

August 7, 2019

ADVISORY OPINION AS TO REQUIREMENT FOR OWNER SIGNATURE ON PERMIT APPLICATION

A question has arisen with respect to procedural differences in the permit application process amongst various municipalities in Broward County.

ISSUE

More specifically, the Board of Rules and Appeals has learned that some municipalities within Broward County are requiring the Owner's signature on the uniform permit application prior to acceptance. Other municipalities do not require an Owner's signature and will accept permit applications and documents from the Contractor.

RULE

I. Florida Building Code Sec 105.3.0.1, 105.3.0.3, and 105.3.0.2.

A. We would first note that FBC Sec 105.3.0.1 states:

105.3.0.1 Qualification of Applicant. Application for permit will be accepted from **owner, qualified persons or firms, or authorized agents. (Emphasis added).**

The use of the word "shall" determines mandatory compliance, the use of the word "may" determines permissive or permitted action See Brooks v. Anastasia Mosquito Control Dist., 148 So.2d 64 (Fla. 1st DCA 1963). Likewise, the use of the word "or" determines the right to discretion in election of action. See Celistics, LLC v. Gonzalez, 922 So.3d 824 (Fla. 3d DCA 2009). Absent "magic words" of exclusivity such as "must" or "shall", the language is permissive thus determining the right to make an election.

Inasmuch as the word "and" is not contained between "owner" and "qualified person" the lack of the conjunctive determines that there is no mandatory requirement for dual signatures.

B Furthermore, the use of the word "or" following the term "qualified persons" determines that the signature is not solely confined to an owner or builder but may be an otherwise qualified person or authorized agent. This is further confirmed by 105.3.0.3 which states:

105.3.0.3 Attesting of Application: The permit application shall be signed in a space provided, before an officer duly qualified to administer oaths, **by the owner, qualified person or firm, or authorized agents. (Emphasis added).**

Again, it is clear from the Florida Building Code (Broward County edition) that the signature on the permit application may be from any of the persons or party(ies) listed. There is also no language which determines that multiple signatures are required.

C. We have also reviewed FBC Sec 105.3.0.2 which states *inter alia*:

105.3.0.2 Application Form. Each application for a permit, shall be submitted with the required fee, and filed with the Building Department on the Broward County Uniform Building Permit Application (effective April 1, 2016) furnished for that purpose (see Appendix A of the Broward County Administrative Provisions). The application shall describe the property on which the proposed work is to be done, and shall include both the legal description and more commonly known address. The application shall also show the use or occupancy of the building or structure; shall be accompanied by plans and/or specifications as required hereafter; shall state the value of the proposed work; as specified in Section 109, shall give such other information as reasonably may be required by the Building Official to describe the proposed work; and shall be attested by the qualified applicant. **The Permit Application shall be inscribed with the application date and the Edition of the Code in effect, and comply with the requirements of Section 713.135 and (6) of the Florida Statutes.**

In so saying, sec 105.3.0.2 creates causal nexus and mandatory review of Florida Building Code sections 105.3.0.2 and 3 and Florida Statutes Sec 713.135(5) and (6) a.

ANALYSIS

II. Florida Statutes Section 713.135 (5) and (6)a

Florida Building Code Sec 105.3.0.2 requires conformance of section 105 with statutes 713. The question arises as to possible conflict between FBC Sec 105.3.0.1, 105.3.0.3 and Florida Statutes sec 713.135(5) and 713.135(6) a.

A. A review of 713.135.5 determines that it is not applicable to the question as to Owners signatures for the reason that nowhere does it require an Owners signature- only Owner information. More specifically the Statute specifies:

In addition to any other information required by the authority issuing the permit, each building permit application must contain:

(a) The name and address of the owner of the real property;

- (b) The name and address of the contractor;
- (c) A description sufficient to identify the real property to be improved; and
- (d) The number or identifying symbol assigned to the building permit by the issuing authority, which number or symbol must be affixed to the application by the issuing authority.

All of the items required under F.S. Sec 713.135.5 pertain solely to *identification* of the Owner. *Nowhere is it required that an Owner signature be supplied.*

B. With respect to 713.135.6(a), the Statute provides a form template which includes an “Owner Affidavit.” The problem with this is that the statute requires an application in “**substantially the following form**” so that the title of the document is not necessarily dispositive of the contents of the document. More to the point, the form template contains a signature line for “**Owner or Agent including Contractor.**”

If the Owner is not the applicant, and the applicant is responsible for performing the work, then it is the sworn statement of the party performing the work that it shall be performed in accordance with the code. This comports with the “substantially the same form” requirements but with the Agent or Contractor attesting to code compliance.

This does not mean that only the applicant’s signature is required on the application. The application still requires the signature of the Owner or the Owner’s Agent in addition to the Contractor, if the Contractor is not acting as the Owner’s Agent.

III. Form over substance arguments are rejected

Although F.S. 713.135(6)(a) provides a template of an “Owner’s Affidavit”, the Affidavit itself states *inter alia*:

OWNER’S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

...

**(Signature of Owner or Agent)
(including contractor)**

We cannot place form over substance when examining the template of the Affidavit set forth under FS Sec 713.135. The fact that it is called an “Owners Affidavit” does not mean that it requires an Owner’s signature or an Owner’s attestation. The Affidavit specifically contemplates a signature by the “Owner, or Agent including Contractor.”

This principle is well established un the Florida courts. More specifically:

[T]he trial court may not merely rely on the title of the document. With respect to the characterization of motions, Florida courts place substance over form. In other words,

“if the motion is mislabeled, the court will look to the substance of the motion, not the label.” Indus. Affiliates, Ltd. v. Testa, 770 So.2d 202, 204 n. 1 (Fla. 3d DCA 2000). *See also* Fire & Cas. Ins. Co. of Conn. v. Sealey, 810 So.2d 988, 992 (Fla. 1st DCA 2002) (“We agree that the true nature of a motion must be determined by its content and not by the label the moving party has used to describe it.”).

IV. Contractor as Owner’s Agent

We further note the signature line of the “Owner’s Affidavit” and in particular the wording “Signature of Owner or Agent including Contractor”. The straightforward interpretation and plain meaning rule under statutory interpretation is that either the Owner or the Agent may sign- “including the Contractor.” Note that the Code does not state “Owner or Agent *and* Contractor” it states “Owner and Agent *including* Contractor.”

This does not mean that the signatures of two (2) persons are required. The plain language rule which determines that the Contractor may sign as the Owner’s Agent where a Contractor is acting as the Owner’s Agent is well recognized under Florida law. If a Contractor is also signing as the Owner’s Agent, it would require a second signature by the Contractor acting in his capacity as the Owner’s Agent, in the signature block of the Broward County Uniform Permit Application

The Florida courts recognize the status of a Contractor acting in the capacity of an Owner’s Agent. See Price vs. J.P Guerry & Sons, 133, Fla. 754 (Fla. 1933) (”Where building contractor agreed to furnish materials and complete two bungalows at a stated price under contract... contractor merely acted as owner's agent in the purchase of materials, and owner, who knew of purchases made by contractor was primarily liable, for purchase price of materials for which materialmen claimed liens under statutes.”). See also Roberts v. Lesser, 96 So. 2d 222 (Fla. 1957) (Subcontractor's suit to foreclose mechanics' lien against property improved allegedly at request of contractor acting as owner's agent.)

If a Contractor is acting in the capacity of Agent he must sign in the dual capacity with a second signature.

V. Failure to be included under “any other information required” under 713.135

The question has been raised as to the broad requirement provision contained in F.S. Sec. 713.135 wherein is stated:

In addition to any other information required by the authority issuing the permit, each building permit application must contain:

The question posed is whether or not the words “In addition to any other information required” provides for a degree of autonomy over statutes and compliance with the codes.

We would first note that the permit application is the “**Broward County Uniform Building Permit Application.**” The uniformity of the document is meant to determine exactly that, the application is uniform and the intention is that it be interpreted uniformly.

In this specific case, if a local municipality were to unilaterally implement changes to the Permit Application process, it will have the effect of altering administrative portion of the Building Code thus creating a “second” set of Building Code requirements.” This is not permissible under Special Act 71-575 and further constitutes the creation of a conflicting amendment to law and forbidden under common law. As noted in Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1273 (Fla 2007):

Where two laws are in conflict, courts should adopt an interpretation that harmonizes the laws, for the legislature is presumed to have intended that both laws are to operate co-extensively and have the fullest possible effect.

Palm Beach v. Harris at 1287.

The courts have further stated:

It is presumed that laws are passed with knowledge of all prior laws already on books, and that legislature neither intended to keep contradictory enactments in force nor to repeal prior law without express intention to do so; courts have duty to adopt scheme of statutory construction which harmonizes and reconciles statutes and to find reasonable field of operation that will preserve force and effect of each.

See Floyd v. Bentley, 496 So.2d 862, 865 (Fla 2d DCA 1986). *See also* Woodgate Development Corp. v. Hamilton Inv. Trust, 351 So.2d 14 (Fla 1977).

It is also a fact that all of the documents attendant with permit applications in Broward County recognize signatures of the “Owner, or Agent including Contractor.” Using the “plain language rules” of statutory interpretation, all of the documents used in the application process are necessarily incorrect as a matter of law because the local municipality wishes to adopt a position contrary to the plain language of the statutorily created documents.

VI. Municipality amendments restricted under Florida Statutes Sec 553.73(4)a

Local municipality amendments are restricted under Florida Statutes Sec 553.73 (4)a, which states *inter alia*:

(4)(a) ...

Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph. Local amendments shall be more stringent than the minimum standards described herein and shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

Thus, a local administrative amendment must strengthen the code in some fashion.

In this case, the Statute does not state that an Owner's signature is required, only that the "Owner's or Agent's signature including Contractor" is required. (*Supra*). Without stating further, only one signature would be required. The governing authority, the Broward County Board of Rules and Appeals wishes to strengthen the administrative portion of the code as contemplated under F.S Sec 553.73 (4)a by requiring the signature of the Owner or the Agent as well as the Contractor. Furthermore, if the Contractor is acting as the Owner's Agent, the Contractor must sign twice. Once in their capacity as the Contractor and the second time verifying their status as the Owner's Agent. This would authorize the imposition of additional penalties on a Contractor who purported to represent the Owner if in fact, they did not. This being an administrative provision, it is axiomatic that the inclusion of additional penalties is a strengthening of the code because the end result is the protection of the public interest. *See State v. Murray*, 644 So.2d 533 (Fla. 4th DCA 1994) ("the primary purpose of administrative remedies is for public protection, not to punish the offender.") See also Florida Department of Financial Services v. Cephas, Case No. 03-0798PL (The Florida courts have adopted the federal position that administrative penalties are instituted for the protection of the public); and Buchman v. State Board of Accountancy, 300 So. 2d 671, (Fla. 1974) (utility of administrative penalties serves to protect the public interest).

VII. Creation of the Florida Building Code and the Authority of the Governing Body

In 1996, the Florida Building Code Study Commission was appointed to review the system of over 400 local jurisdictions and state agencies with building code responsibilities. One of the most important issue was compliance. The Building Commission recommendations called for strengthened compliance through greater predictability and accountability in the building code system. The 1998 Legislature adopted the Study Commission's recommendations and amended Chapter 553, Florida Statutes, Building Construction

Standards to create a single minimum standard building code that is enforced by local governments. In so saying, safety, uniformity and accountability are recognized as critical elements of the Florida Building Code.

a. Florida Statutes Section 553.71

The Florida Statutes 553.71 states *inter alia*:

...

(5) “Local enforcement agency” means an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

F.S. Sec 553.71(5)

b. Florida Statutes Sec 633.208(3)(a)

The use of the word enforcement referring to building departments and municipalities is critical where the Florida Statutes Sections 633.208(3)(a) makes the distinction between enforcement and governing bodies.

More specifically:

...

(3)(a) The local governing body shall determine, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, if there is a need to strengthen the requirements of the minimum firesafety code adopted by such governing body. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates that local conditions justify more stringent requirements than those specified in the minimum firesafety code for the protection of life and property or justify requirements that meet special situations arising from historic, geographic, or unusual conditions.

F.S. §633.208 (3)(a)

Local building departments are “local enforcement agency[ies]” as statutorily indicated while the governing body, is the Broward County Board of Rules and Appeals.

c. The authority of the Board of Rules and Appeals as governing body.

The authority of the Board of Rules and Appeals was affirmed in the express provision of an Opinion rendered by the Attorney General of the State of Florida to this Board on August 21, 2018 wherein was stated:

With regard to requirements for Certificates of Competency, which are found within the Florida Building Code, Broward County Amendments, this office is unable to comment. Section 16.01 (3), Florida Statutes (2018), authorizes the Attorney General to render an opinion "on any question of law relating to the official duties of the requesting officer." **This authority, however, does not extend to the interpretation of local codes and ordinances.**

In so saying, the interpretation of local codes and ordinances is the province of the Board of Rules and Appeals. See Special Act 71-575(3)(a) and 3(c); Section 9.02, Broward County Charter.

VIII. Input from the Florida Building Commission

In response to inquiry from the Board of Rules and Appeals, the Florida Building Commission has declined comment citing the August 21, 2018 Opinion of the Florida Attorney General which it adopts with respect to the provision addressing interpretation of local administrative amendments.

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CONCLUSION

For the reasons set forth above, it is the determination of the General Counsel to the Broward County Board of Rules and Appeals that an Owner's signature shall not be required on a Broward County Building Permit Application as further established and determined under the Florida Building Code and the Florida Statutes.

Furthermore it is the determination of the Broward County Board of Rules and Appeals that in the interest of strengthening the administration provisions of the Florida Building Code and in the interest of furthering uniformity of Florida Building Code requirements amongst the various authorities in Broward County, an Owner's signature shall not be required as part of the permit application process and that if a Contractor is filing a permit application in capacity of both Contractor and as Owner's Agent, the Contractor must sign as both Contractor and as Agent in spaces provided on the face of the Broward County Uniform Building Permit Application form.

If a Contractor is acting as the Owner's Agent, then the Contractor must sign twice. Once in their capacity as Contractor and the second time in their capacity as the Owner's agent.

If a Contractor is not acting as an Owner's Agent, then there must be a second signature of either the Owner or the Owner's Agent or the permit application must be denied.

The agency authority granted to the Contractor by an Owner in the course of the building permit application process is limited solely to the authority to sign a building permit application on behalf of an Owner. No other authority, control, duty(ies), responsibilities, rights, or power is intended or implied other than the authority to sign the building permit application on behalf of an Owner.

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