

Ask Fred

Question: I'm in a situation where I received payments for a job that are greater than the value of the work I will perform and I've had to delay getting started on the job because of some problems I'm having with employees and subcontractors and the delay is going on almost two months now. I remember that there are rules about accepting more money than a job was worth and being guilty of committing fraud. Can you clarify and point me to the right statute?

Answer: Fraud may be inferred by your conduct under very specific circumstances that deal with performance of the job within a 90-day period. Under 489,126, F.S. a contractor who receives money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed cannot, *with intent* to defraud the owner, fail or refuse to perform any work for any 90-day period. Proof that the contractor intended to defraud the owner is *inferred* if –

1. the money given to the contractor was in excess of the value of the work performed *and*
2. the contractor failed to perform any of the work for which he or she contracted during any 60-day period;
3. the failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or a material breach of the contract by the owner; and
4. the contractor failed, for an additional 30-day period after the date of mailing of the required notification found in 489.126(c), to perform any work for which he or she contracted.

Other provisions of that same statute also deal with how contractors must act when they receive money from clients. The statute speaks to delays in performance once money has been paid and the requirement for obtaining permits.

Thanks for asking, Fred R. Gray