

The following are responses to the petition for declarative statement request submitted by Robert J. Koning.

The issues to be determined by declarative statement are:

Issue: 1) Whether home inspection services defined at 468.8311 (2) (3) and (4) are within the scope of licensure or a license division 1 contractor when performing such services for existing or potential clientele provided they do not represent themselves as a person who specializes as a Home Inspector

Response: No, the services defined within the scope of licensure are not the same. Home inspectors deal with historical safety issues and safety practices and contractors deal specifically with current building requirements. That is the whole scope of their licensure. There is no requirement in a real estate transaction to bring the home up to current building practices or code. Whether the contractor represents himself as a home inspector to the clientele or not, he is still acting as a home inspector. However, he is not qualified as such because his services as a home inspector are not defined within the scope of his license.

Issue: 2) Historically, Division I 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 ongoing since the inception of contract licensing. The Florida bar associations' residential real estate contract form requires inspection of a residence by a state licensed contractor as a condition of its contract. This was in standard practice (and still is) until home inspectors were added as an alternate in the recent past

Response: The services that are referred to above are not home inspection services; it is quality control. The contractor has the ability to inspect construction projects, and construction projects involve CURRENT building practices. Furthermore, not all real estate contracts have a required contractor inspection clause. It may have been standard practice, but it was not and is not a requirement. Up until July 1, 2010 when home inspectors were licensed in the state of Florida historically anyone could perform Home Inspections. Home Inspectors have been around as long as licensed contractors have been. They are not a recent profession. However, under current state requirements, Home Inspectors must have 120 hours of training and must pass a rigorous exam. Home Inspectors were not grandfathered in under the contractor's licensing requirements because these are two different professions with different qualifications.

Issue: 3) Although some Home Inspectors were (and are) members of legitimate Home Inspector associations or organizations, many were not. In recent past years a cottage industry for unlicensed home inspectors and inspection entities began to flourish. These unregulated persons operated outside the confines of license contracting laws and expanded in a plethora of items and issues being opined on, along with code sightings

scopes that were never intended to be examined or evaluated by a unlicensed entity performing home inspections. This eventually led the legislative to believe it necessary to regulate these unlicensed home inspection services.

Response: a) It is self-evident from the flourish of Home Inspectors into the marketplace that the marketplace found little value in contractors conducting home inspections. This led to the overwhelming increase in non-contractor real estate transaction inspections by non-contractor home inspection services. Also, if the government and/or public had confidence in the contractors' ability to perform these home inspections, then they would not have been looking for alternatives.

b) Home Inspectors are specifically trained **not to cite** building code. Though many are ICC certificate holders, they report in terms of safety issues and not in building code violations terms. Only the local code official is authorized to cite code.

c) Legislators saw that home inspectors are a unique profession that was not regulated. They wanted to provide some standardization for this profession, and contractors do not meet the standardization requirements.

Issue: 4) Since these activities themselves represent a small specialty segment of the construction industry, requiring the applicants for home inspection services meet the same requirements as qualifying for a Division I contractors license under Florida statute 489 would prevent many who had been practicing these specialty services from obtaining licensure since they cannot meet the rigorous requirements of the Florida statute 489. In light of the foregoing, Florida Statute 468 part XV- Home Inspectors – was created for licensing of persons specializing in home inspection services.

Response: This is a glaring misunderstanding of contractors and home inspector license requirements. They are not similar nor do they meet the same requirements. This statement (issue 4) represents a gross misunderstanding of a home inspection for real estate transaction. Contractors do not have the knowledge base or training to inspect older home issues. Furthermore, Home inspectors are not part of the construction industry. Home inspectors do not build, repair, or demolish buildings. Therefore, Florida Statute 489 does not apply to the field of Home Inspecting.

Issue: 5) Florida statute or 468 part Xv home inspectors -it is self-evident by the way it structures in its intent to limit the scope of those who obtain license 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)

468.8311 definitions

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.

Response: The limitations placed on Home Inspectors by the Florida statute is limited to “visual examination” because it is **not** intended to demolish or destroy the seller’s property and would serve no purpose in doing so. In a home inspection there is no intent to repair, replace, install, demolish, or remove anything in the seller’s home. Therefore, a Division I contractors license is irrelevant.

Issue: 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 (2).

Response: If the contractor is conducting a home inspection under the requirements of the Home Inspector Statute 468, then he/she is limited by the statute to a “Limited Visual” examination of readily accessible installed systems and components of the home. While the contractor may be able to recognize problems with NEW construction, he/she will not recognize historical safety issues and building practices because the education needed is not part of contractor licensure.

Issue: 7)

ES 489.105 (3) Defines a contractor as one who; (emphasis headed by petitioner)

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

Response: Nowhere in the statute 489 does it state or imply that contractors have the specific training of historical safety issues and building practices to qualify them to perform home inspections for real estate transactions. As seen above, a contractor and home inspector are two different professions and require different licensure. The differences in licensure do not allow a home inspector to act as a contractor, nor a contractor to act as a licensure. If a contractor wants to be licensed as a home inspector, he/she needs specific training that is not part of a contractor's training program. Likewise, a home inspector who wants to be licensed as a contractor, will need specific training that is not part of home inspection licensure.

Issue: 8)

The petitioner contends that the home inspector services certainly fall into the broad based brush of the above captioned text. However, the petitioner acknowledges that the term "inspection" is not specifically stated within the context of the Florida statute 489 for a Division I 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 I Contractor's eligible scope of service 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 or 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, All construction work is allowed to be performed and supervised by a license Division I contractor unless it is required to be performed by a Division II contractor pursuant to the specific list codified at 489.113 specifically

489. 113 Qualifications for practice restriction

- (3) a contractor shall sub contract 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...

Response: The Home Inspector does not fall into the broad based brush of the above text because the Home Inspector does not construct, repair, alter, add to, demolish, subtract from, or improve any building or structure, nor do they submit bids for such work. The "inspection" that the petitioner refers to above is really quality control. Contractors should be overseeing the quality of the work they are contracting on behalf of the client during new construction or home improvement. While home inspectors may take part in quality control inspections for new construction or home improvements, Home Inspectors more often identify historical safety issues and building practices in existing homes. Furthermore, a contractor's work, by law, must be inspected by a local building code official, not by a contractor. According to the petitioner, "All construction work is allowed to be performed and supervised by a license Division I contractor.." The Florida statute does not say the Division I Contractor may inspect work. It says he may supervise

work. Even if he does inspect it, he will still have to have the local municipality come out and inspect the work again, according to Florida statute.

Issue: 9)

The Florida Building Code, Residential and Florida Building Code, existing are both required testing and working documents for all Division I 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, appurtenances, wall appointments, and “trimmings” associated with homes – for both new and existing construction.

Response: In response to the required testing that the petitioner refers to, the testing for contractors deals with current building practices. The testing that the Home Inspector is required to pass deals with current building practices AS WELL AS and more importantly, the historical safety issues and historical building practices. In order for a contractor to do a proper inspection of an older home, he/she would need to have had the 120 hours of training required for Home Inspectors. A contractor becoming licensed today would not have the proper training to inspect a home built before 2000. As far as “this list is a bare minimum of compliance items required by the actual code dealt with by a licensed contractor...” The contractor builds according to the blueprint, not according to code. The municipalities inspect the construction for code compliance, not the contractor nor the home inspector.

Issue: 10)

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

468.831 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)

Response: The petition is self evident that contractors want to “...hold 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,” for compensation. To this end, contractors need to be licensed according to the statute that the petitioner quotes above.

Conclusion

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 I contractor is not only a required part of the construction processes, but have always been a delegated statutory duty of a licensed Division I 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 Administrators and Inspectors Board under part XII of this chapter; or
- (c) Possesses a Division I contractor license under part I of chapter 489.

Response: The petitioner states, “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” If the contractors are “competent and qualified” then there would be no need for a grandfather clause. Furthermore, the grandfather clause is not PROOF of competency. Proof of competency comes with 120 hours of training, an exam, and then licensure. As seen below, the grandfather clause from 2010 is the basis for the 2011 clause.

(1) A person who performs home inspection services as defined in this part may qualify for licensure by the department as a home inspector if the person submits an application to the department postmarked on or before March 1, 2011, which shows that the applicant:

- a) Is certified as a home inspector by a state or national association that requires, for such certification, successful completion of a proctored examination on home inspection services and completes at least 14 hours of verifiable education on such services; or

- b) Has at least 3 years of experience as a home inspector at the time of application and has completed 14 hours of verifiable education on home inspection services. To establish the 3 years of experience, an applicant must submit at least 120 home inspection reports prepared by the applicant.

The grandfather clause of 2010 that contained the requirements for those performing home inspections expired in March 2011. The new clause was introduced without regard to qualifications with the presumption that the qualifications of the 2010 clause would be met. Under this current clause, a contractor will be performing home inspections on existing homes without proper training and knowledge of historical safety issues and historical building practices.

If contractors truly were qualified based solely on the contractor's license requirements, then legislators would not have found it necessary to create a grandfather clause.

12) Petitioner is an affected person in need of a declaratory statement. As a certified Division I 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.

Response: These costs are necessary to ensure the safety of the public. Without these measures, the public will be at risk.

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

Response: The petitioner's contractor license does not fall within the scope of the Home Inspector statute as set forth by the legislature.

Responses by Richard Hyland
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