

The 2005 Florida Statutes
06/06/2006

553.791 Alternative plans review and inspection.

(1) As used in this section, the term:

(a) "Applicable codes" means the Florida Building Code and any local technical amendments to the Florida Building Code but does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure for which permitting by a local enforcement agency is required.

(c) "Building code inspection services" means those services described in s. 468.603(6) and (7) involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(d) "Duly authorized representative" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(e) "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(f) "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required pursuant to subsection (5).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner

has secured all other government approvals required by law.

(g) "Private provider" means a person licensed as an engineer under chapter 471 or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(h) "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.
2. A certificate of compliance from the private provider required pursuant to subsection (10).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(2) Notwithstanding any other provision of law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapter 468, chapter 471, or chapter 481. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official at the time of permit application, or no less than 7 business days prior to the first scheduled inspection by the

local building official or building code enforcement agency for a private provider performing required inspections of construction under this section, on a form to be adopted by the commission. This notice shall include the following information:

- (a) The services to be performed by the private provider.
- (b) The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.
- (c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change, update the notice to reflect such changes. In addition, the fee owner or the fee owner's contractor shall post at the project site, prior to the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.

(5) A private provider performing plans review under this section shall review construction plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits on a form adopted by the commission certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

(6)(a) No more than 30 business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (5), the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30-day period, the 30-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the

relevant code chapters and sections.

(7) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. The private provider shall be permitted to send a duly authorized representative to the building site to perform the required inspections, provided all required reports and certifications are prepared by and bear the signature of the private provider. The duly authorized representative must be an employee of the private provider entitled to receive unemployment compensation benefits under chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(8) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections.

(9) Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, shall post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is posted at the project site and all such inspection records are submitted with the certificate of compliance. Records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(10) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form:

To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(11) No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit a corrected request for a certificate of occupancy or certificate of completion.

(12) If the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law, if the official determines that such noncompliance poses a threat to public safety and welfare, subject to the following:

(a) The local building official shall be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion.

(b) If the local building official and private provider are unable to resolve the dispute, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter.

(c) Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter, which shall consider the matter at the commission's next scheduled meeting.

(13) For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the facsimile number listed for that person or entity in the permit application or revised permit

application, or, if no facsimile number is stated, when actually received by that person or entity.

(14)(a) No local enforcement agency, local building official, or local government may adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(g) and the insurance requirements of subsection (15).

(c) Nothing in this section limits the authority of the local building official to issue a stop-work order for a building project or any portion of such order, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(15) A private provider may perform building code inspection services on a building project under this section only if the private provider maintains insurance for professional liability covering all services performed as a private provider. Such insurance shall have minimum policy limits of \$1 million per occurrence and \$2 million in the aggregate for any project with a construction cost of \$5 million or less and \$2 million per occurrence and \$4 million in the aggregate for any project with a construction cost of over \$5 million. Nothing in this section limits the ability of a fee owner to require additional insurance or higher policy limits. For these purposes, the term "construction cost" means the total cost of building construction as stated in the building permit application. If the private provider chooses to secure claims-made coverage to fulfill this requirement, the private provider must also maintain coverage for a minimum of 5 years subsequent to the performance of building code inspection services. The insurance required under this subsection shall be written only by insurers authorized to do business in this state with a minimum A.M. Best's rating of A. Before providing building code inspection services within a local building official's jurisdiction, a private provider must provide to the local building official a certificate of insurance evidencing that the coverages required under this subsection are in force.

(16) When performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468, chapter 471, or chapter 481. All private providers shall be subject to the disciplinary guidelines of s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services shall be conducted by the applicable professional board.

(17) Each local building code enforcement agency may audit the performance of building code inspection services by private providers operating within the local jurisdiction. Work

on a building or structure may proceed after inspection and approval by a private provider if the provider has given notice of the inspection pursuant to subsection (8) and, subsequent to such inspection and approval, the work may not be delayed for completion of an inspection audit by the local building code enforcement agency.

(18) The local government, the local building official, and their building code enforcement personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

History.--s. 17, ch. 2002-293; s. 106, ch. 2005-2; s. 11, ch. 2005-147; s. 1, ch. 2005-216.