



Law Office of  
**KEVIN F. JURSKINSKI**  
& Associates

## **THE BOARD-CERTIFIED ATTORNEYS' TIPS FOR NEGOTIATING, DRAFTING, AND MONITORING THE CONSTRUCTION CONTRACT OF YOUR HOME**

### **START YOUR HOME CONSTRUCTION ON A SOUND LEGAL FOUNDATION**

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Our office represents homeowners, as well as contractors, subcontractors, and material suppliers who engage in the construction of residential properties here in Southwest Florida.

We regularly review proposed construction contracts, negotiate, and draft revisions to or draft the entire construction contract for the benefit of our client, whether that client is the homeowner or contractor.

Our office not only drafts contracts and negotiates terms and conditions, we also engage in litigation over construction contracts and disputes arising from the administration and interpretation of such contracts.

We regularly receive calls, especially from homeowners who are building a home (sometimes for the first time in Florida and sometime for the first time anywhere). Those same prospective homeowners or homebuilders have a variety of questions about Florida law.

This article will identify some key points to keep in mind in regard to the construction of your home. Also, this article includes links to pertinent sections of Florida's construction lien law (Florida Statute §713), which is considered by many professionals as one of the most complicated statutes in Florida based upon its interpretation and sometimes confusing Court rulings.

#### **1. Due Diligence and Determination of Reputation of Contractor:**

Before engaging in discussions with a contractor to build your home, you should do some significant background checking on the contractor, which would include identifying the reputation with the community, checking online reviews, checking the names of former customers, checking the Better Business Bureau records, as well as doing as much research as possible to determine the reputation of the builder.

#### **2. Review of Various Models and Floor Plans Being Offered:**

You should review the various products being offered by the builder to determine if there is a model that the builder normally builds that would interest you. Alternatively, if you are going to have a custom

home, then the ability of the builder to construct the home in accordance with the plans and specifications.

### **3. Comparison Shopping:**

Once the homeowner identifies a grouping of reputable contractors that it wants to work with, the homeowner should then also identify the model/products being offered by those contractors and compare prices accordingly based upon the square footage cost, as well as the inclusion of various allowances (see further discussion as to purchase price below).

### **4. Plans and Specifications:**

As to the plans and specifications, you will need to decide whether you are going to have your own designer/architect design your home or utilize those services by the builder, whether it is their standard model or, alternatively, whether it is a custom home being built to your specifications. In such event, make sure you verify the ability of the builder to build in accordance with the plans and specifications, their prior experience as to same, as well as incorporate the plans and specifications into the actual contract.

### **5. Purchase Price:**

The purchase price should be verified as against other similar contractors for the type of product being offered. The price may vary based upon whether the owner has title to the lot or, alternatively, is purchasing the lot from the builder as part of the construction package.

Attention should be given to the plans and specifications and the total package being offered, which includes all of the various features being provided to the owner and the allowances so that a true “apples to apples” comparison can be made between the prospective builders.

Much of this work should be done by the homeowner as part of its overall due diligence investigation in its search for a quality contractor to build that specific home for the owner.

If the owner instead identifies that it is going to build a custom home, then the owner should have the plans and specifications created by its own architect/designer or, alternatively, contract with a contractor who has a design/build program. If it is going to be a custom home, it will require more attention to detail and time, as well as the fact that if it truly is a custom home the builder must familiarize itself with specificity as to the plans and specifications and be able to build the home as required by the plans and specifications.

### **6. Purchase of Home to be Constructed on Builder's Lot:**

This is generally a situation in which a homeowner purchases a home from a national or regional builder in which the homeowner places a deposit of 10-20% with the balance to be paid at the time of completion of the home. In this scenario, the final inspection will be significant to the homeowner.

### **7. Construction Fundamentals When Having a Home Built on Your Own Lot:**

This is a situation in which the builder is constructing the home on the lot owned by the homeowner, in which case generally the builder requests a down payment and incremental payments (draw payments) during the construction process based upon the work being completed.

In addition, when a home is being built on the owner's lot, it will require far more diligence in making sure that during the construction process, starting with providing a Notice of Commencement pursuant to Florida Statute §713.13, making sure that there are proper payments being made as defined in Florida Statute §713.06 (see Section 8 below) and that incremental draw payments are being properly processed without issues arising in which subcontractors and materials suppliers are not being paid.

This is a significant difference than being built by the contractor on the contractor's lot since at the closing of such transaction, a title company does a full and comprehensive title search report and issues a title policy for the benefit of the homeowner providing the homeowner clear and marketable title from all liens and encumbrances. This is not the case when construction is undertaken on a lot owned by the homeowner. The homeowner should be well aware of their obligations provided for in the Florida Construction Lien Law Notice under Florida Statute 713.015 "Mandatory provisions for direct contracts."

### **8. Proper Payment Procedures:**

This is the most significant issue affecting homeowners who contract to have construction done on their own lot by a contractor. The Florida legislature has set forth in the Construction Lien statute, FS 713.06 et seq, detailed information that is designed to protect the homeowner as well as the contractor and subcontractor and identify a specific format for "proper payments" under the Construction Lien statute.

The reason for that is the significant issues that arise if proper payments are not made, which could result in the homeowner paying twice for the same work or having their home foreclosed upon even before construction is completed.

Pursuant to Florida Statute §713.06, it is fundamental in Florida that an owner must protect itself from construction liens. In fact, in every contract entered into between a homeowner and residential contractor, there are several notices, one of which is the construction lien law notice (a copy of which is attached hereto).

The import of this issue for the homeowner to properly protect themselves, it is required that they fundamentally understand the Florida construction lien law (Florida Statute §713 et seq.) considered by most legal scholars as the most complicated statute in Florida to understand, comprehend, and implement. As it relates to the homeowner, proper payments must be made.

The definition of a proper payment is a payment made to the contractor which takes into consideration that any third party, subcontractor, or material supplier who have provided a Notice to Owner issue a Partial Release of Lien up to the time of that draw. Failure to obtain such Partial Release will result in the payment to the contractor being a "improper payment", which possibly could be to the detriment of the owner.

The construction contract must fully address that and the construction contract must implement the proper procedure for payment.

### **9. Services of the law office of Kevin F. Jursinski, P.A.:**

The law office of Kevin F. Jursinski, P.A. can act as the disbursement agent for construction and does so from basic residential construction contracts in which the owner is paying cash for their home all the way up to commercial projects in which our firm has properly disbursed construction funds of over \$30,000,000.00 on a commercial project. Each draw payment must be monitored properly and

administered.

Our law firm provides a service to assist the homeowner in negotiating, reviewing and administering contracts for their home, starting with our firm being named on the Notice of Commencement so that our firm receives all Notices to Owner. Our firm create a spreadsheet of all notices filed and received and also tracks of all of the draw payments requested and made. Our firm assists the Owner with the proper method to disburse such draw payments with the appropriate releases to be obtained for each construction draw that we disburse or advise our clients to disburse.

#### **10. Time of Completion, Sufficient Forces to Man the Job, Clean up, Inspections, and Alternate Dispute Resolution Procedures:**

These additional five points of Time of Completion, Sufficient Forces to Man the Job, Clean up, Inspections, and Alternate Dispute Resolution Procedures are also significant points that we address with our client and should be included within any properly drafted contract.

We also recommend highly qualified, licensed, bonded and insured inspectors who are also licensed Florida general contractors to assist as your inspector during the construction process.

#### **11. Construction Litigation**

Unfortunately, even with the best drafted contract, our clients sometimes face construction litigation or construction arbitration. Kevin F. Jursinski is a Florida Bar Board Certified Construction attorney who has tried and arbitrated numerous construction cases. The firm also has other competent attorneys that can assist with construction litigation or arbitration if that approach is the only alternative to resolving a problem.

The above suggested details and points should be considered by every homeowner who decides to build or construct a home in Florida.

As indicated above and as featured on our website ( <https://www.kfjlaw.com/practice-areas/construction-law> ), you should consider that the construction contract is the foundation of your legal rights as to your home and pay special attention to all of the details:

### ***“Measure Twice, Cut Once”***

Our office has available qualified construction attorneys that can assist in that process.

- Kevin F. Jursinski, B.C.S
- Kara Jursinski Murphy, LL.M., B.C.S.