



**STATE OF FLORIDA
CONSTRUCTION INDUSTRY LICENSING BOARD**

IN RE:

**THE PETITION FOR DECLARATORY STATEMENT OF
ROBERT J. KONING**

DS 2012-010

FINAL ORDER

This matter came before the Construction Industry Licensing Board (Board) pursuant to section 120.565, Florida Statutes. At a duly-noticed public meeting held on March 16, 2012 in Altamonte Springs, Florida, the Board considered the Petition for Declaratory Statement filed by ROBERT J. KONING, who was present. The Board re-considered the matter at its meeting on May 11 2012 in Daytona Beach, Florida with Petitioner present, and reaffirmed its position.

The Petition was filed with the Department of Business and Professional Regulation on January 24, 2012. Notice of the Petition was published on February 10, 2012, in the Florida Administrative Weekly. No comments were received.

Having considered the Petition and relevant statutes and rules, the Board issues the following:

FINDINGS OF FACT:

1. The facts considered by the Board are as alleged in the Petition, a copy of which is attached hereto and incorporated by reference, and presented at the meeting, with no further investigation by the Board.
2. Petitioner is licensed by the Board as a certified Division 1 contractor.
3. Petitioner asks the Board whether home inspection services are within the scope of licensure of a Certified Division 1 Contractor, provided the Division 1 contractor is not holding themselves out specifically as a home inspector.

CONCLUSIONS OF LAW

4. The Construction Industry Licensing Board has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.
5. Petitioner is substantially affected, as required by section 120.565, Florida Statutes.
6. Pursuant to section 489.105, Florida Statutes, "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. For the purposes of

regulation under this part, “demolish” applies only to demolition of steel tanks over 50 feet in height; towers over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(f):

1. (a) “General contractor” means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.
- (b) “Building contractor” means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.
- (c) “Residential contractor” means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and

accessory use structures in connection therewith.

Therefore, the Board hereby issues a declaratory statement that home inspection services as described in the Petition are within the scope of licensure of a Certified Division 1 Contractor, provided the Division 1 contractor is not holding themself out specifically as a home inspector licensed under Chapter 468, Florida Statutes.

The applicability of this Declaratory Statement is limited to the set of facts incorporated herein. This Final Order shall be effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 15 day of May, 2012.



J.D. HUSSEY, JR., Chair
Construction Industry Licensing Board

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST

DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to: ROBERT J. KONING, 8301 Joliet Street, Hudson, Florida 34667, and by hand/ interoffice delivery to Daniel Biggins, Assistant Attorney General, Suite PL-01, The Capitol, Tallahassee, Florida 32339-1050; Tammie Britt, Suite PL-01, The Capitol, Tallahassee, Florida 32339-1050 and the Construction Industry Licensing Board, 1940 North Monroe Street, Tallahassee, Florida 32399-1039, on or before 5:00 p.m., this 16th day of May, 2012.

Brenda M. Mill

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City, State, Zip+4	<i>Hudson, FL 34667</i>
E-5 For 3800, August 2006 See Reverse for Instructions	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 1/24/2012
File #

In re: ROBERT J KONING'S PETITION
FOR DECLARATORY STATEMENT
ON A DIVISION 1 CONTRACTOR'S
AUTHORITY TO CONDUCT HOME
INSPECTIONS

DS 2012-010

Construction Industry
Licensing Board
JAN 24 2012

PETITION FOR DECLARATORY STATEMENT

Petitioner, Robert J. Koning, pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Fla. Admin. Code, hereby petitions the Department of Business and Professional Regulation, Construction Industry Licensing Board ("Board") for a declaratory statement, and states:

Introduction

Petitioner, Robert Koning, maintains licensure as a Certified Division 1 contractor under Chapter 489.105(3) Florida Statutes. Petitioner's address is 8301 Joliet Street, Hudson, Florida 34667; telephone (727) 863-5147.

The statutory provisions at issue are Part XV of Chapter 468, Florida Statutes, and Sections 468.831 and 468.831, Florida Statutes.

The issues to be determined by declaratory statement are:

- 1) Whether Home Inspection Services defined at 468.831(2)(3) and (4) are within the scope of licensure of a Certified Division 1 Contractor when performing such services for existing or potential clientele - provided they are not representing themselves as a person who specializes as a "Home Inspector".

Discussion

- 2) Historically, Division 1 Contractors have always maintained the ability to perform home inspection services on construction projects for their clientele. These inspections have been for clientele's private use and knowledge or for use as a Home Inspection selling document describing all conditions of the construction to potential buyers of the property. These contractor provided services have been on-going since the inception of contractor licensing itself. In fact, the Florida Bar Association's Residential Real Estate Contract Form requires inspection of a residence by a state-licensed contractor as a condition of its contract. This was a standard provision (and still is) until Home Inspectors were added as an alternate in the recent past.
- 3) Although some Home Inspectors were (and are) members of legitimate home inspector associations of organizations, many were not. In recent past years, a cottage industry of unlicensed home inspectors and inspection entities began to flourish. These unregulated persons operated outside the confines of licensed contracting laws and expanded to a plethora of items and issues being opinioned, along with code citing scopes that were never intended to be examined or evaluated by an unlicensed entity performing home inspections. This eventually led the legislature to believe it necessary to regulate these unregulated home inspection services.
- 4) Since these activities themselves represent a small specialty segment of the construction industry, requiring that applicants for home inspector services meet the same requirements as

qualifying for a Division 1 Contractor's license under Florida Statute 489 would prevent many who had been practicing these specialty services from attaining licensure, since they could not meet the rigorous requirements of Florida Statute 489, et seq. In light of the foregoing, Florida Statute 468 – Part XV – Home Inspectors - was created for licensing and regulation of persons specializing in Home Inspections services.

5) Florida Statute 468 – Part XV – Home Inspectors - is self evident by way of its structure in its intent to limit the scope of those who attain licensure under its provision to work scopes that do not include any of the professional services required to be performed by licensed contractors, pursuant to Florida Statute 489 to wit: *(emphasis added by author)*

468.3311 – Definitions..

(4) "Home inspection services" means a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof/covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

6) Since the Home Inspector is restricted to a "limited Visual examination", it limits the scope of one licensed under FS 468, as a Home Inspector to activities that do not involve disassembly or destructive testing of construction elements. Examinations further or deeper than "Limited Visual" require the advanced training, testing, code familiarity and education of a contractor licensed pursuant to the rigorous requirements of Florida Statute 489, et seq. Not only do such inspections always require a contractor licensed pursuant to Florida Statute 489, but frequently require, permitting pursuant to Florida Statute 553 Part IV (Florida Building Code) and Notice requirements pursuant to Florida Statute 558?

7) FS 489.105 (3) defines a "contractor" as one who; (emphasis added by petitioner)

(3) "Contractor" means the person who is qualified for, and shall only be responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others . construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection....

8) The petitioner contends that Home Inspector Services certainly falls into the broad based brush of the above captioned text. However, the petitioner acknowledges that the term "inspection" is not specifically stated within the confines of Florida statute 489 for a Division 1 Contractor (or Division II). This however would be expected since the scope of construction services listed in 489 is not exhaustive or detailed – furthermore inspection duties are implied and understood as necessary for each and every construction component(s). A Division 1 Contractor's eligible scope of services include: stucco, masonry, painting, tile setting, carpentry, trim carpentry, fenestration, excavation, concrete, drywall, etc... and requires the supervision, coordination and responsibility for all aspects and systems of the construction installed by the contractor through his/her subcontractors work product - yet none of these services are specifically delineated in 489 as specific scopes of work. The statute is broad in its overall conceptual description for construction and reconstruction work, *supra*. All construction work is allowed to be performed and supervised by a licensed Division 1 Contractor unless it is required to be performed by a Division 2 Contractor pursuant to the specific list codified at 489.113.

Specifically:

489.123. Qualifications for practice; restrictions. —

(3) A contractor shall subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work, unless such contractor holds a state certificate or registration in the respective trade category, however:...

- 9) The Florida Building Code, Residential and Florida Building Code, Existing are both required testing and working documents for all Division 1 Contractors and contain (including but not limited to) code compliance provisions for; the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure. This list of items is all that a licensed Home Inspector must inspect, yet this list is a bare minimum of compliance items required by the actual code dealt with by a licensed contractor constructing a residence: Additionally, a licensed contractor is completely familiar with residential appliances, appliances, wall appointments, and "trimmings" associated with homes — for both new and existing construction.

- 10) The Home Inspector Statute acknowledges that such services may be exempt from licensing under its provisions by way of the following section:

468.331 Exemptions. —*The following persons are not required to comply with any provision of this part:*

(1) An authorized government employee of the United States, this state, or any municipality, county, or other political subdivision who is conducting home inspection services within the scope of that employment, as long as the employee does not hold out for hire to the general public or otherwise engage in home inspection services.

(2) A person acting within his or her authorized scope of practice as licensed under federal, state, or local codes or statutes, except when such person holds himself or herself out for hire to the public as a "certified home inspector," "registered home inspector," "licensed home inspector," "home inspector," "professional home inspector," or any combination thereof stating or implying licensure under this part.

(Emphasis added by petitioner)

Conclusion

11) All inspection services not relegated by statute as belonging to the local building official are intrinsically intertwined with the construction services and scopes contained within Florida statute 489. Furthermore, inspection of the in-progress by a Division 1 contractor is not only a required part of the construction processes, but have always been a delegated statutory duty of a licensed Division 1 contractor. Therefore these services are "(2) A person acting within his or her authorized scope of practice as licensed under federal, state, or local codes or statutes." as stated in the exemption above. The proof of competency and authorized scope of practice can further be found in the current (01/01/2012) statutory grandfathering provision of the Home Inspector Statute 468 8324:

468.8324 Grandfather clause —

- (1) A person who performs home inspection services may qualify for licensure as a home inspector under this part if the person submits an application to the department postmarked on or before July 1, 2012, which shows that the applicant:*
 - (a) Possesses certification as a one- and two-family dwelling inspector issued by the International Code Council or the Southern Building Code Congress International;*
 - (b) Has been certified as a one- and two-family dwelling inspector by the Florida Building Code Administrator and Inspectors Board under part XII of this chapter; or*
 - (c) Possesses a Division 1 contractor license under part I of chapter 489.*
- (Emphasis added by petitioner)*

12) Petitioner is an affected person in need of a declaratory statement. As a certified Division 1 Contractor, petitioner should be allowed under Florida law to continue (as before) to conduct Home Inspections without the financial burden of an additional license, cost of maintaining an additional license, additional insurance policy, and additional continuing education requirements of the specialty license. These costs are substantial and affect the petitioner's ability to competitively perform and impact the public by increasing the cost for such inspection services.

13) NOW WHEREFORE, Petitioner respectfully requests the Board to issue a declaratory statement finding that Home Inspection services are "within the scope" of a properly licensed Division 1 Contractor pursuant to FS 489 provided the Division 1 Contractor does not hold himself out specifically as a "Home Inspector" licensed under Florida Statute 468 – Part XV.

Respectfully Submitted,



Robert J. Konig
8301 Joliet Street
Hudson, Florida 34667
727-863-5147
Petitioner

¹ 468 8311 Definitions.—As used in this part, the term:

- (2) "Home" means any residential real property, or manufactured or modular home, which is a single-family dwelling, duplex, triplex, quadplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.
- (3) "Home Inspector" means any person who provides or offers to provide home inspection services for a fee or other compensation
- (4) "Home inspection services" means a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

History.—s. 3; ch. 2007-235; s. 16, ch. 2010-106; s. 8, ch. 2010-176.

² CHAPTER 558 - CONSTRUCTION DEFECTS