

Plans & Specs

ABC - Fall Issue



Associated Builders
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Florida Gulf Coast
Chapter

August Construction
Unemployment Rates
Improve in 45 States from 2014

New Laws to Live By!

Construction Material Prices
Plunge in September

Difficulty in Finding Skilled
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in Jobs Report



New Laws to Live By

By Justin R. Zinzow

Someone once said that laws are like sausages; it is better not to see them being made. As a sportsman who makes a mean wild-game sausage I disagree. But this is not a cook book, so I should say that as a lawyer, a statesman, and a patriot I also disagree. Laws, their application, and their origination, are a unique thing. They often come into being without our knowing, or have broader impact than we ever expected. Following are some of 2015's sausages, and what they should mean to you.

Construction Monitoring through Drones is Now Regulated

Contractors and owners have often used various birds-eye view techniques to document construction progress for planning, historical documentation, dispute resolution, and other reasons. With the popularity, size, and cost effectiveness of drones, these data delivery vehicles will surely have a place on and above construction projects in the years to come. Until now Florida has not regulated the use of drones, except to prohibit law enforcement from utilizing them to conduct unlawful searches. Effective July 1, 2015, the new Freedom from Unwarranted Surveillance Act prohibits any person from recording images of privately owned real property, or of any owner, tenant, occupant, or other person on that property with the intent to conduct surveillance on the person or property in violation of such person's reasonable expectation of privacy or his or her written consent. An image includes photographs and videos, and also "thermal, infrared, ultraviolet, electromagnetic waves, sound waves, odors, or other physical phenomena which captures conditions existing on or about real property." A person is presumed to have a reasonable expectation of privacy if he or she is "not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone." The Act contains numerous exemptions, some of which may be applicable to the construction industry, but which bear significant scrutiny.

Construction Defect Notice

Some readers may have received or heard of the dreaded Chapter 558, Florida Statutes Notice of Construction Defects. The purpose of this law was theoretically sound – to resolve disputes without costly litigation or arbitration – but its application was fraught with problems. Claim notices were nothing but vague accusations sent to every trade on a project, forcing a construction party to decide whether to alert its insurer to what could be a frivolous claim (thereby increasing insurance claims), or delay alerting its carrier (thereby risking coverage denial). Claims were often asserted for damages which could have been readily avoided by the owner with proper maintenance, but the Act provided no mechanism through which to constructively have that dialogue. The process was not confidential so construction parties often did not wish to participate. Insurers were often blocked from participating at all or effectively, excluding often essential stakeholders from the process.

This year the legislature clarified and improved the notice of claim procedures. Among improvements made:

- **Vague accusations are no longer sufficient.** The defects described must be based upon at least a visual inspection of the affected area, and the notice must identify the location of each defect in sufficient detail such that the contractor can locate the defect without undue burden.
- **Maintenance failure discussions can now take center stage.** The owner must provide, upon request, a copy of all maintenance records, which can then be used to facilitate an open and honest discussion concerning the real cause of the damage.
- **Insurers may participate in the process.**
- **The process is now confidential.**

While receiving a 558 notice is not an enjoyable experience, these statutory changes create a better opportunity for claim resolution. Prompt attention

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should be given to these notices and construction parties should now be more inclined to participate earnestly in the dispute resolution process instead of just going through the motions.

Creating New Structural Engineer License

The Florida Legislature has created a new professional engineering category: structural engineer. Engineers, design-build firms, or those trades contracting directly with engineers should be careful to verify that structural engineers are preparing now for compliance so that later problems do not arise.

As of March 1, 2017, no person, other than a licensed structural engineer, can practice structural engineering. This type of engineering was previously subsumed in the general “engineering” license, but has now been carved out. Structural engineering means “any engineering service or creative work that includes the structural analysis and design of structural components or systems for threshold buildings.” The FEMC must issue a structural license to any qualified applicant who (in addition to paying fees): (a) is already licensed or is qualified to be licensed as a general engineer, (b) provides a record of 4 years of active structural engineering experience, and (c) has passed the National Council of Examiners for Engineering and Surveying Structural Engineering examination. However, licensed engineers who act quickly (before September 1, 2016) can be exempted from the experience and examination requirements through an affidavit and informal examination process.

Keep Building that Shiny City Upon a Hill

John Winthrop, a pioneer and early Puritan minister coined the phrase made famous by Ronald Reagan. Throughout his Presidency Ronald Reagan would refer to America as that Shiny City Upon a Hill. She is so, because of her grand ideals, but also because of each and every contractor who risks life, limb, and purse to build her. Law can add risk if unknown, or reduce risk if embraced. Embrace and apply the law to your daily work and build on.

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Looking to Get Involved?

As a member of ABC in Florida, you are invited to participate in the following legislative and political activities.

2016 Tallahassee Conference January 27-28, 2016

Doubletree by Hilton, Tallahassee
Contact: Carol Bowen

Chapter Candidate Interviews Spring/Summer 2016

Contact: Your Local Chapter

Grassroots Efforts

Attend meetings, offer testimony
and letters of support.

Contact: Carol Bowen



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