

By Senator Albritton

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1 A bill to be entitled
2 An act relating to reduction of construction
3 contracting fraud; amending s. 489.126, F.S.; deleting
4 an intent requirement for contractor fraud offenses;
5 revising elements of offenses; providing legislative
6 findings; revising criminal penalties for contractor
7 fraud offenses; amending s. 501.1375, F.S.; revising
8 the maximum amount of a prospective buyer's deposit
9 for a residential dwelling which must be put into
10 escrow; providing that a prospective buyer of a
11 residential dwelling unit may not waive the right to
12 have deposit funds placed in escrow; amending s.
13 713.345, F.S.; requiring escrow of certain payments
14 received for the improvement of real property;
15 providing criminal penalties; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsections (3) and (4) of section 489.126,
21 Florida Statutes, are amended, and subsections (5) and (6) are
22 added to that section, to read:

23 489.126 Moneys received by contractors.—

24 (3) (a) A contractor who receives money for repair,
25 restoration, addition, improvement, or construction of
26 residential real property in excess of the value of the work
27 performed shall not, ~~with intent to defraud the owner,~~ fail or
28 refuse to perform any work for any 90-day period.

29 (b) Proof that a contractor received money for the repair,

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30 restoration, addition, improvement, or construction of
31 residential real property and that the amount received exceeds
32 the value of the work performed by the contractor is shown when
33 ~~and that:~~

34 1. The contractor failed to perform any of the work for
35 which he or she contracted during any 90-day ~~60-day~~ period;

36 2. The failure to perform any such work during the 90-day
37 ~~60-day~~ period was not related to the owner's termination of the
38 contract or a material breach of the contract by the owner; and

39 3. The contractor failed to perform for 90 days due to just
40 cause or terminated the contract without proper notification to
41 the owner, ~~for an additional 30-day period after the date of~~
42 ~~mailing of notification as specified in paragraph (c), to~~
43 ~~perform any work for which he or she contracted,~~

44
45 ~~gives rise to an inference that the money in excess of the value~~
46 ~~of the work performed was taken with the intent to defraud.~~

47 (c) Proper notification for purposes of paragraph (b) must
48 be made by the contractor in the form of a letter that includes
49 the reason for termination of the contract or the failure to
50 perform sent via certified mail, return receipt requested,
51 mailed to the last address of the owner in the written
52 contracting agreement. If there is no address for the owner
53 listed in the contracting agreement, or no written agreement
54 exists, the letter must be mailed to the address of the payment
55 received or the letter must be filed as a notice of termination
56 with the building department with jurisdiction over the
57 improvement ~~Notification as contemplated in paragraph (b)~~
58 ~~consists of a certified letter, return receipt requested, mailed~~

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59 ~~to the address of the contractor as listed in the written~~
60 ~~contracting agreement. The letter must indicate that the~~
61 ~~contractor has failed to perform any work for a 60-day period,~~
62 ~~that the failure to perform the work was not the result of the~~
63 ~~owner's termination of the contract or a material breach of the~~
64 ~~contract by the owner, and that the contractor must recommence~~
65 ~~construction within 30 days after the date of mailing of the~~
66 ~~letter. If there is no address for the contractor listed in the~~
67 ~~written contracting agreement, or no written agreement exists,~~
68 ~~the letter must be mailed to the address of the contractor~~
69 ~~listed in the building permit application.~~

70 (4) The Legislature finds that vigorous enforcement of
71 residential contracting is necessary to protect consumers and
72 the state's economy and, therefore, this section shall be
73 strictly construed ~~Any person who violates any provision of this~~
74 ~~section is guilty of theft and shall be prosecuted and punished~~
75 ~~under s. 812.014.~~

76 (5) A violation of subsection (2) is a:

77 (a) Felony of the third degree, punishable as provided in
78 s. 775.082, s. 775.083, or s. 775.084, if the total money
79 received for permits is less than \$20,000.

80 (b) Felony of the second degree, punishable as provided in
81 s. 775.082, s. 775.083, or s. 775.084, if the total money
82 received for permits is \$20,000 or more but less than \$50,000.

83 (c) Felony of the first degree, punishable as provided in
84 s. 775.082, s. 775.083, or s. 775.084, if the total money
85 received for permits is \$50,000 or more.

86 (6) A violation of subsection (3) is a:

87 (a) Felony of the third degree, punishable as provided in

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88 s. 775.082, s. 775.083, or s. 775.084, if the total money
89 received exceeding the value of the work performed is less than
90 \$20,000.

91 (b) Felony of the second degree, punishable as provided in
92 s. 775.082, s. 775.083, or s. 775.084, if the total money
93 received exceeding the value of the work performed is \$20,000 or
94 more but less than \$50,000.

95 (c) Felony of the first degree, punishable as provided in
96 s. 775.082, s. 775.083, or s. 775.084, if the total money
97 received exceeding the value of the work performed is \$50,000 or
98 more.

99 Section 2. Subsections (2) and (3) of section 501.1375,
100 Florida Statutes, are amended to read:

101 501.1375 Deposits received for purchase of residential
102 dwelling units; placement in escrow; waiver; exceptions.—

103 (2) NOTICE TO BUYER OF RIGHT TO HAVE DEPOSIT FUNDS PLACED
104 IN ESCROW ACCOUNT.—In all offers to purchase, sales agreements,
105 or written contracts made between a building contractor or a
106 developer and a prospective buyer of a one-family or two-family
107 residential dwelling unit, the building contractor or developer
108 shall notify the prospective buyer that any deposit (up to 5 ~~10~~
109 percent of the purchase price) made by the buyer to the building
110 contractor or developer shall, ~~unless waived in writing by the~~
111 ~~buyer,~~ be deposited in an escrow account with a savings and loan
112 association, bank, or trust company; ~~;~~ an attorney who is a
113 member of The Florida Bar; ~~;~~ a licensed Florida real estate
114 broker; ~~;~~ or a title insurance company authorized to insure title
115 to real property in this state. The funds, if escrowed, may be
116 deposited in separate accounts or commingled with other escrow

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117 or trust accounts. ~~Any such offer, agreement, or contract used~~
118 ~~by the building contractor or developer with respect to the sale~~
119 ~~of a one-family or two-family residential dwelling unit shall~~
120 ~~contain the following legend in conspicuous type: THE BUYER OF A~~
121 ~~ONE FAMILY OR TWO FAMILY RESIDENTIAL DWELLING UNIT HAS THE RIGHT~~
122 ~~TO HAVE ALL DEPOSIT FUNDS (UP TO 10 PERCENT OF THE PURCHASE~~
123 ~~PRICE) DEPOSITED IN AN ESCROW ACCOUNT. THIS RIGHT MAY BE WAIVED,~~
124 ~~IN WRITING, BY THE BUYER.~~

125 (3) ESCROW ACCOUNTS; WITHDRAWALS.—If the buyer of a one-
126 family or two-family residential dwelling unit does not waive
127 the right to have deposits placed in an escrow account, the
128 building contractor or developer shall place the funds (up to 5
129 ~~10~~ percent of the purchase price) in an escrow account. The
130 account shall be clearly denoted on the records of the escrow
131 holder as an escrow account. All withdrawals from the account
132 shall require the signatures of both the building contractor or
133 developer and the buyer or the buyer's agent, except as provided
134 in this section.

135 Section 3. Section 713.345, Florida Statutes, is amended to
136 read:

137 713.345 Moneys received for real property improvements;
138 penalty for misapplication.—

139 (1) (a) A person, firm, or corporation, or an agent,
140 officer, or employee thereof, who receives any payment on
141 account of improving real property must apply such portion of
142 any payment to the payment of all amounts then due and owing for
143 services and labor which were performed on, or materials which
144 were furnished for, such improvement before ~~prior to~~ receipt of
145 the payment. This paragraph does not prevent any person from

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146 withholding any payment, or any part of a payment, in accordance
147 with the terms of a contract for services, labor, or materials,
148 or pursuant to a bona fide dispute regarding the amount due, if
149 any, for such services, labor, or materials.

150 (b) Any person who knowingly and intentionally fails to
151 comply with paragraph (a) is guilty of misapplication of
152 construction funds, punishable as follows:

153 1. If the amount of payments misapplied has an aggregate
154 value of \$100,000 or more, the violator commits ~~is guilty of~~ a
155 felony of the first degree, punishable as provided in s.
156 775.082, s. 775.083, or s. 775.084.

157 2. If the amount of payments misapplied has an aggregate
158 value of \$1,000 or more but less than \$100,000, the violator
159 commits ~~is guilty of~~ a felony of the second degree, punishable
160 as provided in s. 775.082, s. 775.083, or s. 775.084.

161 3. If the amount of payments misapplied has an aggregate
162 value of less than \$1,000, the violator commits ~~is guilty of~~ a
163 felony of the third degree, punishable as provided in s.
164 775.082, s. 775.083, or s. 775.084.

165 (c) A permissive inference that a person knowingly and
166 intentionally misapplied construction funds in violation of this
167 subsection is created when a valid lien has been recorded
168 against the property of an owner for labor, services, or
169 materials; the person who ordered the labor, services, or
170 materials has received sufficient funds to pay for such labor,
171 services, or materials; and the person has failed, for a period
172 of at least 45 days from receipt of the funds, to remit
173 sufficient funds to pay for such labor, services, or materials,
174 except for funds withheld pursuant to paragraph (a).

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175 (d) A state attorney or the statewide prosecutor, upon the
176 filing of an indictment or information against a contractor,
177 subcontractor, or sub-subcontractor which charges such person
178 with a violation of paragraph (b), shall forward a copy of the
179 indictment or information to the Department of Business and
180 Professional Regulation. The Department of Business and
181 Professional Regulation shall promptly open an investigation
182 into the matter and, if probable cause is found, shall furnish a
183 copy of any investigative report to the state attorney or
184 statewide prosecutor who furnished a copy of the indictment or
185 information and to the owner of the property which is the
186 subject of the investigation.

187 (2) (a) A person, firm, or corporation or an agent, officer,
188 or employee thereof who receives any payment on account of
189 improving real property more than 5 percent of the project's
190 cost must place such payment in an escrow account with a savings
191 and loan association, bank, or trust company; an attorney who is
192 a member of The Florida Bar; or a licensed Florida real estate
193 broker, or must provide a certified letter detailing the amount
194 and date of any payments made to subcontractors out of the
195 payment received within 30 days after receipt of payment.

196 (b) A person who violates paragraph (a) commits a felony of
197 the third degree, punishable as provided in s. 775.082, s.
198 775.083, or s. 775.084.

199 (3) ~~(2)~~ This section does not apply to mortgage bankers or
200 their agents, servants, or employees for their acts in the usual
201 course of the business of lending or disbursing mortgage funds.

202 Section 4. This act shall take effect July 1, 2019.