

Home Sick

Homebuyers can wind up paying twice to build a home in Florida thanks to a state law that leaves consumers on the hook for unpaid workers or supplies.

By Cynthia Barnett

Florida Trend Archives —JULY 2003 ISSUE¹

Editor's note: For this report on Florida's Construction Lien Law, Cynthia Barnett examined a year's worth of claims into the state's Construction Industries Recovery Fund. Claims to the fund, a last resort for consumers who have been financially harmed by a contractor and have no possibility of recovering losses, represent only a fraction of construction disputes statewide. But the cases clearly reveal the pitfalls for consumers in Florida construction law. Of the 230 claims made to the fund in 2002, more than half involved liens against homeowners who had already paid for work or supplies but had to pay again.

Long before he signed the \$464,000 contract for construction of his family's new home in Sewall's Point on Florida's southeast coast, Philip Hellriegel read up on all the potential problems of building a house in the Sunshine State. Recently retired as president and CEO of an \$80-million New Jersey trucking company, Hellriegel figured he was a savvy enough businessman not to get burned.

But Hellriegel's 34 years of business experience had not prepared him for the pitfalls that Florida's Construction Lien Law creates for consumers. Fiercely protected by the state's \$42-billion home-building industry, the law is meant to ensure that subcontractors and suppliers get paid for their labor and materials. But the law also insulates contractors from accountability when they take a homebuyer's money but don't pay the subcontractors. And it leaves homebuyers on the hook for the unpaid bills—meaning they end up paying twice for work or supplies.

Industry leaders contend that problems with the law are rare; consumers can protect themselves with due diligence, they say. But a *Florida Trend* analysis of Hellriegel's case and more than 100 others like it across the state found that problems are widespread—and that consumers can do everything right and still get burned.

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On Great Clients

By Joe Berkeley²

Insightful design can make the most of a limited budget, inform the difficult decisions that must be made during a project, and assist in choosing the best materials. The work of excellent builders is also sure to be found here and is just as easy to admire. Great builders have a keen mind for solving problems and good hands for crafting a vision into a reality. But a third component goes into great work, and it is not so easy to detect: the quality of the client.

According to most builders, "Clients get the work they deserve." Two different clients may present identical budgets to the same architect and the same builder, yet one gets a vastly superior home simply by virtue of being a great client. But little has ever been written about what makes a great client. There is no manual, no how-to-book, no seminar on the subject. And while some of the builders I've hired over the years may fall down laughing at the thought, I'd like to offer some advice.

Be well-informed and respectful—

Great clients don't say, "I want the built-in bookcases to be, you know, simple." Would that be simple as in constructed of MDF with butt joints? Or would that be Shaker-style constructed of the finest materials possible? Great clients say, "I want the bookcases to look like this picture I found in a magazine. What do you think?"

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The general contractor Hellriegel chose, Michael Trapani of Palm City-based Strathmore Contracting, was licensed. He had a clean record with the Florida Department of Business and Professional Regulation. Hellriegel interviewed former customers. And he set up the contract so that before each payment he could double-check that Trapani had paid his subcontractors.



Hellriegel and his wife signed the papers for their 4,400-sq.-ft. dream home just before Christmas in 1998. Trapani was to pull permits by June 1999 and finish the house by the following June, in time for the Hellriegels' son to begin second grade at his new school.

Construction began on time and proceeded on schedule for half a year. In March 2000, Hellriegel gave Trapani a scheduled \$60,000 payment. Soon after, in a pattern familiar to hundreds of consumers each year, progress slowed. Workers trickled in and out of the work site. For two months, Trapani offered excuses. In May, he told Hellriegel he was broke and couldn't finish the house.

Hellriegel demanded an accounting of the \$328,000 he'd paid. Trapani could account for only \$190,000.

"I was shocked," Hellriegel says. But the bad news from Trapani was only the first in a series of unpleasant surprises over the next two years.

In the end, Hellriegel paid more than \$700,000 for what was supposed to be a \$464,000 home. He spent another \$38,000 in legal fees.

Liens and More Liens

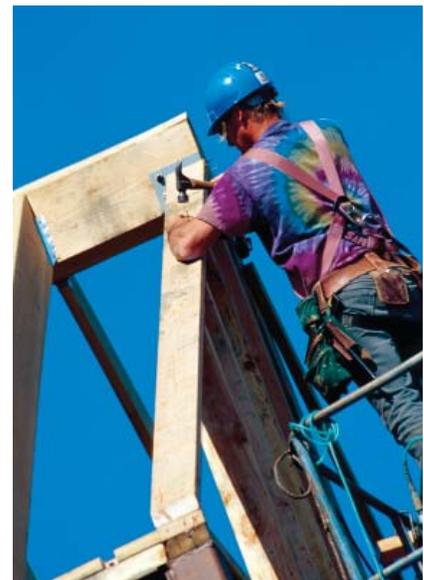
Hellriegel's second dose of bad news came via certified mail. Florida's Construction Lien Law says that any subcontractor, supplier, laborer or professional who isn't paid can collect by making a claim—a lien—against the property. To remove the lien and obtain clear title to their property, homeowners have to pay the subs and suppliers even if they've already paid their contractor for the work—thus paying double.

In Hellriegel's case, 13 subcontractors were demanding more than \$200,000 for work and supplies for which Trapani had not paid them.

Hellriegel thought he had protected himself against that possibility by following the steps recommended by the state DBPR. Before each new payment, he had required Trapani to produce "partial release of lien" documents from subcontractors and suppliers stating Trapani had paid them for work up to that point.

Hellriegel, who visited his home site every other day, says he had even asked several of the subcontractors whether Trapani was paying them on time. None let on there was a problem, he says, until Trapani's company imploded. "I feel like the subcontractors lied through their teeth to me so that I would hand the contractor 60 grand," Hellriegel says.

But one of Hellriegel's suppliers says he was as surprised as Hellriegel when Trapani's business went bust. Don Osteen, vice president of the Martin County division of East Coast Lumber, says Trapani had paid his debts on time for nine years before the day he sat down in Osteen's office to say he was broke. "When he went down, he went down fast," says Osteen, who says the company recouped only 60% of what it lost to Trapani and spent another \$23,000 in legal bills.



The cases *Trend* reviewed indicated it's common for subcontractors to fail to tell a homebuyer when a contractor is in financial trouble. Ultimately, they know the lien law protects them even if the contractor doesn't pay them.

In addition, subcontractors told *Trend* that builders sometimes bully them into not communicating with homeowners. "The biggest reason why some of these subcontractors don't go to the homeowner more is that they want to keep working," says Cam Fentriss, a lobbyist for small subcontractors. "It's a whistleblower psychology."

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Mitigating Pre-Closing Construction Lending Risk

Part One

By John Morrissey³

Construction lending, although highly profitable, includes a vast number of risks. Many of those risks exist prior to the loan ever closing, and it has been estimated that a substantial portion of a lender's risk can be mitigated through proper review of the project and contractor. Part I of this article will address proper techniques for reviewing a project and Part II of next quarter's article will address proper techniques for reviewing a contractor's qualifications.

A construction loan, by its very definition, requires a lender to approve a loan based upon collateral that does not yet exist. As a result, it is imperative that the lender possesses a detailed understanding of the project scope and associated costs. This process is typically referred to as project review, and the goal of a project review is to ensure that the lender is lending sufficient funds in combination with the borrower equity to complete the asset. Foregoing a project review can lead to budget deficiencies, missing key elements of construction and contract terms that are contrary to the lender's credit policy. All of these issues are avoidable and can be addressed when a lender properly analyzes all project information.

Many lenders oftentimes view the inspector as their budget management tool. This can be detrimental because no matter how efficient and knowledgeable the inspector may be, he/she cannot regulate whether sufficient funds are available to complete the project. In addition, while an inspection may assist with maintaining a proper balance between loan funds disbursed and the overall percentage of completion, the real risk is that the project has been underbid by the contractor from the beginning and the lender will be left with an asset that is 80% complete and 100% disbursed. In order for a lender to mitigate their project risk, and avoid the above situation, the following steps should be taken:

Review the Budget:

Each construction loan project should include a construction budget/cost breakdown. The following questions should be asked when reviewing the budget:

1. Does the budget total correctly? A budget that does not total correctly could indicate that the budget submitted is just an estimate and not the "final" construction budget.
2. Does the budget match the contract amount? If the contract is fixed price, or a cost plus with a guaranteed maximum price, the budget should match the stated amount on the contract. If these amounts don't match, then either the budget or the contract may not be the "final" one agreed to by the contractor and borrower.
3. Does the budget contain all of the key elements of construction, i.e. (appliances, cabinets, countertops, doors, drywall, electrical rough/fixtures, exterior finish, flooring, foundation, framing, grading, HVAC, painting, plumbing rough/fixtures, roofing, windows, profit/overhead)? An under-detailed budget that does not contain these elements could make it difficult for an inspector to accurately inspect the project. Asking the

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Mitigating Pre-Closing Construction Lending Risk

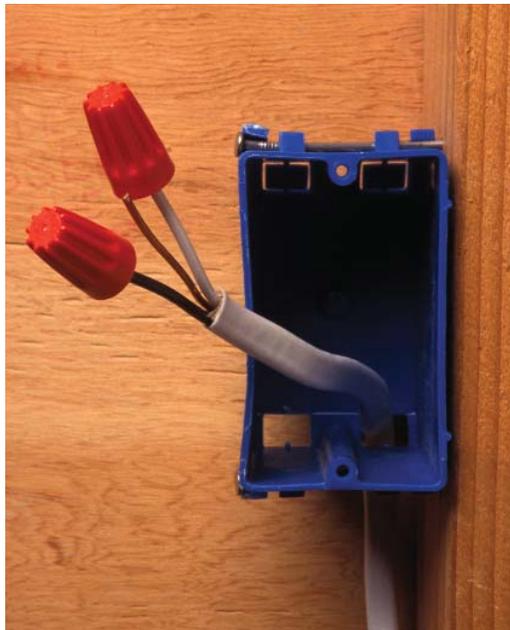
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builder/borrower to indicate where certain key elements of construction are located within the budget can reveal items that will not be completed by the general contractor. Furthermore, excluded budget items can lead to borrower or contractor liquidity problems if left unaddressed. These key elements must be included in the budget to ensure sufficient loan funds are available to complete the home.

Review the Contract:

While the lender is not a party to the construction contract, it is important that the lender review the contract anyway. The following questions should be answered during the review:

1. Is the contract submitted to the lender executed by the pertinent parties? Although rare, sometimes a contract may not be between the parties that the lender expects.
2. Does the contract clearly define the scope of the work to be performed for the borrower? Could the contract be specifically enforced?
3. Are all of the attachments described in the contract included? The lender should obtain a copy of the entire contract for review.
4. Are there any provisions in the contract outside of lender policy? Many contracts will contain language that is in conflict with lender procedures. The most common is payment terms outside the lender's policies. An example would be disproportionate deposits prior to any work being completed. While the lender is not a party to this contract the contractor expects its terms to be followed. Any conflicts with credit policy should be made clear to both the borrower and contractor up front to avoid problems later. These acknowledgements should be signed by the contractor and the borrower to ensure that the lender's terms and conditions will prevail.
5. Is the contract signed by both parties? In certain states the law requires that the contract not be signed until closing. If this is the case, the lender should condition their loan approval subject to receipt of a fully executed contract. In all other states, the lender should require a copy of the fully executed contract prior to loan closing.



Review the Plans:

In order to ensure that the budget is adequate to build the project, a review of the plans is necessary. The plans should be a full "bid set," meaning that it is the set that the contractor is using to obtain bids from his subcontractors and suppliers. At a minimum, the plans should include elevations, floor plans for each floor, foundation plan, and a framing plan. Of course a larger more complicated home will require more detailed plans than a small home, and adjustments can be made for these differences. The following questions should be answered during the plans review:

1. Is the square footage on the plans consistent with the square footage indicated on the appraisal?
2. Does the project detailed in the plans match the description in the contract? Is it the same asset that was used in the appraisal?
3. Does the asset have unusual components that would have a significant impact on cost? For example, is it being constructed on a steep or sloped lot? If this is the case, the foundation allowance in the budget should be closely scrutinized to ensure there are sufficient funds and a contingency may need to be included.

Review the Overall Cost Per Square Foot:

Finally, the project should be reviewed to ensure that the cost per square foot being charged for the construction is adequate to build the asset. The appraisal can be used to help with this review. On a Uniform Residential Appraisal Report, the appraiser will show a "Cost Estimated New." This is the appraiser's estimate of how much it would cost to build a similar project in the area. This amount should be compared to the contractor's budget and be within a reasonable variance, 10–15%. If not, the project may be underbid which leads to insufficient funds to complete the project. The lender should also consult an alternative resource other than the appraiser to confirm cost per square footage.

In conclusion, while the above review items may seem simple, a comprehensive analysis of these elements will mitigate a lender's construction risk. In return, the lender will realize a completed asset, and one, which is completed within the budget. It is by reviewing the project up front that both of these goals can be reached.



Granite Loan Management Acquires Constructsure

Granite Loan Management (GLM), a national Construction Risk Mitigation Company located in Centennial, Colorado, is pleased to announce the acquisition of Constructsure. The Chicago-based company, now relocated to Centennial, Colorado, operated for seven years utilizing a web-based inspection ordering and delivery system. Formerly owned by Larry Manchester, the acquisition will allow Constructsure, renamed Granite Construction Inspections (GCI), to continue to deliver the highest level of service and efficiencies in addition to developing new technology.

GCI will operate under GLM, which is a national outsource provider for construction lenders and manages lender's portfolios, utilizing GLM's Construction Risk Mitigation System™. The system is comprised of seven key components effectively mitigating a lender's risk prior to and during construction. The system includes the following seven services with standards developed in each area: Contractor Acceptance, Project Review, Construction Inspections, Statutory Compliance, Fund Control, Final Roll to Perm and Risk Reporting. All components can be custom tailored to meet each lender's specific needs. GLM also provides construction lending consulting services including quality control inspections, risk assessment and work out services.

"GLM and GCI are a perfect strategic fit and the acquisition of GCI's construction inspection expertise will not only broaden our product offerings, but augment GLM's reputation as The Experts in Construction Lending" says William Cobb, President. Larry Manchester, former owner of GCI has over 17 years of experience in the construction industry and will govern GCI as Senior Vice President & Chief Operating Officer. For additional information regarding GLM's and/or GCI's services please contact Penny Roach, Senior Marketing Manager, toll free at 1-888-456-4888 or via e-mail at penny.roach@graniteloan.com.

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On Great Clients

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Great clients speak up when they notice the painter wants to finish the plywood in the utility room before the plumber installs the spider-shaped heat manifold on top of it. True, it's a fine line between being a pest, but a great client makes observations and reports them calmly. Great clients get excited and tell the carpenter, "Thanks for the great job you did framing this roof. It's a sin to cover it up." People want to do good work for those who appreciate it. Conversely, people want to go home as quickly as possible when dealing with a client who is indifferent at best and combative at worst.

Bad clients look down their noses at folks who wear work boots and heft plywood for a living. Great clients show up with cold drinks when it is 90 degrees F outside and the crew is installing insulation in the attic.

Great clients never say, "Hey, that's not how Norm does it on TV!" They understand that through the magic of television, and unseen helpers, Norm can do a week's work in a half-hour. Likewise, great clients realize that the clause in the contract about "unforeseen delays due to weather" is there for a reason. If it rains for three weeks straight, you really can't do much about it.

Great clients don't expect builders and architects to be marriage counselors. Like everyone in the midst of a construction project, great clients are likely to review the sanctity of their matrimonial vows. However, they do so behind closed doors. When they feel the vitriol rising, one of them wisely says, "We'd like to think about this one. We'll get back to you."

While there is no direct corollary between the quantity of money on a job and the quality of the client, there is one universal truth: Great clients pay on time. If the contract says one-third of the money is due when the framing is completed, the check is there when the last nail is driven. No one wants to wait for their money; no one wants to be a bill collector.

It's not easy, but it's worth the trouble—

Just as there are bad clients in the world, so too are there bad builders and bad architects. On every project, the client, the architect, and the builder form a three-legged stool. If any one of the legs comes up short, the project turns rickety at first and eventually collapses into a miserable heap of mediocrity.

So why would anyone go through all the anguish of being a great client? Because extraordinary clients get the exceptional work they deserve, and that is the finest reward of all.

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Hellriegel was paying Trapani directly from his personal funds, but consumers who build with the help of a bank loan get little more protection. Before releasing funds to a contractor, banks require the contractor to sign notarized affidavits promising that they've paid all subs and suppliers. In the cases reviewed by *Trend*, contractors routinely falsified affidavits in order to get the next "draw" from the bank.

The law gives the banks no liability for releasing money based on fraudulent affidavits. In some of the cases reviewed by *Trend*, banks helped after the fact by negotiating settlements with vendors that let the consumers pay half of what was owed. In other cases, lenders helped only by offering financing for the new money owed.

Too Little, Too Late

The state's Construction Industries Recovery Fund—paid for by consumers with a per-square-footage charge on home-building permits—is a last resort for homeowners who lose money when a contractor leaves them in the lurch.

Navigating the fund and meeting its requirements, such as a court judgment against the contractor, can require thousands of dollars in legal fees. In two of the cases analyzed by *Trend*, consumers say they would not have been able to collect without their elected state lawmaker stepping in to help.

In many cases, it's not worth the hassle. The maximum recoverable, \$25,000, is paltry for those who've seen their retirement savings disappear. It also means that consumers who get ripped off in a case involving a swimming pool or remodeling job can recover 100% of their losses, while those who lose on a new home recover only a fraction.

Meanwhile, a \$250,000-per-contractor limit means there's a first-come, first-served race when a large group of



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homeowners is harmed. “In essence, the homeowner who helps pay for the fund has purchased a performance bond. It’s supposed to be insurance,” says Sherry Rogers, a DBPR regulatory consultant who worked on the fund until April, when she quit to start a construction-services business. “But this insurance is so difficult to collect on that it’s almost completely ineffective.”

Protection

So-called mechanic’s lien rights are long-respected protections for people who provide labor, materials and services. Former state Sen. Fred Dudley, a construction lawyer and industry lobbyist who led the last major rewrite of the law in 1990, says the key idea is to prevent “unjust enrichment”—that is, increasing the value of an owner’s property while the very people who’ve improved it go unpaid.

Paul Thompson, executive vice president of the Florida Home Builders Association, says the lien law puts the ultimate responsibility for payment on the right person—the homeowner. “They own the property, and they are responsible,” says Thompson. “And that’s why we have an elaborate mechanism in place to make them aware that they are responsible.”

Indeed, Florida law makes clear that subcontractors who begin work on a home must notify the owner via certified mail that he is ultimately responsible for paying the subs even if he’s already paid the contractor. Ironically, the law, which was intended to help small businesses, more often benefits bigger firms that have the time and resources to devote to the notification and collection process.

Contractors, meanwhile, often assure homeowners that the notice is nothing to worry about. But consider the impact of the lien law in the unraveling of four home builders in Florida over the past few years: Steven Bultema’s Lighthouse Building Co. in Spring Hill; Michael Molloy’s Starlight Homes in Cape Coral; Doug Reynaert’s Reynaert & Sons in Lehigh Acres; and Glen Schultz’s Artistic Home Builders in Citrus County. Eighty-one families in the counties served by Lighthouse, 66 in Cape Coral, 42 in Citrus County, and some 30 more in the southwest Florida area served by Reynaert lost tens of thousands of dollars each—much of it for work and supplies for which they had already paid.

In all four cases, home-building executives and state officials insisted the problems were isolated. Several blamed the victims for not understanding the law, not checking out their contractor or for choosing a contractor based on the lowest estimate.

“The same person who will spend an hour in the mall searching for a \$20 sweater will sign a complex construction contract in less time than that and assume everything is fine in the world,” complains Robert Lang, a Tampa environmental contractor who chairs the state’s Construction Industries Licensing Board (CILB). “But everything is not fine in the world.”

Trend found, in fact, that many Floridians harmed by the lien law, like the Hellriegels, were sophisticated and informed and put considerable time and care into choosing a builder. They include physicians, judges, professors, even a property appraiser who was intimately familiar with the lien law and the builders in his community (see “Savvy Victims,” below).

No Help

In the wake of Trapani’s business collapse, Hellriegel took over managing construction for his home in June 2000, the month his family had planned to move in. “It’s was just basically a pretty bad house,” says Hellriegel, “a shell.”

He spent all summer at the site, from 5 a.m. to 5 p.m. every day, making the 45-minute commute from his family’s condo in Jupiter. When the school year started, he brought his son along so the boy could start second grade in his new neighborhood.

Hellriegel’s close-up view of construction would make him even angrier with the lien law. Knee-deep in \$200,000 worth of liens, Hellriegel found that some materials on which he owed money hadn’t even been used on his house. He paid \$6,000 for treated lumber used in decking when his house didn’t have a deck. He found he owed for doorknobs even though the house didn’t yet have doors. He was made to pay twice for the lumber he needed to finish the job—yet it was nowhere to be found. So he had to pay for it a third time.

The lien law doesn’t require a supplier filing a lien to prove that materials used for a home were delivered to the home’s address. In fact, it specifically allows suppliers to have delivered the materials to the contractor at a different location.



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When it seemed like things couldn't get much worse, Hellriegel headed to a hearing in federal bankruptcy court, where Trapani had filed a personal bankruptcy petition. Hellriegel argued that he felt Trapani had committed fraud and therefore shouldn't be entitled to bankruptcy protection.

The court gave Trapani the protection. Hellriegel was told not to bother coming back—there was simply nothing left for creditors. The same story was repeated in numerous other cases that *Trend* reviewed.

Hellriegel's trip to the federal courthouse also revealed that this wasn't Trapani's first bankruptcy. He'd filed Chapter 7 in 1989.

That didn't matter because the state's licensing board only scrutinizes applicants with bankruptcies within the past five years. And it probably wouldn't have mattered if the bankruptcy had been more recent: The board routinely licenses contractors with recent bankruptcies—despite continuing problems with contractors who go in and out of business.

Worse: The board has allowed some bankrupt contractors to keep building houses even after their financial misdoings result in compensation from the state's Construction Industries Recovery Fund ("Too Little, Too Late," above).

To win an award from the fund, a consumer must meet stringent burdens of proof—and under Florida law, any contractor whose customers have successfully filed for compensation from the fund must relinquish his license until he has paid the fund back. But *Trend* found that several contractors whose clients had to be reimbursed by the state are still licensed—and still building houses—even though they never repaid the fund.

Case in point: Doug Reynaert, the longtime builder who left southwest Florida families with half-built homes and tens of thousands of dollars in liens when he filed for bankruptcy in 2001. Angela Barnes, a former Fort Myers physician's assistant who lost \$65,000 to Reynaert, received the maximum \$25,000 compensation from the state. But the construction board has let Reynaert hold on to his license, citing more than a dozen contractors around the state who have appealed their suspensions based on the fresh-start provisions of the federal bankruptcy laws.

Barnes, meanwhile, has sold her Fort Myers home and returned to her native Ohio. She says she would never build a home in Florida again. "The lien law is a scam, and the fact



that Doug is still building houses is a scam," she says. "What you have in Florida is a good-old-boy system that looks out for everyone but the consumer."

Lang, the licensing board's chairman, says his group's hands are tied: "The federal bankruptcy law is the wild card that can trump the state laws." Lang says the board tries to find other ways to suspend contractors who have mismanaged finances or committed fraud. "If it were up to us, they would be suspended. But if they pursue it with the right lawyer, they're going to beat us."

Trapani relinquished his license voluntarily to avoid further administrative proceedings with the CILB. In doing so, he agreed to pay restitution of \$246,000 to the Hellriegels and between \$32,000 and \$52,000 each to three other families whose homes he abandoned. The U.S. Bankruptcy Court discharged each of these debts.

Prosecution?

The more Hellriegel learned about Trapani's business practices, the more convinced he became that his contractor had committed crimes. Armed with a letter signed by Trapani acknowledging he'd collected \$328,000, paid out \$190,000 and couldn't account for the difference, Hellriegel met with various police agencies and prosecutors. But the law-enforcement officials all said the same thing: It's not a criminal matter.

Willingness to pursue homebuilders varies greatly among Florida's 20 judicial circuits. In the First Judicial Circuit in Pensacola, State Attorney Curtis Golden's economic crimes division has used bank-fraud laws to prosecute contractors who signed false affidavits in order to draw more of a consumer's loan. But many prosecutors seem to take the view that it's a civil matter.

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In the Fifth Circuit, which includes Citrus County, State Attorney Brad King came under enormous community pressure earlier this year to build a case against Fred Colebrooke, a sheriff's detective-turned-contractor who cost six customers more than \$300,000 after he decided not to use their payments toward their jobs. A state investigation found that while Colebrooke had been operating on the financial edge, transferring money from one business interest to pay for others, he was not criminally liable because he didn't divert the money for personal use.

In the wake of the Schultz and Colebrooke cases in Citrus County, Sen. Nancy Argenziano, R-Crystal River, and Rep. Charles Dean, R-Inverness, shepherded bills through the Legislature that make falsifying documents regarding subcontractors a felony. But industry observers say that and other amendments to the lien law this year will make a difference only if more of Florida's prosecutors are willing to pursue dishonest contractors.

"Some of the state attorneys have to be hounded and pushed and prodded and politically motivated," says Deborah Lawson, a Tallahassee lobbyist representing subcontractors and suppliers and the executive director of the American Subcontractors Association of Florida. "We all know that if they were more aggressive, fewer people would do the crime."

Bad Business

In fact, both contractors and law-enforcement officials ignore a number of provisions in the lien law. For example, the law makes the intentional misapplication of construction funds—that is, using one family's money to pay the bills on another family's house—a felony.

But small contractors busy juggling jobs say it's common to mingle money for one building project with another. Typically, small builders deposit all funds into one operating account and pay all bills out of that account. The contractors



say there's rarely intent to misapply money. They point out that initial funds provided by a consumer or bank are often not enough to launch a new home project for a small, custom home builder without the capital backing that big corporate builders enjoy.

"There is a discrepancy between the real world and what the law says," acknowledges Jacksonville construction lawyer Chip Bachara, who believes this year's changes will make a big difference for consumers. "But that doesn't mean the contractor is dishonest; most are honest people working hard to make a living."

Indeed, among Florida's more than 30,000 homebuilders, it's highly unusual to come across someone clearly intent on embezzling a buyer's money.

The vast majority of problems are the result of poor financial management by a contractor. The files reviewed by *Trend* are filled with small and medium-sized builders who took pride in building houses but paid too little attention to their balance sheets.

Many of the builders were juggling funds among jobs until one thing went wrong—in Cape Coral, contractor Michael Molloy blamed a disgruntled subcontractor who suddenly called in liens.

Epilogue

Hellriegel took solace in the fact that Trapani, in relinquishing his license, agreed "never again to apply for licensure as a contractor in the state of Florida."

But as it turns out, Trapani may not need his license after all. Like many other unlicensed contractors, he can set up another business with a licensed contractor as its "qualifier," allowing him to continue building homes.

According to documents filed with the state's Division of Corporations, a home-building company called Hemmingway Homes is being run from the address where Trapani lives in Palm City. Martin County Building Department records say the business is owned by Linda Usher, a certified general contractor in nearby Stuart. But Division of Corporations documents make no mention of Usher. They show the company is owned by Mary Knierim, who is Trapani's girlfriend and the co-owner of his house.

Knierim told *Trend* that Trapani is also her business partner and that the two would be willing to be interviewed but then apparently changed her mind. Neither she nor Trapani would speak to *Trend*.

According to DBPR documents, Trapani is disputing another part of his license relinquishment that says he cannot be employed in a supervisory or managerial capacity in a contracting business in Florida for five years. That provision,

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Trapani argues, contradicts the fresh-start policies of the U.S. Bankruptcy Code.

Hellriegel doesn't want to hear about it. "This man could walk away with my money and not go to jail," he says. "There's not much else that can surprise me."

Savvy Victims

Industry insiders often paint people harmed under Florida's lien law as naive retirees who didn't understand the complexities of their new-home contract. Amendments passed this year by the Florida Legislature say that warnings about the lien law required in all construction contracts must be "printed in no less than 18-point, capitalized, boldfaced type"—about the size of the headline above.

But *Trends* analysis found that even savvy consumers who well know their rights and responsibilities can get burned.

Case in point: A Jacksonville property appraiser—who asked that his name not be used—chose a reputable builder. He called and interviewed eight former clients. He went to the builder's job sites and interviewed current clients as well as subcontractors. Just like all the consumer-protection literature recommends, he had the builder produce a partial release of lien before each bank draw—and he insisted that he co-sign each draw. He visited the job site every day to monitor progress on his house.

None of this protected him when the builder failed to pay subcontractors and suppliers, falsified documents saying he had paid subs and suppliers in order to draw more money for the job, used that money for other jobs, and finally committed suicide as his finances began to unravel.

"The construction lien law desperately needs reform," says the appraiser, who lost \$80,000. "No one watched closer than we did, and it happened right in front of our eyes." While the suicide may seem highly unusual, three of the cases reviewed by *Trend* involved contractor suicides.

Possible Solutions

Over three decades and 17 rewrites of the Construction Lien Law, state lawmakers have focused on more public notice, more public disclosure and more public education about homebuyer responsibilities under the law. But the public probably would be better protected if the state could

reduce the number of contractors who operate at the financial margins.

Florida led the nation in new-home permits, with 63,741 issued through April of 2004—that's 11.5% of permits nationwide, leading California, which had 62,245, and Texas, which had 56,269. But the state's oversight of contractors is somewhere in the middle of the pack, consumer advocates say: Much better than oversight in Georgia or Texas, which don't even license home builders, but not as strong as in California or Arizona, which keep close tabs on contractor finances.

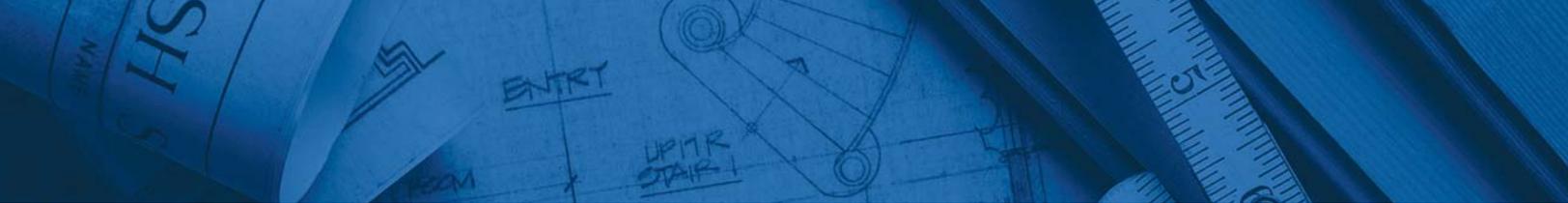
Florida's DBPR revoked or suspended more licenses last year than ever before as consumer complaints against contractors climbed near 4,000. But investigations can take years, and actions against contractors come too late for consumers who've already lost money. Tightening licensure rules on the front-end would be more effective.

Possibilities Include:

Requiring more substantial capital backing for a license. The present requirement—a net worth of \$10,000 for a residential or \$20,000 for a general contractor—is paltry considering the price of homes and contractor workloads. "These businesses quickly get into the millions, and at that point the contractor is so busy building homes he's forgetting about the business model," says Constantine "Chuck" Kalogianis, a Pasco County real estate lawyer who represents two families that lost tens of thousands of dollars when a contractor named David Olsen of Landmark Homes in New Port Richey abandoned their homes in the middle of construction. Some states, such as North Carolina, base licensure on a contractor's available working capital. North Carolina grants a limited license for contractors with \$12,500; an intermediate for those with \$50,000; and an unlimited license for those with \$100,000.

Requiring a licensing bond. California, Washington and Arizona all do. Licensing boards can base the amount of the bond on the contractor's experience level or business record. The bonds are relatively inexpensive for contractors in good standing: California's \$7,500 bond required for a contractor with a good record costs \$89 a year. California's licensing board ups the bond requirement any time a contractor is found to have violated the state's construction law. Florida CILB Chairman Robert Lang argues that half to two-thirds of Florida's contractors, many of them top-notch small business-people, are not bondable. "They may be excellent craftsmen and honest people and not have financial wherewithal," says





Home Sick

(cont'd)

Lang. "We might weed out a bunch of folks, but we would cripple the system."

Tightening the licensure requirements for builders with recent bankruptcies. The DBPR flags applications with recent bankruptcies and sends them before the CILB for scrutiny. But they don't get much. The board routinely allows those applications to proceed, relying on the contractor's word that the bankruptcy was personal and had nothing to do with business. "I don't think we have enough information to really see the whole picture," says Lee-En Chung, a Sarasota general contractor and professional engineer who serves on the CILB. Chung and other members acknowledge



the state has a problem with contractors who maintain a cycle of starting a business, harming consumers, shutting down, declaring bankruptcy and starting a new business.



There's also wide agreement that the recovery fund needs reforming. According to Stephen Schmidt, executive director of the National Association of State Contractors' Licensing Agencies, 15 states have recovery funds, and Florida's is among the most difficult to navigate. Arizona's was, too, until the state

got rid of the court judgment, debtors' search and other requirements. The fund is now entirely administrative. "If the debt is justified, why should you have to incur thousands of dollars in attorneys fees and get a default judgment?" Schmidt asks. "It's not that hard to verify what happened and figure out the loss."

Sherry Rogers, a former administrator at the fund who now runs a construction-services business, would like to see a bigger step: Taking homeowners out of the equation entirely, so that contractors and subcontractors are the ones who pay for the fund and collect from the fund when they are harmed. "Subcontractors and suppliers usually know when they are dealing with a bad risk," Rogers says. "If the industry was responsible for the recovery fund, you might see people being more careful about who they do business with. At that point, the bad guys would have to go."

In the News *NARCL Completes Two Strategic Initiatives*

The National Association of Residential Construction Lenders (NARCL) is pleased to announce the completion of two strategic initiatives. NARCL recently introduced a standardized "Builder (Contractor) Information Questionnaire" (Form 001) which is designed to provide uniformity for builders and lenders alike. After receiving feedback from builders

regarding the lending communities inconsistent builder review process, NARCL gave this initiative the highest priority and many lenders are excited to implement and utilize the standardized Builder Information Questionnaire.

The second initiative was the introduction of Inspection Standards or Guidelines. Previously

no such standards existed, and it was difficult for lenders to identify quality inspection firms. However, when used, these Guidelines will provide inspectors and lenders with consistency in the area of construction inspections. For additional information about these two initiatives please contact info@narcl.org.

Mark Your Calendar:

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Construction-at-a-Glance

	April 03	April 04
Monthly Housing Starts*	1,637	1,981
YTD Permits-Single Family*	434	500
Monthly New Home Sales*	1,027	1,093
Unemployment Rate	6.0%	5.6%

**Thousands of Units*