FLORIDA BUILDING & FIRE CODE 6th Edition (2017)

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BROWARD COUNTY
BOARD OF RULES AND APPEALS

FBC 6th Edition (2017)
FORMAL INTERPRETATION (#25)

DATE: **November 14, 2019**

TO: **All Building Officials**

FROM: **James DiPietro, Administrative Director**

SUBJECT: **Required Signatures on the Broward County Uniform Building Permit Application**

At its regular meeting of November 14, 2019, the Board approved an interpretation based on an advisory opinion as to the requirements for owner signature on permit application.

The opinion from Charles Kramer, General Counsel to the Board of Rules and Appeals was dated on October 31, 2019.

Formal Interpretation:
An Owner's signature is not required on a Broward County Building Permit Application as further established and determined under the Florida Building Code and the Florida Statutes.

The fact that the actual permit application form provides signature space for both a Contractor and an Owner or Owner's Agent does not determine that multiple signatures are required. An Owner may sign when acting in the capacity of an Owner as Contractor, or the Owner's duly appointed Agent may sign on behalf of an Owner who has given that Agent proper authority.

Alternatively, a Contractor may sign solely and independently from either an Owner or Owner's Agent for the purpose of applying for a building permit.

EFFECTIVE DATE: November 15, 2019

******PLEASE POST AT YOUR PERMIT COUNTER*******

Attachments:

I: Broward County Uniform Building Permit Application

2: Advisory opinion from Charles Kramer, Esq.

BROWARD COUNTY UNIFORM BUILDING PERMIT APPLICATION

Select One Trade: ☐ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Mechanical** ☐ **Other** _____

Application Number: Application Date:

1

Job Address:			Unit:	City:	
Tax Folio No.:	Flood Zn:	BFE:	Floor Area:	Job Value:	
Building Use:		Construction Type:		Occupancy Group:	
Present Use:		Proposed Used:			
Description of Work:					
☐ New ☐ Addition ☐ Repair ☐ Alteration ☐ Demolition ☐ Revision ☐ Other:					
Legal Description:					☐ Attachment

2

Property Owner:	Phone:	Email:	
Owner's Address:	City:	State:	Zip:

3

Contracting Co.:	Phone:	Email:	
Company Address:	City:	State:	Zip:
Qualifier's Name:	Owner-Builder: ☐	License Number:	

4

Architect/Engineer's Name:	Phone:	Email:	
Architect/Engineer's Address:	City:	State:	Zip:
Bonding Company:			
Bonding Company Address:	City:	State:	Zip:
Fee Simple Titleholder's name (if other than owner):			
Fee Simple Titleholder's Address (If other than owner):	City:	State:	Zip:
Mortgage Lender's Name:			
Mortgage Lender's Address:	City:	State:	Zip:

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

X_____
Signature of Property Owner or Agent

STATE OF FLORIDA
COUNTY OF BROWARD

Sworn to (or affirmed) and subscribed before me this_____ day of _____, 20_____ by

_____
(Type / Print Property Owner or Agent Name)

_____
NOTARY'S SIGNATURE as to Owner or Agent's Signature

Notary Name _____
(Print, Type or Stamp Notary's Name)

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

X_____
Signature of Qualifier

STATE OF FLORIDA
COUNTY OF BROWARD

Sworn to (or affirmed) and subscribed before me this_____ day of _____, 20_____ by

_____
(Type / Print Qualifier's Name)

_____
NOTARY'S SIGNATURE as to Qualifier's Signature

Notary Name _____
(Print, Type or Stamp Notary's Name)

Personally Known _____ or Produced Identification _____

Type of Identification Produced _____

APPROVED BY: _____ Permit Officer Issue Date: _____ Code in Effect: _____

A jurisdiction may use a supplemental page requesting additional information and citing other conditions, please inquire.

Note: If any development work as described in FS 380.04 Sec. 2 a-g is to be performed, a development permit must be obtained prior to the issuance of a building permit.

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October 31, 2019

ADVISORY OPINION AS TO REQUIREMENT FOR OWNER SIGNATURE ON PERMIT APPLICATION

A question has arisen with respect to procedural differences in the permit application process amongst various municipalities in Broward County.

ISSUE

More specifically, the Board of Rules and Appeals has learned that some municipalities within Broward County are requiring the Owner's signature on the uniform permit application prior to acceptance. Other municipalities do not require an Owner's signature and will accept permit applications and documents from the Contractor.

RULE

I. Florida Building Code Sec 105.3.0.1, 105.3.0.3, and 105.3.0.2.

A. We would first note that FBC Sec 105.3.0.1 states:

> 105.3.0.1 Qualification of Applicant. Application for permit will be accepted from **owner, qualified persons or firms, or authorized agents. (Emphasis added).**

The use of the word "shall" determines mandatory compliance, the use of the word "may" determines permissive or permitted action See Brooks v. Anastasia Mosquito Control Dist., 148 So.2d 64 (Fla. 1st DCA 1963). Likewise, the use of the word "or" determines the right to discretion in election of action. See Celistics, LLC v. Gonzalez, 922 So.3d 824 (Fla. 3d DCA 2009). Absent

"magic words" of exclusivity such as "must" or "shall", the language is permissive thus determining the right to make an election.

Inasmuch as the word "and" is not contained between "owner" and "qualified person" the lack of the conjunctive determines that there is no mandatory requirement for dual signatures.

B Furthermore, the use of the word "or" following the term "qualified persons" determines that the signature is not solely confined to an owner or builder but may be an otherwise qualified person or authorized agent. This is further confirmed by 105.3.0.3 which states:

> 105.3.0.3 Attesting of Application: The permit application shall be signed in a space provided, before an officer duly qualified to administer oaths, **by the owner, qualified person or firm, or authorized agents. (Emphasis added).**

Again, it is clear from the Florida Building Code (Broward County edition) that the signature on the permit application may be from any of the persons or party(ies) listed. There is also no language which determines that multiple signatures are required.

C. We have also reviewed FBC Sec 105.3.0.2 which states *inter alia*:

> **105.3.0.2 Application Form**. Each application for a permit, shall be submitted with the required fee, and filed with the Building Department on the Broward County Uniform Building Permit Application (effective April 1, 2016) furnished for that purpose (see Appendix A of the Broward County Administrative Provisions). The application shall describe the property on which the proposed work is to be done, and shall include both the legal description and more commonly known address. The application shall also show the use or occupancy of the building or structure; shall be accompanied by plans and/or specifications as required hereafter; shall state the value of the proposed work; as specified in Section 109, shall give such other information as reasonably may be required by the Building Official to describe the proposed work; and shall be attested by the qualified applicant. **The Permit Application shall be inscribed with the application date and the Edition of the Code in effect, and comply with the requirements of Section 713.135 and (6) of the Florida Statutes.**

In so saying, sec 105.3.0.2 creates causal nexus and mandatory review of Florida Building Code sections 105.3.0.2 and 3 and Florida Statutes Sec 713.135(5) and (6) a.

ANALYSIS

II. Florida Statutes Section 713.135 (5) and (6)a

Florida Building Code Sec 105.3.0.2 requires conformance of section 105 with statutes 713. The question arises as to possible conflict between FBC Sec 105.3.0.1, 105.3.0.3 and Florida Statutes sec 713.135(5) and 713.135(6) a.

A. A review of 713.135.5 determines that it is not applicable to the question as to Owners signatures for the reason that nowhere does it require an Owners signature- only Owner information. More specifically the Statute specifies:

> In addition to any other information required by the authority issuing the permit, each building permit application must contain:
> (a) The name and address of the owner of the real property;
> (b) The name and address of the contractor;
> (c) A description sufficient to identify the real property to be improved; and
> (d) The number or identifying symbol assigned to the building permit by the issuing authority, which number or symbol must be affixed to the application by the issuing authority.

All of the items required under F.S. Sec 713.135.5 pertain solely to ***identification*** of the Owner. ***Nowhere is it required that an Owner signature be supplied.***

B. With respect to 713.135.6(a), the Statute provides a form template which includes an "Owner Affidavit." The problem with this is that the statute requires an application in "***substantially the following form***" so that the title of the document is not necessarily dispositive of the contents of the document. More to the point, the form template contains a signature line for "**Owner or Agent including Contractor.**"

If the Owner is not the applicant, and the applicant is responsible for performing the work, then it is the sworn statement of the party performing the work that it shall be performed in accordance with the code. This comports with the "substantially the same form" requirements but with the Agent or Contractor attesting to code compliance.

III. Form over substance arguments are rejected

Although F.S. 713.135(6)(a) provides a template of an "Owner's Affidavit", the Affidavit itself states *inter alia*:

OWNER'S AFFIDAVIT:

I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

...

(Signature of Owner or Agent)
(including contractor)

We cannot place form over substance when examining the template of the Affidavit set forth under FS Sec 713.135. The fact that it is called an "Owners Affidavit" does not mean that it requires an Owner's signature or an Owner's attestation. The Affidavit specifically contemplates a signature by the "Owner, or Agent including Contractor."

This principle is well established un the Florida courts. More specifically:

[T]he trial court may not merely rely on the title of the document. With respect to the characterization of motions, Florida courts place substance over form. In other words,

> "if the motion is mislabeled, the court will look to the substance of the motion, not the label." Indus. Affiliates, Ltd. v. Testa, 770 So.2d 202, 204 n. 1 (Fla. 3d DCA 2000). *See also* Fire & Cas. Ins. Co. of Conn. v. Sealey, 810 So.2d 988, 992 (Fla. 1st DCA 2002) ("We agree that the true nature of a motion must be determined by its content and not by the label the moving party has used to describe it.").

IV. Contractor as Owner's Agent

We further note the signature line of the "Owner's Affidavit" and in particular the wording "Signature of Owner or Agent including Contractor". The straightforward interpretation and plain meaning rule under statutory interpretation is that either the Owner or the Agent may sign- "including the Contractor." Note that the Code does not state "Owner or Agent ***and*** Contractor" it states "Owner ***or*** Agent ***including*** Contractor."

This does not mean that multiple signatures are required. The plain language rule determines that the Contractor may sign as the Owner's Agent in his/her capacity as Contractor. A second signature by the Contractor is not required.

The Florida courts recognize the status of a Contractor acting in the capacity of an Owner's Agent. See Price vs. J.P Guerry & Sons, 133, Fla. 754 (Fla. 1933) ("Where building contractor agreed to furnish materials and complete two bungalows at a stated price under contract... contractor merely acted as owner's agent in the purchase of materials, and owner, who knew of purchases made by contractor was primarily liable, for purchase price of materials for which materialmen claimed liens under statutes."). See also Roberts v. Lesser, 96 So. 2d 222 (Fla. 1957) (Subcontractor's suit to foreclose mechanics' lien against property improved allegedly at request of contractor acting as owner's agent.)

V. Failure to be included under "any other information required" under 713.135

The question has been raised as to the broad requirement provision contained in F.S. Sec. 713.135 wherein is stated:

> **In addition to any other information required by the authority issuing the permit,** each building permit application must contain:
>
> ...

The question posed is whether or not the words "In addition to any other information required" provides for a degree of autonomy over statutes and compliance with the codes.

We would first note that the permit application is the "**Broward County Uniform Building Permit Application.**" The uniformity of the document is meant to determine exactly that, the application is uniform and the intention is that it be interpreted uniformly.

In this specific case, if a local municipality were to unilaterally implement changes to the Permit Application process, it will have the effect of altering an administrative portion of the Building Code thus creating a "second" set of Building Code requirements" specific to that municipality. This is not permissible under Special Act 71-575 and further constitutes the creation of a conflicting amendment to law and forbidden under common law. As noted in Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1273 (Fla 2007):

> Where two laws are in conflict, courts should adopt an interpretation that harmonizes the laws, for the legislature is presumed to have intended that both laws are to operate co-extensively and have the fullest possible effect.

Palm Beach v. Harris at 1287.

The courts have further stated:

> It is presumed that laws are passed with knowledge of all prior laws already on books, and that legislature neither intended to keep contradictory enactments in force nor to repeal prior law without express intention to do so; courts have duty to adopt scheme of statutory construction which harmonizes and reconciles statutes and to find reasonable field of operation that will preserve force and effect of each.

See Floyd v. Bentley, 496 So.2d 862, 865 (Fla 2d DCA 1986). *See also* Woodgate Development Corp. v. Hamilton Inv. Trust, 351 So.2d 14 (Fla 1977).

VI. Municipality amendments restricted under Florida Statutes Sec 553.73(4)a

Local municipality amendments are restricted under Florida Statutes Sec 553.73 (4)a, which states *inter alia*:

> (4)(a) ...
>
> Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph. Local amendments shall be more stringent than the minimum standards described herein and shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

Thus, a local administrative amendment must strengthen the code in some fashion but only as established county wide through the Broward County Board of Rules and Appeals. As previously noted, uniformity in the Code requires uniformity in its administration and application.

VII. Creation of the Florida Building Code and the Authority of the Governing Body

In 1996, the Florida Building Code Study Commission was appointed to review the system of over 400 local jurisdictions and state agencies with building code responsibilities. One of the most important issue was compliance. The Building Commission recommendations called for

strengthened compliance through greater predictability and accountability in the building code system. The 1998 Legislature adopted the Study Commission's recommendations and amended Chapter 553, Florida Statutes, Building Construction Standards to create a single minimum standard building code that is enforced by local governments. In so saying, safety, uniformity and accountability are recognized as critical elements of the Florida Building Code.

a. Florida Statutes Section 553.71

The Florida Statutes 553.71 states *inter alia*:

...

> (5) "Local enforcement agency" means an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

F.S. Sec 553.71(5)

b. Florida Statutes Sec 633.208(3)(a)

The use of the word enforcement referring to building departments and municipalities is critical where the Florida Statutes Sections 633.208(3)(a) makes the distinction between enforcement and governing bodies. More specifically:

...

> (3)(a) The local governing body shall determine, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, if there is a need to strengthen the requirements of the minimum firesafety code adopted by such governing body. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates that local conditions justify more stringent requirements than those specified in the minimum firesafety code for the protection of life and property or justify requirements that meet special situations arising from historic, geographic, or unusual conditions.

F.S. §633.208 (3)(a)

Local building departments are "local enforcement agency[ies]" as statutorily indicated while the governing body, is the Broward County Board of Rules and Appeals.

c. The authority of the Board of Rules and Appeals as governing body.

The authority of the Board of Rules and Appeals was affirmed in the express provision of an Opinion rendered by the Attorney General of the State of Florida to this Board on August 21, 2018 wherein was stated:

> With regard to requirements for Certificates of Competency, which are found within the Florida Building Code, Broward County Amendments, this office is unable to comment. Section 16.01 (3), Florida Statutes (2018), authorizes the Attorney General to render an opinion "on any question of law relating to the official duties of the requesting officer." **This authority, however, does not extend to the interpretation of local codes and ordinances.**

In so saying, the interpretation of local codes and ordinances is the province of the Board of Rules and Appeals. See Special Act 71-575(3)(a) and 3(c); Section 9.02, Broward County Charter.

VIII. Input from the Florida Building Commission

In response to inquiry from the Board of Rules and Appeals, the Florida Building Commission has declined comment citing the August 21, 2018 Opinion of the Florida Attorney General which it adopts with respect to the provision addressing interpretation of local administrative amendments.

THIS SPACE INTENTIONALLY LEFT BLANK

CONCLUSION

For the reasons set forth above, it is the determination of the General Counsel to the Broward County Board of Rules and Appeals that an Owner's signature is not required on a Broward County Building Permit Application as further established and determined under the Florida Building Code and the Florida Statutes.

The fact that the actual permit application form provides signature space for both a Contractor and an Owner or Owner's Agent does not determine that two (2) or three (3) signatures are required. An Owner may sign when acting in the capacity of an Owner as Contractor, or the Owner's duly appointed Agent may sign on behalf of an Owner who has given that Agent proper authority. Alternatively, a Contractor may sign solely and independently from either an Owner or Owner's Agent for the purpose of applying for a building permit.



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