

**ORDINANCE
2004-13**

AN ORDINANCE AMENDING SECTIONS 6-114 AND 6-115 OF WALTON COUNTY CODE TO ADOPT SECTION 489.129(1) FLORIDA STATUTES AND FLORIDA RULE 61G 4-17 FLORIDA ADMINISTRATIVE CODE FOR DISCIPLINARY PROCEEDINGS AND PENALTIES FOR CONTRACTOR COMPETENCY, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners adopted the Walton County Contractor Competency Board Ordinance on October 14, 2003, and

WHEREAS, the present provisions of Section 6-114 "Prohibitions! Violations" and Section 6-115 "Penalty Ranges, do not sufficiently address all acts and consequences which arise,

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners as follows:

Section 1. Authority; purpose and intent. This ordinance is adopted pursuant to section 125.01 and Chapter 489 Florida Statutes.

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Section 2. Section 6-114 is amended as follows:

Section 6-114 PROHIBITIONSNIOLATIONS

~~(A) It is unlawful for any person to engage in the business or act in the capacity of a contractor in the county without having been duly certified or registered as required under the provisions of this division. Nothing in this division shall apply to owners of property acting as their own contractor as provided in Section 487.103(7) Florida Statutes as amended.~~

~~(B) It is a violation of this ordinance for any person in the county to:~~

- ~~(1) Falsely hold himself out as one duly certified as required by the provisions of this ordinance;~~
- ~~(2) Falsely impersonate one duly certified as required by the provisions of this ordinance;~~
- ~~(3) Present as his own the certificate or registration of another~~

~~(4) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a certificate or registration; or~~

~~(5) Use or attempt to use a certificate or registration which has been suspended or revoked.~~

~~(C) It is a violation of this ordinance for any person to commit any act which may be cause for warning, reprimand, suspension or revocation of a certificate of competency or which may be cause for disciplinary action. The acts or circumstances which constitute cause for warning or suspension or revocation of a certificate of competency are as follows:~~

~~(1) Disregard of and/or failure to correct violations of the applicable building codes or laws of the state or county.~~

~~(2) Aiding or abetting any uncertified or unregistered person to evade any provision of this ordinance.~~

~~(3) Knowingly combining or conspiring with an uncertified person by allowing one's certificate to be used by any uncertified person with intent to evade the provisions of this ordinance. When a certificate holder or registrant allows his certificate to be used by one or more companies without having active participation in the operations, management or control of such companies, such an act constitutes prima facie evidence of an intent to evade the provisions of this ordinance.~~

~~(4) Acting in the capacity of a contractor under any certificate issued hereunder, except in the name of the certificate holder or registrant as set forth on the issued certificate or in accordance with the personnel of the certificate holder or registrant as set forth in the application for the certificate.~~

~~(5) Diversion of funds or property received for prosecution or completion of a specified construction project or operation when as a result of the diversion the contractor is or will be unable to fulfill the terms of his obligations or contract.~~

~~(6) Financial mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs whom:~~

~~a. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received~~

~~funds from the customer to pay for the supplies or services;
and the contractor has not had the liens removed from the property by payment
or by bond within 30 days after the date of such liens.~~

~~b. Signing a statement with respect to a project or contract falsely indicating
that the work is bonded; falsely indicating that payment has been made for all
subcontracted work, labor and materials which results in a financial loss to the
owner, purchaser or subcontractor; or falsely indicating that workers'
compensation and public liability insurance is provided.~~

~~c. The contractor has abandoned a customer's job and the percentage of
completion is less than the percentage of the total contract price paid to the
contractor as of the time of abandonment, unless the contractor is entitled to
retain such funds under the terms of the contract or refunds the excess funds
within thirty (30) days after the date the job is abandoned. A project is to be
considered abandoned after ninety (90) days if the contractor terminates such
project without notification to the prospective owner and without just cause.~~

~~d. The contractor's job has been completed, and it is shown
that the customer has had to pay more for the contracted job than the original
contract price, adjusted for subsequent change orders as approved by the
customer, unless such increase in cost was the result of circumstances beyond
the control of the contractor, was the result of circumstances caused by the
customer, or was otherwise permitted by the terms of the contract between the
contractor and the customer.~~

~~(7) The revocation or suspension of a certificate holder's registration with the state
construction industry licensing board or of a certificate holder's certificate of
competency from some other jurisdiction may be considered by the Board as just cause
for suspension or revocation of the certificate of competency.~~

~~(8) Aiding and abetting a homeowner or other building owner to obtain a building
permit for the purpose of avoiding his responsibilities as a contractor and without
advising the homeowner of the legal responsibility he assumes on taking out a permit.~~

~~(9) Failing to complete contracts in a reasonable time.~~

~~(10) Being convicted or found guilty, regardless of adjudication of a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.~~

~~(11) No contractor shall allow his name, certificate, registration or license to be used by another contractor or by any other person, either for the purpose of obtaining permits, or for doing business or work under his licenses. Also, no contractor shall contract with, or work for any company, business or person that indicates that they are authorized to contract, but are in fact unlicensed.~~

~~(12) Proof that the licensee is guilty of fraud, deceit, incompetency, misconduct or gross negligence, in the practice of contracting.~~

~~(13) Violating any provision of this ordinance.~~

~~(14) Proof that a certificate of competency has been obtained by fraud or misrepresentation.~~

A. The Board may take any of the following actions against a certificate holder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the license, require financial restitution to a consumer for financial harm related violation of a provisions of this code, impose an administrative fine not to exceed \$5,000 per violation, or assess costs associated with the investigation or prosecution.

B. The Board may take such action as is specified in Section 6-11 4A above if the certificate holder is found guilty of any of the acts enumerated in Section 489.129(1) Florida Statutes as may amended, which are hereby adopted and incorporated by reference.

SECTION 3. Section 6-115 is amended to read:

Section 6-115 PENALTY RANGES

The following guidelines shall be used in disciplinary cases, absent aggravating or mitigating circumstances:

~~(A) Obtaining license through fraud or misrepresentation. Revocation and/or \$5,000.00 fine.~~

~~(B) Convicted or found guilty of a crime relating to contracting. Use penalty for violation most closely resembling the act underlying the convictions; repeat violation, revocation and \$1,000 to \$5,000.00 fine.~~

~~(C) Fraud, deceit, misleading or untrue representations. First violation \$1,000.00 to \$3,000.00 fine and suspension or revocation; repeat violation, revocation and \$5,000.00 fine.~~

~~(D) Improperly interfering with an investigation or disciplinary action. \$1,000.00 to \$5,000.00 fine and suspension or revocation.~~

~~(E) Violation of state or local building codes or laws. First violation \$500.00 to \$1,250.00; repeat violation \$1,250.00 to \$5,000.00 fine and suspension or revocation.~~

~~(F) Assisting unlicensed persons to evade provisions of this ordinance or Chapter 489, Florida Statutes. First violation \$500.00 to \$2,500.00 fine; repeat violation, \$2,500.00 to 5,000.00 fine and suspension or revocation.~~

~~(G) Combining and conspiring with unlicensed person or entity to evade provisions of Chapter 489 Florida Statutes (2002), as amended. First violation, \$500.00 to \$2,500.00 fine; repeat violation \$2,500.00 to \$5,000.00 fine and suspension or revocation.~~

~~(H) Failure to qualify a firm and/or acting under a name not on license. Repeat violation \$750.00 to \$1,500.00 fine.~~

~~(I) Mismanagement or misconduct causing financial harm to the customer. First violation \$750.00 to \$1,500.00 fine and/or probation; repeat violation \$1,500.00 to \$5,000.00 fine and suspension or revocation.~~

~~(J) Contracting in a city or county where the contractor is not licensed. First violation \$500.00 fine where the jurisdiction is not adjacent to one where contractor is properly licensed or practice outside the geographical scope of the license was willful. Repeat violation under any circumstances, \$500.00 to \$1,500.00 fine and suspension or revocation.~~

~~(K) Contracting beyond scope and practice allowed by license, no safety hazard. First violation \$500.00 fine; repeat violation \$500.00 to \$2,500.00 fine and suspension or revocation.~~

~~(L) Contracting with delinquent license. Repeat violation \$1,000.00 to \$2,500.00 fine and suspension or revocation. Any violation, respondent must pay all fees and costs required to place license in current inactive status, in addition to fines specified herein.~~

~~(M) Contracting beyond scope of license, safety hazard is created. First violation \$1,000.00 to \$2,500.00 fine; repeat violation \$2,500.00 to \$5,000.00 fine, suspension or revocation.~~

~~(N) License number not appearing in advertisement. First violation \$100.00; repeat violation, reprimand and \$250.00 to \$1,000.00 fine.~~

~~(O) Failure to keep business and financial records as required. First violation \$100.00 to \$1,000.00 fine and/or reprimand to probation; repeat violation \$500.00 to \$5,000.00 fine and/or probation or suspension.~~

~~(P) Contracting with an inactive license. First violation \$250.00 to \$500.00 fine; repeat violation \$500.00 to \$1,000.00 fine and suspension or revocation.~~

~~(Q) Failure to supervise construction activities. First violation \$250.00 to \$1,000.00 fine and/or probation; repeat violation \$1,000.00 to \$5,000.00 fine and suspension or revocation.~~

~~(R) Failure to register qualified business organization. Repeat violation \$500.00 to \$1,000.00 fine and suspension or revocation.~~

~~(S) Failure to notify residential property owner of recovery fund. First violation \$10000 to \$500.00 fine; repeat violation \$1~,000.00.~~

~~(T) Abandonment First violation \$500.00 to \$2,000.00 fine; repeat violation revocation and \$5,000.00 fine.~~

~~(U) _____ False payment statements and false statement of insurance coverage. First violation \$500.00 to \$3,000.00 fine and suspension or revocation; repeat violation \$1,500.00 to \$5,000.00 fine and suspension or revocation.~~

~~(I) Committing fraud or deceit in the practice of contracting in which no monetary harm is sustained by the customer and no physical harm to any person. First violation \$500.00 to \$1,000.00 fine; repeat violation \$1,000.00 to \$1,500.00 fine and suspension or revocation. In the event monetary or other harm is caused to the customer or physical harm to any person for the first violation \$500.00 to \$2,000.00 fine and suspension or revocation; repeat violation \$2,000.00 to \$5,000.00 fine and suspension or revocation.~~

~~(W) Failure to honor warranty. First violation \$500.00 to \$1,000.00 fine; repeat violation \$1,000.00 to \$2,000.00 fine and suspension or revocation.~~

~~(X) Any other form of misconduct or in competency. First violation \$250.00 to \$1,000.00 fine and/or probation; repeat violation \$1,000.00 to \$5,000.00 fine, suspension or revocation.~~

The absence of any violation from this ordinance shall be viewed as an

~~oversight, and shall not be construed as an indication that no penalty is to be assessed. The guideline penalties for the offense most closely resembling the admitted violation shall apply.~~

As penalties for the violations of this ordinance the Board shall follow the Disciplinary Guidelines set out in Chapter 61 G4-1 7 Florida Administrative Code, as may be amended, which guidelines are hereby adopted and incorporated by reference in this ordinance.

Section 12. Effective Date

This ordinance shall take effect as provided by law.

ADOPTED this 9th day of March 2004.

BOARD OF COUNTY COMMISSIONERS
WALTON COUNTY, FLORIDA

Attest:

Martha Ingle
Martha Ingle
Clerk of Court.

By: Larry D. Jones
Larry D. Jones, Chair

