

26 qualified business to obtain a performance bond and
27 provide proof of such bond under certain
28 circumstances; providing that the designated
29 contractor or qualified business has control over a
30 certain disbursement if certain requirements are met;
31 authorizing the owner of the residential real property
32 to request in a specified manner an accounting record
33 from the designated contractor or qualified business;
34 requiring the designated contractor or qualified
35 business to provide such accounting records within a
36 specified timeframe; creating a rebuttable
37 presumption; providing applicability; providing
38 criminal penalties; authorizing certain disciplinary
39 action under certain circumstances; creating s.
40 938.14, F.S.; requiring the court to impose an
41 additional court cost for certain offenses; providing
42 that such court cost is a condition of probation,
43 community control, or court-ordered supervision;
44 requiring the clerk of the court to transfer a
45 specified amount to the Florida Homeowners'
46 Construction Recovery Fund; providing for the clerk of
47 the court to retain a service charge; amending s.
48 489.140, F.S.; conforming a provision to changes made
49 by the act; providing an effective date.

50

51 Be It Enacted by the Legislature of the State of Florida:

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53 Section 1. Paragraph (s) is added to subsection (1) of
 54 section 489.129, Florida Statutes, to read:

55 489.129 Disciplinary proceedings.—

56 (1) The board may take any of the following actions
 57 against any certificateholder or registrant: place on probation
 58 or reprimand the licensee, revoke, suspend, or deny the issuance
 59 or renewal of the certificate or registration, require financial
 60 restitution to a consumer for financial harm directly related to
 61 a violation of a provision of this part, impose an
 62 administrative fine not to exceed \$10,000 per violation, require
 63 continuing education, or assess costs associated with
 64 investigation and prosecution, if the contractor, financially
 65 responsible officer, or business organization for which the
 66 contractor is a primary qualifying agent, a financially
 67 responsible officer, or a secondary qualifying agent responsible
 68 under s. 489.1195 is found guilty of any of the following acts:

69 (s) Committing a violation of s. 713.345(2). If a
 70 contractor or qualified business licensed by the board under
 71 this chapter pleads guilty or nolo contendere to, or is found
 72 guilty of, regardless of adjudication, an offense in violation
 73 of s. 489.126(5)(b), (c), or (d); s. 489.126(6)(b), (c), or (d);
 74 or s. 713.345(2)(g), the board and the Electrical Contractors'
 75 Licensing Board must suspend all licenses issued to such

76 licensee under this chapter for at least 1 year from the date of
 77 the conviction. The suspension required under this paragraph is
 78 not exclusive, and the board may impose any additional penalties
 79 set forth in this subsection.

80
 81 For the purposes of this subsection, construction is considered
 82 to be commenced when the contract is executed and the contractor
 83 has accepted funds from the customer or lender. A contractor
 84 does not commit a violation of this subsection when the
 85 contractor relies on a building code interpretation rendered by
 86 a building official or person authorized by s. 553.80 to enforce
 87 the building code, absent a finding of fraud or deceit in the
 88 practice of contracting, or gross negligence, repeated
 89 negligence, or negligence resulting in a significant danger to
 90 life or property on the part of the building official, in a
 91 proceeding under chapter 120.

92 Section 2. Subsection (2) of section 713.345, Florida
 93 Statutes, is renumbered as subsection (3), and a new subsection
 94 (2) is added to that section, to read:

95 713.345 Moneys received for real property improvements;
 96 penalty for misapplication; escrow account required for certain
 97 funds.—

98 (2) (a) As used in this subsection, the term:

99 1. "Substantial completion" means performance that is
 100 nearly equivalent to that which was contracted for and when only

101 minor, corrective, or warranty work remains.

102 2. "Designated contractor or qualified business" means a
 103 contractor who is certified or registered under chapter 489 or a
 104 business organization qualified by a contractor who is certified
 105 or registered under chapter 489 who:

106 a. Has been certified, registered, or qualified for less
 107 than 5 years;

108 b. Contracts for improvements to residential real property
 109 within an area in which a state of emergency has been declared
 110 under s. 252.36 for a hurricane within 18 months after the date
 111 of the declaration; or

112 c. Has been disciplined by the Construction Industry
 113 Licensing Board or the Electrical Contractors' Licensing Board
 114 within the previous 5 years for failing to comply with this
 115 subsection or s. 489.126.

116 (b) A designated contractor or qualified business that
 117 receives a payment of \$10,000 or more prior to commencement
 118 pursuant to a contract for improvements to residential real
 119 property must, within 3 business days after receipt, place such
 120 payment in an escrow account with a savings and loan
 121 association, bank, or trust company located in the state; an
 122 attorney who is a member in good standing with The Florida Bar;
 123 or a real estate broker licensed in the state, unless such
 124 escrow requirement is waived in writing by the owner of the
 125 residential real property. If such escrow is waived in writing

126 by the owner of the residential real property, the contractor
127 must provide a copy of a performance bond if required under
128 subparagraph 5.

129 1. Unless the contract specifies where such payment must
130 be deposited, the designated contractor or qualified business
131 must, within 10 business days after a deposit has been made,
132 inform the owner of the residential real property in writing of
133 the name of the depository institution, attorney, or real estate
134 broker with whom the funds have been deposited.

135 2. The designated contractor or qualified business may
136 keep funds received from different owners in the same account if
137 the designated contractor or qualified business has financial or
138 accounting records that clearly show how the funds deposited
139 were allocated to each owner.

140 3. A depository institution, an attorney, or a real estate
141 broker who receives a payment in an amount of \$10,000 or more
142 from a designated contractor or qualified business under this
143 subsection for improvements to residential real property is not
144 required to inquire into the nature of any deposits to or
145 withdrawals from the escrow account or to ensure that any
146 withdrawals from such account are used for a specific purpose as
147 required by a contract. A deposit into the escrow account
148 remains the property of the owner of the residential real
149 property except as otherwise provided in this subsection.

150 4. A designated contractor or qualified business may

151 withdraw funds from the escrow account before the substantial
152 completion of work in the following circumstances:

153 a. Under the terms of a payment schedule agreed to in the
154 contract between the designated contractor or qualified business
155 and the owner of the residential real property;

156 b. When required to make payments to subcontractors or for
157 materials related to the contracted job in order to comply with
158 subsection (1); or

159 c. If the owner of such property violates the contract,
160 but only if the amount withdrawn by the designated contractor or
161 qualified business covers reasonable costs plus liquidated
162 damages not to exceed \$500.

163 5. If the escrow requirement is waived in writing by the
164 owner of the residential real property, a designated contractor
165 or qualified business must obtain a performance bond equal to
166 the value of the contract and provide proof of such bond to the
167 property owner before commencing or continuing the project.

168 6. A designated contractor or qualified business has
169 control over the disbursement of funds in escrow upon
170 substantial completion of the contract, or any portion that is
171 specifically accounted for in the contract.

172 (c) The owner of the residential real property may deliver
173 by certified mail, return receipt requested, a written demand to
174 the address listed in the contract for an accounting report of
175 the funds paid to the designated contractor or qualified

176 business. If the address of the designated contractor or
177 qualified business is not provided in the contract, or a written
178 contract or agreement does not exist, the owner must deliver by
179 certified mail, return receipt requested, the written demand to
180 the address that is listed for the designated contractor or
181 qualified business with the Department of Business and
182 Professional Regulation for licensing purposes. Within 60 days
183 after receipt of such demand, the designated contractor or
184 qualified business must provide the owner with an accounting
185 record indicating all payments made to and from the designated
186 contractor or qualified business, including those that were made
187 to subcontractors and for purchased materials, by certified
188 mail, return receipt requested.

189 (d) The failure of a designated contractor or qualified
190 business to respond to an owner's written demand for an
191 accounting report as required under paragraph (c) creates a
192 rebuttable presumption that a violation was willful.

193 (e) This subsection does not apply to any of the
194 following:

195 1. A contract for hourly labor provided by a contractor
196 certified or registered under chapter 489 or a business
197 organization qualified by a contractor certified or registered
198 under chapter 489.

199 2. A contractor certified or registered under chapter 489
200 or a business organization qualified by a contractor certified

201 or registered under chapter 489 who owns the real property upon
202 which the improvement or construction is to be completed.

203 3. A cost-plus contract.

204 (f) If the value of a contract or addenda thereto is more
205 than \$100,000 for a contract for improvements to residential
206 real property, a contractor certified or registered under
207 chapter 489 or a business organization qualified by a contractor
208 certified or registered under chapter 489, must obtain a
209 performance bond equal to the value of the contract and provide
210 proof of such bond to the property owner before commencing or
211 continuing the project.

212 (g) A contractor certified or registered under chapter 489
213 or a business organization qualified by a contractor certified
214 or registered under chapter 489 commits a felony of the third
215 degree, punishable as provided in s. 775.082, s. 775.083, or s.
216 775.084, if the contractor or qualified business willfully fails
217 to place funds in an escrow account as required under this
218 subsection.

219 (h) If a contractor or qualified business pleads guilty or
220 nolo contendere to, or is found guilty of, regardless of
221 adjudication, a violation of paragraph (g), the licensee is
222 subject to discipline under s. 489.129(1)(s).

223 Section 3. Section 938.14, Florida Statutes, is created to
224 read:

225 938.14 Court cost imposed in cases related to construction

226 fraud.-

227 (1) If a person pleads guilty or nolo contendere to, or is
 228 found guilty of, regardless of adjudication, an offense in
 229 violation of s. 489.126, s. 489.127, or s. 713.345, the court
 230 shall impose a court cost of \$51 against the offender in
 231 addition to any other cost or penalty required by law. Payment
 232 of such court cost is a condition of probation, community
 233 control, or any other court-ordered supervision.

234 (2) Each month, the clerk of the court shall transfer \$50
 235 from the proceeds of the court cost to the Florida Homeowners'
 236 Construction Recovery Fund. The clerk of the court shall retain
 237 \$1 of each sum collected as a service charge.

238 Section 4. Section 489.140, Florida Statutes, is amended
 239 to read:

240 489.140 Florida Homeowners' Construction Recovery Fund.-
 241 There is created the Florida Homeowners' Construction Recovery
 242 Fund as a separate account in the Professional Regulation Trust
 243 Fund. The recovery fund shall be funded pursuant to ss. 468.631
 244 and 938.14 ~~s. 468.631~~.

245 Section 5. This act shall take effect July 1, 2024.