

Tips on how to be a successful Contractor.



ASK FRED



DBPR source for up-to-date information and hot topics

The Florida Department of Business and Professional Regulation (DBPR) recently listed as one of its Hot Topics information about a contractor's duty to provide a statement about the Florida Homeowners' Construction Recovery Fund within the construction contract.



Other current hot topics include provisions allowing U.S. Military Veterans to use experience gained in the military toward the requirements for licensure. Up to three years of military experience may be applied toward the experience requirements for a certified contractor's license. New forms were posted on July 1, 2016 for veterans to use when applying for licensure.

Better to bid your projects accurately than act in bad faith by underbidding.

Question: I know there is a term for when a contractor enters into a contract on a project knowing that the bargain isn't right, but I can't recall what it is. I'm specifically talking about a contractor who signed a contract to build a house for \$800,000 knowing that the house would cost well over 1.5 million to complete, but entered into the contract anyway feeling that the owners would pay any amount in order to keep the home. Now he's in the middle of a lawsuit.

Answer: This is a very good question because it is not frequently asked, but should be on every contractor's mind. The term you're looking for is the covenant of good faith and fair dealing. All contracts contain an implicit covenant of good faith and fair dealing. A covenant is a promise. The promise of good faith and fair dealing in contracts is implied because language is not actually or literally written into the contract. Acting in good faith is the corner stone of contracts and is so integral to the deal that proof to the contrary may void a contract or allow it to be avoidable. Fair dealing means that the parties are not with motive to deceive the other party. If a contractor entered into a contract to build a residence for \$800,000, but actually knew that the project was under bid is acting in bad faith. Having a "feeling" that in the end the owner would pay any amount is not acting in good faith and fair dealing. Not disclosing the variance in cost is acting in bad faith.

Thanks for asking,
Fred Gray

Contractors should take a few minutes at least monthly to peruse the DBPR's website for topics of interest to the profession, along with pertinent information each contractor must know.

[Click to see the DBPR's web page for contractors –](#)

The Law Spot

Duty of contractor to notify residential property owner of recovery fund



Section 489.140, F.S., provides that a Florida Homeowners' Construction Recovery Fund must exist and kept as a separate account in the Professional Regulation Trust Fund. The existence of the fund isn't of much use to a homeowner, however, if they're unaware that it exists and how to obtain funds from it. Section 489.1425, F.S., imposes a duty on contractor to notify residential property owners of the recovery fund. The notification must be contained within each agreement or contract for repair, restoration, improvement, or construction to residential real property as a written statement explaining the consumer's rights under the recovery fund. The requirement doesn't apply when the value of all labor and materials doesn't exceed \$2,500. The written statement must be substantially in the following form:

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:

Contractors must follow the above language with the board's address and telephone number. A violation of the requirement is punishable by a fine of \$500 for the first violation and the fine deposited into the recovery fund. Subsequent violations are punishable by a fine of \$1,000 per violation, and the moneys deposited into the recovery fund.

[Click to read the statute](#)

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