

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:

52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75

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

489.129 Disciplinary proceedings.—

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

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

76 such licensee under this chapter for at least 1 year after the
 77 date of the conviction. The suspension required under this
 78 paragraph is not exclusive, and the board may impose any
 79 additional penalties 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, and such contractor or business
106 organization:

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

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

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

117 (b) A designated contractor or qualified business that
118 receives, pursuant to a contract for improvements to real
119 property, payments of \$10,000 or more, regardless of whether
120 such payments are paid in a lump sum or in the aggregate, before
121 the commencement of such improvements to residential real
122 property must, within 3 business days after receipt, place such
123 payment in an escrow account with a savings and loan
124 association, bank, or trust company located in the state; an
125 attorney who is a member in good standing with The Florida Bar;

126 or a real estate broker licensed in the state, unless such
127 escrow requirement is waived in writing by the owner of the
128 residential real property. If such escrow is waived in writing
129 by the owner of the residential real property, the designated
130 contractor or qualified business must provide a copy of a
131 performance bond if required under subparagraph 5.

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

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

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

151 remains the property of the owner of the residential real
152 property except as otherwise provided in this subsection.

153 4. A designated contractor or qualified business may
154 withdraw funds from the escrow account before the substantial
155 completion of work in the following circumstances:

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

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

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

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

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

175 (c) The owner of the residential real property may deliver

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

192 (d) The failure of a designated contractor or qualified
193 business to respond to an owner's written demand for an
194 accounting report as required under paragraph (c) creates a
195 rebuttable presumption that a violation of this section is
196 willful.

197 (e) This subsection does not apply to any of the
198 following:

199 1. A contract for hourly labor provided by a designated
200 contractor or qualified business.

201 2. A designated contractor or qualified business that owns
 202 the real property upon which the improvement or construction is
 203 to be completed.

204 3. A cost-plus contract.

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

211 (g) A designated contractor or qualified business commits
 212 a felony of the third degree, punishable as provided in s.
 213 775.082, s. 775.083, or s. 775.084, if the designated contractor
 214 or qualified business willfully fails to place funds in an
 215 escrow account as required under this subsection.

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

220 Section 3. Section 938.14, Florida Statutes, is created to
 221 read:

222 938.14 Court cost imposed in cases related to construction
 223 fraud.—

224 (1) If a person pleads guilty or nolo contendere to, or is
 225 found guilty of, regardless of adjudication, an offense in

226 violation of s. 489.126, s. 489.127, or s. 713.345, the court
 227 shall impose a court cost of \$51 against the offender in
 228 addition to any other cost or penalty required by law. Payment
 229 of such court cost is a condition of probation, community
 230 control, or any other court-ordered supervision.

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

235 Section 4. Section 489.140, Florida Statutes, is amended
 236 to read:

237 489.140 Florida Homeowners' Construction Recovery Fund.—
 238 There is created the Florida Homeowners' Construction Recovery
 239 Fund as a separate account in the Professional Regulation Trust
 240 Fund. The recovery fund shall be funded pursuant to ss. 468.631
 241 and 938.14 ~~s. 468.631~~.

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