

Building Permits -- Owner/Builder Exemption

Number: INFORMAL

Date: July 22, 2014

Mr. Michael S. Craig
Polk County Attorney
Post Office Box 9005
Bartow, Florida 33831-9005

Dear Mr. Craig:

As Polk County Attorney, you have requested this office's assistance in determining whether, in light of Attorney General Opinion 91-05, a property owner would qualify for the owner/builder exemption under section 489.103(7), Florida Statutes, if he or she owns 5 percent of the property and a limited liability corporation owns the other 95 percent. While this office has no authority to resolve mixed questions of law and fact,[1] I offer the following informal comments in an effort to be of assistance.

According to the information you have forwarded, an individual has contacted the Polk County Building Department seeking a building permit exemption under section 489.103(7), Florida Statutes. The property for which the exemption is sought is approximately 6.5 acres and contains a mobile home park with over twenty mobile homes and three single family houses. It is titled with 5 percent owned by the individual seeking the exemption. A limited liability corporation, Connection Wise LLC, owns the remaining 95 percent of the property.

The exemption is sought for one of the single family houses on the property and the individual who has applied for the exemption lives in that house and plans to make repairs to it. When this individual initially contacted the county building department, 100 percent of the property was owned by Connection Wise LLC. County staff advised this individual that, as concluded in Attorney General's Opinion 91-05, a limited liability corporation does not qualify for the owner/builder exemption. Subsequently, the LLC quit-claimed a 5 percent interest in the property to this individual. Following execution of the quit-claim deed, the individual again contacted the county building department seeking an owner/builder permit exemption and you have requested our assistance in determining whether this arrangement comes within the scope of section 489.103(7), Florida Statutes. You have assured this office that this matter is not in litigation.

Part I, Chapter 489, Florida Statutes, regulates the construction industry and requires the licensure of any person who engages in construction contracting.[2] Among the exceptions to this licensing requirement, however, is one for the owners of property. Specifically, section 489.103(7), Florida Statutes, provides that Part I, Chapter 489, Florida Statutes, does not apply to:

"(7)(a) Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors:

1. When building or improving farm outbuildings or one family or two family residences on such

property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$75,000, on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure by the owner builder within 1 year after completion of same creates a presumption that the construction was undertaken for purposes of sale or lease."

To qualify for this exemption, the owner must personally appear and sign the building permit application. Section 489.103(7), Florida Statutes, also provides that the local permitting agency must provide the owner with a disclosure statement in substantially the form provided in the statute.[3]

In the situation you have presented, the individual's interest in the property is held in conjunction with a limited liability company. This office opined, in Attorney General Opinion 91-05, that corporations are unable to qualify for the owner/builder exemption under section 489.103(7), Florida Statutes, as they lack the ability to personally appear and sign the building permit as required by the statute. The opinion focuses on the nature of corporate entities:

"A corporation is a legal entity created by law separate and distinct from the persons comprising it.[4] As an artificial entity, a corporation may only act through its agents.[5] While a corporation may own property, employ individuals and enter into contracts,[6] it does not exist personally to do so. A corporation does not physically exist to construct or supervise the construction of a building. Rather it must rely upon agents or employees to carry out such functions. Such reliance excludes the corporation from the owner/builder exemption in s. 489.103(7), F.S., which states that it does not apply to any person who is employed by an owner and acts in the capacity of a contractor. Furthermore, a corporation lacks the ability to personally appear and sign the building permit."

Similarly, a limited liability company is a business entity organized and existing under Chapter 608, Florida Statutes. A limited liability company is generally understood to be "[a] company – statutorily authorized in certain states – that is characterized by limited liability, management by members or managers, and limitations on ownership transfer." [7] Like a corporation, a Florida limited liability company can own property, employ individuals and enter into contracts, but does not exist personally to act.[8]

This office has determined that corporations are unable to qualify for the owner/builder exemption under section 489.103(7), Florida Statutes, as they lack the ability to personally appear and sign the building permit as required therein. It appears that a limited liability company would suffer from the same disability.

In light of the above, it appears questionable that the quit-claim transfer of a small interest in property owned by a limited liability company would overcome the disability and allow a 5 percent interest owner to qualify for the owner/builder exemption that was previously denied to the limited liability company.

I trust that these informal comments will be helpful.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

[1] See Department of Legal Affairs Statement Concerning Attorney General Opinions (available at www.myfloridalegal.com / Legal Resources / AG Opinions / When Opinions Will Not Be Issued ("Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative or administrative policy.")).

[2] See s. 489.101, Fla. Stat., which states that it is in the interest of public health, safety and welfare to regulate the construction industry, and s. 489.113(2), Fla. Stat., which requires that a person must be certified or registered in order to engage in the business of contracting in this state.

[3] See s. 489.103(7)(c), Fla. Stat., which provides:

"DISCLOSURE STATEMENT

1. I understand that state law requires construction to be done by a licensed contractor and have applied for an owner builder permit under an exemption from the law. The exemption specifies that I, as the owner of the property listed, may act as my own contractor with certain restrictions even though I do not have a license.

2. I understand that building permits are not required to be signed by a property owner unless he or she is responsible for the construction and is not hiring a licensed contractor to assume responsibility.

3. I understand that, as an owner builder, I am the responsible party of record on a permit. I understand that I may protect myself from potential financial risk by hiring a licensed contractor and having the permit filed in his or her name instead of my own name. I also understand that a contractor is required by law to be licensed in Florida and to list his or her license numbers on permits and contracts.

4. I understand that I may build or improve a one family or two family residence or a farm outbuilding. I may also build or improve a commercial building if the costs do not exceed \$75,000. The building or residence must be for my own use or occupancy. It may not be built or substantially improved for sale or lease. If a building or residence that I have built or substantially improved myself is sold or leased within 1 year after the construction is complete, the law will presume that I built or substantially improved it for sale or lease, which violates the exemption.

5. I understand that, as the owner builder, I must provide direct, onsite supervision of the construction.

6. I understand that I may not hire an unlicensed person to act as my contractor or to supervise persons working on my building or residence. It is my responsibility to ensure that the persons whom I employ have the licenses required by law and by county or municipal ordinance.

7. I understand that it is a frequent practice of unlicensed persons to have the property owner obtain an owner builder permit that erroneously implies that the property owner is providing his or her own labor and materials. I, as an owner builder, may be held liable and subjected to serious financial risk for any injuries sustained by an unlicensed person or his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an owner builder and am aware of the limits of my insurance coverage for injuries to workers on my property.

8. I understand that I may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on my building who is not licensed must work under my direct supervision and must be employed by me, which means that I must comply with laws requiring the withholding of federal income tax and social security contributions under the Federal Insurance Contributions Act (FICA) and must provide workers' compensation for the employee. I understand that my failure to follow these laws may subject me to serious financial risk.

9. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern owner builders as well as employers. I also understand that the construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

10. I understand that I may obtain more information regarding my obligations as an employer from the Internal Revenue Service, the United States Small Business Administration, the Florida Department of Financial Services, and the Florida Department of Revenue. I also understand that I may contact the Florida Construction Industry Licensing Board at (telephone number) or (Internet website address) for more information about licensed contractors.

11. I am aware of, and consent to, an owner builder building permit applied for in my name and understand that I am the party legally and financially responsible for the proposed construction activity at the following address: (address of property).

12. I agree to notify (issuer of disclosure statements) immediately of any additions, deletions, or changes to any of the information that I have provided on this disclosure.

Licensed contractors are regulated by laws designed to protect the public. If you contract with a person who does not have a license, the Construction Industry Licensing Board and Department of Business and Professional Regulation may be unable to assist you with any financial loss that you sustain as a result of a complaint. Your only remedy against an unlicensed contractor may be in civil court. It is also important for you to understand that, if an unlicensed contractor or employee of an individual or firm is injured while working on your property, you may be held liable for damages. If you obtain an owner builder permit and wish to hire a licensed contractor, you will be responsible for verifying whether the contractor is properly licensed and the status of the contractor's workers' compensation coverage.

Before a building permit can be issued, this disclosure statement must be completed and signed by the property owner and returned to the local permitting agency responsible for issuing the permit. A copy of the property owner's driver license, the notarized signature of the property owner, or other type of verification acceptable to the local permitting agency is required when the permit is issued.

Signature: (signature of property owner).

Date: (date)."

[4] See *American States Insurance Company v. Kelley*, 446 So. 2d 1085 (Fla. 4th DCA 1984).

[5] See *Palazzo v. Gulf Oil Corporation*, 764 F.2d 1381 (11th Cir. Fla. 1985) (corporation as artificial entity that can act only through its agents cannot appear pro se in a judicial case, but must be represented by counsel).

[6] See *generally* s. 607.011, Fla. Stat., enumerating the general powers of corporations.

[7] See Black's Law Dictionary (8th ed.), p. 299.

[8] See s. 608.404, Fla. Stat., setting forth the general powers of limited liability companies.