing and recording a NOC?
- How do you record a NOC?
- Do you also have to post a NOC at the site?



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# CONSTRUCTION LIENS (CONTINUED)

- What is a Notice to Owner?
  - When does it have to be served?
  - How is it served?
  - How long does it last?



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# CONSTRUCTION LIENS (CONTINUED)

- What is a proper payment?
  - NOC properly recorded
  - Building Permit issued
  - Lienors serving notice to owner
  - NOC has not been terminated
  - NOC has not expired



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# CONSTRUCTION LIENS (CONTINUED)

- What is a partial release of lien?
- What is a final release of lien?
- What is a Contractor's Final Payment Affidavit?



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# CONSTRUCTION LIENS (CONTINUED)

- What is a demand for a sworn statement of account?
  - Do I have to use a specific form?
  - How do I serve the demand?
  - Does the contractor have to reply to my demand?



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# CONSTRUCTION LIENS (CONTINUED)

- What is a demand for an "account designation"?
- Is my property protected against a lien if my husband/wife did not sign the construction contract?
- Can a supplier repossess materials?



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# CONSTRUCTION LIENS (CONTINUED)

- How do I know if there is a lien against my property?
- How long does a lien last?
- Can I shorten the period?
- How can I get a lien removed?



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# CONSTRUCTION LIENS (CONTINUED)

- What is a fraudulent lien?
- Penalty for misapplication of funds.
- If I have a construction loan, is my lender responsible for ensuring proper payments?



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# INSURANCE BASICS

- Read the claim provisions of your policy.
- The "One Deductible" rule
- Duty to mitigate
- Document your claim



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# INSURANCE BASICS (CONTINUED)

- Additional living expenses
- Keep the pressure up
- Cashing the check



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# INSURANCE BASICS (CONTINUED)

- Make sure you have adequate coverage- particularly condos
- Lots of pictures
- Read everything; question everything
- Department of Insurance Helpline
  - 1-800-343-2762



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# INSURANCE BASICS (CONTINUED)

- Dispute Resolution
  - Mediation: Florida's Hurricane Mediation Program 800 227 8676 (800 22 Storm)
- Appraisal
- Litigation



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# INSURANCE BASICS (CONTINUED)

- Unfair Claim Settlement Practices
- Use of a Public Adjuster (the State of Emergency Rule)



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# WRAP UP

- Understand your rights and obligations
- Ask Questions
- Read Documents
- Get Help



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