



CONSTRUCTION LAW ALERT

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Liability of the Qualifying Agent for the General Contractor

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Florida law imposes a requirement on a business organization engaged in general contracting to apply for a certificate of authority to conduct business through a “qualifying agent” or “qualifier.”

The purpose of this requirement is to ensure that projects undertaken by a company are supervised by one certified and licensed individual. To allow a contractor to be the qualifying agent for a company, without placing any requirement on the contractor to exercise any supervision over the company’s work done under his or her license, would permit a contractor to loan or rent his or her license to the company. This would circumvent the legislative intent that an individual, certified as competent, be professionally responsible for supervising construction work on jobs requiring a licensed contractor.

Qualifications of Qualifying Agent

If a company proposes to engage in contracting in Florida, it must apply for a license through a qualifying agent. A qualifying agent is a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage and control the contracting activities of the business organization with which he or she is connected.

A qualifying agent must be certified or registered pursuant to Florida’s contracting statute. There is no requirement for the qualifying agent to be an officer, director, partner or occupy any other executive position in the business organization. However, the qualifying agent must have certain authority and responsibilities within the organization.

Normally, a qualifying agent may use his or her license only for the business organization for which he or she is the qualifier. If the qualifying agent desires to additionally engage in contracting in his or her own name or in affiliation with another business organization, he or she must apply to the Florida Department of Business and Professional Regulation to obtain approval.

Responsibilities of Qualifying Agent

The Florida Statutes addresses construction contractor licensing and imposes specific responsibilities on the qualifying agent. Primary qualifying agents are jointly and equally responsible for supervision of all operations of the business organization, for all field work at all sites, and for financial matters, both for the organization in general and for each specific job.

Normally, a primary qualifying agent must have the final approval authority for all construction work performed by the business organization and final approval authority on all business matters, including contracts, specifications, checks, drafts or payments, regardless of the form of payment, made by the business organization, except when a financially responsible officer is approved.

Florida law permits a business organization to split the contracting and financial responsibilities by appointing a financially responsible officer. If the business organization does not wish to make the qualifying agent responsible for all financial matters, it may appoint a financially responsible officer who is a person other than the primary qualifying agent, who, with the approval of the Construction Industry Licensing Board, assumes personal responsibility for all financial aspects of the business organization.

In addition to a primary qualifying agent, a business organization may employ secondary qualifying agents. A secondary qualifying agent is a certified or registered contractor who has the responsibility to supervise, direct, manage and control construction activities on a job for which he or she has obtained a permit. The secondary

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qualifying agent is responsible for the supervision of field work at sites where his or her license was used to obtain the building permit and any other work for which he or she accepts responsibility. A secondary qualifying agent is not responsible for supervision of financial matters.

One Florida court found that a licensed general contractor was responsible for the failure to supervise construction and for deliberate violation of applicable building codes, such that his license could properly be revoked for those violations. Even though he was only one of several qualifying contractors for the corporate contractor, the court held that it was upon the qualifier's certification that the building permit was issued and the plans approved and no other qualified contractor was assigned by the business organization to supervise, or did in fact supervise the construction.

Liability of Qualifying Agents

Qualifying agents of general contractors are not liable for private causes of action outside of the

disciplinary actions set forth in the Florida Statutes, unless they subject themselves to further liability as a participant in the actual construction of the project, e.g., one who actually completes defective construction. However, a qualifying agent still has a duty to supervise a business organization's construction projects. If a qualifying agent fails to fulfill this duty, in addition to facing administrative sanctions, the qualifier may be subject to liability based on a common law theory of negligence. Thus, the exposure here is for property -damage and/or personal injury which results from failure of a prudent contractor to use due care.

Qualifiers may be liable for violating the Florida Building Code. The Florida Statutes creates a cause of action against a person or party who committed a violation of the Florida Building Code. Although there are no reported cases of an individual qualifier of an entity acting as general contractor being held liable for violating the Florida Building Code, liability may be found if the qualifier performs actual

construction work on the project, knew or should have known about any alleged building code violation, and the violation caused personal injury or damage to property other than the property subject to the permits.

Finally, a qualifying agent may also have liability under Florida's Deceptive and Unfair Trade Practices Act, particularly if he or she personally performs work on the project.

In conclusion, qualifying agents and construction companies conducting business through qualifiers should be cognizant of their statutory responsibility and their exposure to liability when they do not comply with their obligations. ■

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