

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF DADE

FALL TERM A.D. 1989

FINAL REPORT OF THE DADE COUNTY GRAND JURY

FILED

May 15, 1990

11

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A CRITIQUE OF CONSTRUCTION REGULATION

INTRODUCTION

In 1896, Henry Flagler's East Coast Railroad arrived in South Florida and started the growth of modern Miami and Dade County. Initial growth in Dade County was primarily along the coastal ridge from its northern limits to Coconut Grove with the first tremendous growth period occurring in the 1920's. Planned residential cities sprang up, tourist attractions were constructed and Miami Beach was joined to the mainland. The Depression marked the rise in homesteading in southern and western portions of the County, a growth pattern prevalent today.

Growth escalated during the years between the 1950's and the 1970's with the resurgence of rapid subdivision development in the outlying areas of the County. By 1970, Dade's population reached 1,268,000 and during the next ten years grew by an additional 28%. The 1980's continued the pattern of growth with an influx of over 125,000 immigrants. Today, Dade County's population is estimated to be around 1,892,000 with projected annual increases of around 10% expected throughout the next decade. Forty-two percent of Dade County's developed land is devoted to residential housing, the vast majority of which are single family homes. Between 1970 and 1990 more than 70% of the County's residential growth occurred in the unincorporated Dade areas.

The years between 1976 and 1986 saw a boom in the construction industry which paralleled the residential growth in unincorporated Dade. Today, nearly 60% of Dade's population resides in the unincorporated areas. Metropolitan Dade County has had the primary responsibility for managing this growth and maintaining the integrity of the construction trade.

Over the years, building regulations evolved to provide greater assurances of safety and quality in construction. Enforcement agencies were established to ensure strict compliance

with building regulations. Anyone driving through Dade County must admire the grace and unique qualities of many of its buildings. Dade County's residential neighborhoods can be matched with the best in the country. Overall, Dade County can be proud of its construction industry and of the regulatory agencies which govern it. Nevertheless, during our term we learned of several industry and regulatory deficiencies that put the general public at risk. Any potential for loss of life, serious bodily injury or financial ruin is unacceptable. While the potential risk may be low, we believe the existing deficiencies must be addressed. We focussed on the quality of the existing regulations, the overall effectiveness of their enforcement and the protection these regulations provide for the consumer.

Our initial review began with a complaint about a development in Northwest Dade. We wanted to help the homeowners because government, in our opinion, had failed them. As our inquiry progressed, what first appeared as an isolated case of government neglect, instead became an indication of greater governmental omissions. As more construction failures coincidentally surfaced, we focussed our attention on those agencies charged with the responsibility of regulating the construction industry and insuring compliance with the safety provisions of the South Florida Building Code. We heard from homeowners; building officials and inspectors; developers; licensed and unlicensed contractors and subcontractors; and representatives from licensing and professional regulatory boards. The witnesses described various cases which identified several existing regulatory and construction deficiencies in Dade County. The consequences have been aggravation and financial loss for homeowners, developers and contractors alike. Consider the following examples.

Unable to obtain action from the developer on her newly constructed house, one homeowner lived with unrepairable roof leaks for over one year before a ceiling finally collapsed and forced her to evacuate her home. In South Dade, eight five-story

low-income housing buildings have serious structural deficiencies due to improper construction and have severe fire code violations. A development of over three hundred homes was recently built on muck in Northwest Dade causing several foundations to crack and rendering at least one home's structure potentially unsound unless immediate action occurs. There is a South Dade development in which the second-story floors of the homes were improperly constructed so that walking on them caused the furniture to rattle and shake. The same development has faulty ventilation, improper roofing components and fire code violations.

We also heard from homeowners whose home improvements, such as pools, were started, paid for and never finished and whose new roofs were completed only to leak as badly as the previous roofs. While home improvement problems are not as dramatic as the new construction examples, these also indicated a general failure of the system to adequately protect the consumer of building services.

BUILDING INSPECTIONS

A series of devastating hurricanes from the mid-1930's to the mid-1950's, the proliferation of differing municipal building codes, and the rapid growth of population and construction in Dade County convinced officials of the need for a uniform and stringent building code. This code, the South Florida Building Code, was first adopted by the Dade County Board of County Commissioners on October 29, 1957. The Code was founded on the principle that the people's safety is the highest law. Its fundamental goals are the preservation of human life and property from fire and other life safety hazards. It provides certain minimum standards, provisions and requirements for safe and stable design, methods of construction and uses of materials in structures.

A home is the largest single expenditure made and the largest single asset held by most families in Dade County.

People rely on building code enforcement to protect them from unsafe and incompetent construction practices and to assure that the value in their home will endure. Competent building inspections are the cornerstone of homeowner and lender confidence in the entire construction industry. A certificate of completion or occupancy generates the confidence that a structure complies with the South Florida Building Code. Unfortunately, our investigation into construction problems and building inspections indicates that stricter controls are needed to assure the continued integrity of construction.

The Code requires each jurisdiction to appoint a Building Official to head its building department. That person must be a registered professional engineer, registered architect, or licensed general contractor. The building official must meet certain experience requirements and be certified by the Board of Rules and Appeals. Building officials may delegate powers and assignments to subordinate building inspectors who must also be registered engineers, registered architects or licensed general contractors. They perform the building inspections so important in today's construction industry.

Dade County's Building and Zoning Department is the County's largest building department. It has about sixty inspectors who inspect residential, commercial, industrial and remodeling construction in most of Dade County. Within the last year, over 9,600 homes were built in unincorporated Dade County. These homes accounted for the majority of the approximately 267,700 inspections done during this time period. Building and Zoning does not have enough building inspectors to competently conduct the necessary number of inspections and they are not adequately supervised. Inspections are frequently conducted in a short, perfunctory manner and some are not performed at all.

A prime example of what can happen when government fails to perform efficient inspections is that of "Ms. Gonzalez". While the name is fictitious, the incident is unfortunately very real. Ms. Gonzalez, a single parent, purchased a \$140,000 home

in West Kendall. Building and Zoning inspection records indicated that the construction, including the roof, was built to code. A certificate of completion was issued and Ms. Gonzalez and her children moved in. She quickly discovered serious roof leaks. Despite numerous pleas for help to the developer and the Dade County Building and Zoning Department, effective intervention did not occur until one year later. By then the leaks had led to serious structural damage, turning her would be dream house into a nightmare. Her waterlogged bedroom ceiling eventually collapsed nearly hitting her child as it fell.

After a year of pestering dozens of government agencies, follow-up inspections were conducted pursuant to a county commissioner's direction and substantiated Ms. Gonzalez's claim that the roof was not properly constructed according to the code. Ultimately, these roof defects forced her to move out, eventually costing her the house, her life savings and her dreams.

Another construction controversy concerns a housing development in South Dade. The embittered nature of this dispute has increased over time as the developer and the homeowners accused one another of various acts of bad faith. Recently, a well-respected engineer, working with the Board of Rules and Appeals, uncovered fire code violations, problems with the basic construction of the second-story floors and improper installation of roof vents. The fire code violations included the use of "highly flammable" paper-backed insulation in ceilings lacking the fire inhibiting qualities demanded by the building code. The floors, which shook when walked upon, were incorrectly installed. The improper installation of the roof vents would allow water to leak into the home. All of these problems could have been prevented by a competent inspection at the time of construction.

While we are certain that there are many qualified and dedicated building inspectors doing an effective job, we are also certain that others are not. Repeatedly, witnesses testified that the inspection staff of Dade County's Building and Zoning

Department does not have an adequate number of quality inspectors. These witnesses included inspectors who perform initial and follow-up inspections. We sought to verify this contention. We surveilled a number of inspectors performing their inspections. We also heard testimony from these same inspectors. We reviewed county inspection reports and route sheets. In too many instances, inspections are done too quickly or improperly in violation of department policy, or in some cases, not done at all.

A discouraging picture of several inspectors' daily activities was obtained by investigators who discreetly followed them. We were shocked by what we learned. One electrical inspector reportedly stopped at fifteen sites during his eight hour inspection day. In reality, he went to one commercial construction site for approximately thirty seconds after having spent thirty minutes eating breakfast and proceeded to spend the next hour at a bowling alley watching a woman bowl. After stops at a real estate office and at the International Airport Center the inspector proceeded home at 1:40 P.M. The inspector did not stop at any of the assigned locations on his route sheet which he indicated as inspected.

Another inspector, while performing roofing inspections, never climbed a ladder his entire work day. As the morning hours progressed, the length of time involved in inspections markedly decreased. While early sites were visited from between eight and twenty minutes, by 9:48 A.M. the inspector was leaving construction sites within two minutes of his arrival. In one instance, the inspector only visited the construction trailer and never looked at the building to be inspected. By 11:02 A.M. the inspections were done by driving through the site without ever leaving the car. By 11:40 A.M., this inspector was home for the day.

Another building inspector, after completing his half-hour breakfast proceeded at rapid pace through his inspections routine. These inspections were done so quickly that

the surveillance teams had a difficult time keeping up with him. In many instances, the inspector spent no more than two minutes at a site. The longest time spent at any site was ten minutes. Of the twelve stops this inspector made, six lasted between five and ten minutes. Of the remaining six, the durations were between one and four minutes. This inspector also completed his day early, returning home at 12:05 P.M.

In addition to building inspections, the Department of Building and Zoning also conducts elevator, boiler and underground tank inspections. The investigators followed an inspector who specializes in one of these areas. His route sheet indicated three stops encompassing ten inspections. His first inspection began at 10:26 A.M. He spent thirty minutes there and reported five inspections completed. At the second stop, his sole activity was spending twenty minutes in conversation with an unknown individual. The surveilling investigators, viewing him clearly through a large store window, never observed him go near or inspect any equipment. He did not visit his third listed stop at all. He ended his inspections by 11:40 A.M. After lunch, he went to a public library and remained there until 3:30 P.M. The investigators observed him throughout this time and photographed him. He read newspapers and napped for the rest of the afternoon.

Inspectors testified to performing inadequate and falsified inspections. Part of the reason was attributed to the large number of daily inspections required of each inspector. Building and Zoning supervisors appear out of touch with the actual operations of the inspection department. Their own performance study in the last fiscal year showed inspectors averaging 28.7 inspections per day and spending an average of nine minutes per inspection. Our surveillance indicated these numbers to be highly improbable. Inspection experts testified that the length of time spent making an inspection should be longer, closer to fifteen minutes and the corresponding number of daily inspections lower. Clearly, Building and Zoning's unrealistic policy goal of thirty inspections a day forces some

inspectors to perform superficial inspections and encourages inspectors to begin engaging in the practice of falsification of inspection records.

The management of the department recognizes that better, longer inspections mean hiring more inspectors. In a memo discussing one supervisor's opposition to inspectors carrying folding ladders in their car, he states that more time on inspections means less inspections done and therefore more staff needed.

Building and Zoning administrators have testified that they have had great difficulty in firing poor inspectors. However, administrative failures to properly document employee behavior indicates poor departmental management and cannot be used as an excuse for allowing incompetent employees to hold essential inspection positions. Building and Zoning also needs to reevaluate its present personnel staffing and either act to send more of its "office" staff out to perform inspections or rearrange its budgetary priorities so as to hire more skilled inspectors. It also needs to assess if unreasonable inspection quotas foster fraudulent inspection reports. Clearly, the problems of Ms. Gonzalez's roof were the result of either a short, superficial inspection or no inspection at all.

Inadequate manpower and the ineffective use of existing manpower are serious concerns. While we believe additional inspectors are needed, we strongly feel that the most crucial need is proper supervision. Supervisors should be held accountable when their subordinates fail to work a full day or perform perfunctory and inadequate inspections. Top management must not merely issue edicts to first line supervisors but must follow-up to ensure that the supervisors are actually getting performance from their inspectors. Spot checks by Building and Zoning officials should be augmented by proactive evaluations. Supervisors who do not ensure a full day's competent work from their subordinates should be removed from their supervisory

positions. Those who obtain effective inspections from their staff should be supported and rewarded.

The administration of Building and Zoning should act to eliminate those inspectors who do not do their jobs. While the elimination of false inspection reports may prove difficult and while the department may find the firing of such inspectors also difficult, it must occur. Failure to act has created the present situation where too many department employees know of inspectors who do not work full days, who claim inspections they have not done and who perform inferior inspections. The administration's failure to address this has led to a departmental acceptance of nonexistent or inferior work. This attitude saps the morale of those employees who wish to do a good job and undercuts the credibility of all the county's inspections. Additionally, the department's policy of allowing inspectors to destroy daily route sheets after the information has been computerized is highly questionable. This policy eliminates potential evidence the department may find essential if civil or criminal litigation occurs. Administrators must make themselves aware of existing problems and act swiftly and decisively to correct them.

We were also surprised to learn that there are no building code requirements to perform construction in a "workmanlike" manner. Despite the difficulties inherent in the subjective nature of the term "workmanship", we believe the South Florida Building Code should address the issue. At a minimum, structures built according to the code should work properly: a roof should not leak, a door should open and close, a floor should support furniture without any buckling. We are not suggesting that minor matters of aesthetics be made code violations. But we are dumbfounded when told that a house can be in complete compliance with the code and yet have major components that simply do not work.

SPECIFIC RECOMMENDATIONS

1. Each building department in Dade County should have an independent management and performance evaluation conducted to assess its proper functioning in compliance with the

South Florida Building Code and good management practices. Dade County's Building and Zoning Department should be evaluated to particularly assess a realistic ratio between inspectors and inspections required per day.

2. Dade County Building and Zoning should enlarge its inspection staff.
3. Supervisors and managers at Building and Zoning should institute quality assurance mechanisms that monitor the actual time spent inspecting and the quality of inspections performed.
4. Any inspector who falsifies documents indicating inspections performed should be removed from that position.
5. All inspectors should be required to have regular in-service training with respect to complying with departmental policies.
6. The South Florida Building Code should be amended to include a workable and realistic standard for "workmanship".

ROOFING INSPECTIONS

Workmanship on roofs was universally condemned. The current Dade County Building and Zoning roof inspection program is unable to control the situation. In addition to the problems brought to our attention, we heard testimony that those doing roofing inspections are general contractors, not licensed roofing contractors. These inspectors do not like to climb up on roofs to inspect them. This may explain why our surveillance team never observed a single inspector using a ladder. One witness made a suggestion which we endorse wholeheartedly. All roofing inspections should be done by licensed roofing contractors designated as roof inspectors just as electrical inspections are done by designated electrical inspectors.

In addition, the number of required roofing inspections should be increased. Presently, there is no inspection required between the tin-cap inspection and the final inspection. We learned that many intermediate steps which determine the integrity of the roof are unchecked and uncheckable because they are covered up by the time of the final inspection. We recommend

an intermediate inspection just prior to the placement of the final exterior roof covering.

To pay for the additional inspectors and inspections we recommend an increase in the roofing permit fee. Contractors have assured us that the additional cost would be minimal, on the order of twenty to thirty dollars per roof.

SPECIFIC RECOMMENDATIONS

Each Building Department should:

1. Hire certified experienced roof inspectors.
2. Institute an intermediate roofing inspection.
3. Increase roof permit fees to pay for these additional inspectors and inspections.
4. Require every roof inspector to go up on the roof except where dangerous or where property damage could occur.

HANDICAPPED ACCESSIBILITY

Dade County Government has worked within the last twenty years to break down the political, social and economic barriers which separate people and groups from one another. State and county governments have enacted statutes and amended the building code to overcome the physical barriers which segregate a portion of Dade citizenry, the handicapped, from the rest of the population. Handicapped accessibility has been a troublesome issue for property owners, builders, Building and Zoning officials and the handicapped themselves. The frustrations handicapped citizens feel when shut out of buildings is equally matched by the frustrations property owners feel when faced with the problems and expense of modifying their buildings. However, state law and the South Florida Building Code require the provision of accessibility for handicapped. This must be done.

Undoubtedly, Building and Zoning is spending a large amount of agency time investigating the complaints of the handicapped. One competent inspector estimated that 25% of his inspection days are involved with handicapped issues. However,

these barriers are so prevalent that every day, particularly in existing buildings, we come across hindrances to normal life for someone handicapped. Even in the Grand Jury chamber, we were saddened to recognize that existing construction prevented a handicapped witness from reaching the witness stand. Continued vigilance by regulatory agencies throughout the county, particularly Dade Building and Zoning, must be exercised. From the initial submission of plans to the permitting and the actual inspection process, issues of handicapped accessibility must be a high priority of agency attention. Exemptions to provisions of this law must be clearly explained to the public and receive the proper open and public review so as to avoid charges of undue influence and favoritism.

BOARD OF RULES AND APPEALS

The Board of Rules and Appeals is an agency with countywide jurisdiction to oversee building practices and building departments. Its twenty-six members represent various trades, professions and interests within the construction industry. It interprets the South Florida Building Code and recommends revisions of the code to the county commission. It certifies people as competent to hold positions as building inspectors or building officials. It hears appeals from the rulings made by the various building departments. It also conducts building inspections in response to complaints of improper construction practices when the appropriate building department requests assistance or is the subject of the complaint.

There are several factors which limit the practical effectiveness of Dade County's Board. The most apparent is the lack of autonomy from Dade County Building and Zoning. In Dade County, the Board of Rules and Appeals is funded through the Department of Building and Zoning. The Department of Building and Zoning can and does exert substantial political pressure on the Board. This presents an appearance of conflict of interest and in some cases, an actual conflict of interest when the Board

is required to review the conduct of the Building and Zoning Department. For example, when code enforcement officers created a stir by issuing citations at the South Dade housing development, they later received orders temporarily not to conduct certain inspections in the unincorporated areas of Dade County. These areas are served only by Dade County Building and Zoning. As the only agency having countywide oversight jurisdiction, the Board of Rules and Appeals has to be free to criticize and issue notices of violation to all the building departments in Dade County without fearing pressure or financial repercussions.

It has been suggested that Dade County's Board be remodeled to some extent like the Board of Rules and Appeals in Broward County. We agree. The major advantages of the structure of Broward's Board are its independence from political pressures and its smaller appearance of potential conflicts of interest. In Broward County, since the Board is funded by a special fee on permits, it is completely independent of any political influence other than that of the general public. No Building and Zoning official and no county commissioner can increase or decrease the funding for the Board of Rules and Appeals. Only the general public may. Moreover, on Broward's Board, fewer than half of the members are appointed by the county commission. The remainder are appointed by Broward's League of Cities. This allows for the healthy competition between the county and the individual municipalities. It does not limit the Board's political accountability to any single political entity.

We also believe that Broward's practice of not permitting its Board of Rules and Appeals enforcement staff members to engage in outside consulting work is a sound judgement. Unlike in Dade County, members of the Broward Board enforcement staff do not engage in outside consulting because they believe it gives an appearance of possible conflict of interest.

The inability of the Board to effectively respond to complaints is particularly demonstrated in the initial case we studied. The present problems at the Northwest Dade development may have been avoided if the Board would have reacted sooner. When the building official in this small municipality asked the Board for input on permitting the use of the "dynamic compaction" technique, he could not get an answer. Seeking his answer elsewhere, he testified he was advised by the city attorney to grant the building permits. The "dynamic compaction" technique used in this development was not consistent with good engineering practice and prompt action by the Board to so inform the building official might have avoided the subsequent problems.

The Broward Board is proactive while the Dade Board is almost exclusively reactive. We would like to see the Board of Rules and Appeals in Dade County exercise its autonomy by taking on a proactive program of review of the quality and quantity of building inspections both in unincorporated Dade County and in the municipalities. The Board should also review the qualifications and performance of the building officials in each municipality. As the watchdog agency with the necessary expertise, we believe the Board of Rules and Appeals should have the independence and the resources to evaluate building officials, to evaluate building inspectors, to evaluate building inspections and where necessary, to see that incompetent people are retrained or removed.

The code enforcement staff of Dade's Board needs to be strengthened. Presently the Board has only four code enforcement officer positions. This is too few, particularly in view of the fact that one of the inspectors is actually functioning as a code writer rather than a field inspector and another is an expert who does not have the physical capability to perform field inspections on a regular basis. We respect the board's judgement in keeping the expert as a member because his expertise is unquestioned and is a valuable asset to the Board. Nonetheless, such a decision contributes to the obvious lack of staff necessary to perform field inspections. The code enforcement

section only employs field inspectors in structural soundness and plumbing. Additional field inspection positions are needed for a mechanical inspector, a roofing inspector and an electrical inspector. The code enforcement section has also underutilized its enforcement officers by keeping them in the office to perform clerical functions, such as performing "telephone duty" and delivering mail. It appears that Building and Zoning will not fund the necessary inspector and clerical positions to bolster the effectiveness of this department.

SPECIFIC RECOMMENDATIONS

1. The Board of Rules and Appeals needs to acquire independence and autonomy from Building and Zoning, including financial independence. A feasibility study should be undertaken to explore the use of a percentage of permit fees to directly fund the Board as is done in Broward County.
2. The Board's code enforcement field inspectors staff needs to be increased. An experienced certified mechanical inspector, a roofing inspector and an electrical inspector need to be hired to conduct field inspections.
3. The use of field inspectors to conduct clerical functions, such as "telephone duty" and delivering mail should be eliminated.
4. Clerical staff should be hired who can receive and respond to complaints and perform general clerical functions.

LACK OF GOVERNMENT RESPONSE

We found many instances where government failed to prevent construction deficiencies from occurring and then failed further to provide expeditious resolutions of these problems. Individual homeowners have difficulty getting Dade County Building and Zoning and other regulatory agencies to properly respond to a complaint. For instance, Ms. Gonzalez resorted to hiring her own engineer to evaluate her roof. Despite complaints concerning her initial roof inspections and her enormous effort to obtain county reinspections, the department sent the same inspector to review his own work. Understandably, she objected to having this same inspector respond to her complaint. It was only after a county commissioner intervened that the department

acted decisively. Ultimately, it was Ms. Gonzalez's perseverance that overcame the department's inertia.

Citizen's telephone inquiries and complaints made to the Building and Zoning Department appear to proceed haphazardly from one individual to another with little or no assistance offered. The director admits that this is an area in which he must take corrective action. In contrast, many witnesses indicated that builders' and developers' complaints are more readily addressed. Since most of Building and Zoning's funding comes from permit fees, there is a tendency to see the department's role as assisting the construction industry. Too many staff members seem to accept this role and many builders expect it.

Many construction issues rely on the competency and honesty of the builders. As one senior Building and Zoning official recently told the Board of Rules and Appeals, "It's one of those things, like many things in construction, that we don't see and we rely on the competency of the contractors and designers to comply with the code." While there can never be a perfectly constructed building, a reliance on the industry to police itself has led to the construction problems we see today and will lead to further problems visible only in the future.

Under certain conditions the building code allows an engineer hired by the builder to inspect the propriety of construction techniques. The case of the fire safety and structural deficiencies in the eight five-story low-income apartment buildings in South Dade is an example of the "threshold engineer" allowing improper building techniques to endanger both property and safety. At this building project, the exterior block walls apparently lacked both steel reinforcing rods and poured concrete, vertical openings through which smoke could spread were never closed and the interior walls may have lacked sufficient fire inhibiting properties to meet the fire code requirements. However, since the engineer signed the inspection documents, this construction was accepted. As in most cases

where an engineer is involved, inspectors give way to the engineer's authority. Presently, there is a tendency for all building departments in Dade County to unquestioningly accept the correctness of documents presented under an engineer's seal. This tendency must be checked.

SPECIFIC RECOMMENDATIONS

1. A countywide "911" complaint response switchboard and referral type service needs to be established where the public's inquiries and complaints can be handled. It should be manned by qualified staff who are familiar with the bureaucracies of the construction industry.
2. The Dade Building and Zoning Department should improve its public relations by making the department more accessible to the public and improving its inquiries and complaints performance.
3. The present building permitting process is slow and cumbersome and should be streamlined.

LACK OF EFFECTIVE ENFORCEMENT

While agencies on both the state and county levels regulate the construction industry, the lack of coordination between the two often creates jurisdictional gaps. Dade County licenses, monitors and disciplines contractors and tradesmen. The state's Department of Professional Regulation (DPR) also does this. Neither agency has effective jurisdiction over unlicensed contractors. If a contractor holds a Dade County license, the Dade County Construction Trades Qualifying Boards have disciplinary jurisdiction; if he holds a state license, the DPR has jurisdiction. An individual may lodge a complaint with enforcement agencies at either the state or county level or both. If the disciplinary agency suspends or revokes a license upon its review of a complaint, the contractor or tradesman can still operate by obtaining a new license issued by a different agency. If a contractor loses, for example, his county license, he may obtain a state license that allows him to still do business in Dade County. We heard of several specific instances which highlight the absurdity of this problem, but one in particular stands out.

A major pool company failed to finish numerous pool contracts and in other cases left partially built, shoddy pools. After receiving numerous complaints, Dade County reviewed the circumstances and ultimately revoked the pool company's license. The pool company then applied for and received a state license. Today, it continues to do pool construction and, due to continued heavy advertising, is a well-recognized pool company. Once licensed by the state, the county agencies no longer retain disciplinary jurisdiction. The county is rendered powerless to discipline this problematic pool contractor.

It makes no sense for someone to have reached a level of construction incompetence leading to the loss of his county license only to be granted a state license. The victims in the case of the pool company example lost thousands of dollars paid to the pool company, thousands of dollars in damage done to property during construction and thousands of dollars of additional payments made to a second pool company to rectify the mistakes of the first. This company is still operating, selling pools and leaving problems behind for its hapless victims. Presently, DPR is investigating the company. Victims have been told that it may take a year before DPR can act to rescind the company's license.

Changes in state and county licensing are essential if construction incompetence is to be corrected. This ability to substitute one type of license for another suspended license must be eliminated. A communication system between county and state licensing agencies must be established which would prohibit someone with a suspended local license from obtaining a state license as an alternative. The present system is analogous to granting someone with a suspended driver's license a second license and a clean record. No one would knowingly allow such a hazardous system to exist but we presently allow those incompetents in the construction industry additional opportunities to victimize consumers.

In addition to suspending or revoking a license, these agencies have the authority to order a contractor to take corrective action on a complaint and or pay a fine. It appears though that the enforcement of fines is virtually nonexistent and therefore fairly meaningless. For instance, in 1989 Dade's disciplinary boards ordered fines to be paid by its disciplined contractors totaling \$132,000. But Dade only collected \$8,500 of those fines. We urge that each jurisdiction implement aggressive collection procedures, pool these fines, and establish a statewide computerized tracking system for known and repeat bad contractors.

On March 1, 1990, the Florida Legislature Construction Complaints Study Committee's Report similarly addressed this enforcement deficiency and recommended that the state's disciplinary actions be delegated to the local authorities. This recommendation is worthy of serious consideration because it streamlines the complaint process and provides greater control and enforcement powers to the locality where a contractor is operating.

To assist in the prevention, detection, and prosecution of fraud in the contracting industry, all developers, contractors and builders should be required to maintain complete financial records of their business. Several of the regulatory agencies emphasized the need for records to prove any fraudulent activity by a contractor or company. All contractors and subcontractors and payments made or received relating to them should be required to be recorded and maintained in written form for a period of not less than three years. Presently, many other professions are required to do this. These records should be available for inspection by all regulatory agencies having jurisdiction over the contracts or any work done under them.

At each license renewal, contractors should be required to provide current credit information, to document any of their continuing education credits, and to disclose any disciplinary actions and/or criminal convictions taken against them during the

preceding term of their license. A person with a county license revocation for misconduct should not be eligible for state licensure until the misconduct has been corrected and the person's county license eligibility reinstated. Likewise, persons having had their state license revoked should not be licensed by Dade County until the misconduct leading to the revocation has been cured and the person's state license eligibility is restored.

SPECIFIC RECOMMENDATIONS

1. State and county government should consolidate their existing disciplinary jurisdictions.
2. A computer tracking system, accessible to both state and county enforcement agencies, should be established to control license issuance and eligibility.
3. Persons with suspended or revoked licenses should be prohibited from obtaining licenses from other Florida jurisdictions.
4. The Legislature should create a mandatory requirement that those in the construction industry be required to maintain financial records for a minimum of three years.
5. Contractors and tradesmen should be required to prove their good record of performance and financial responsibility at the time of license renewal.

UNLICENSED CONTRACTORS AND ENFORCEMENT

Unlicensed contractors are undesirable for several reasons. To begin with, there is no effective method to supervise or discipline them. Licensed or not, any contractor may occasionally do shoddy work. While licensed contractors theoretically face thousands of dollars in fines and penalties for failing to correct code violations or maintain financial responsibility, unlicensed contractors realistically face at most a \$500 fine for a second degree misdemeanor. The lack of teeth in the enforcement of the licensing requirements seriously inhibits the regulatory agencies' ability to protect the public. Instead, it provides a positive incentive for contractors to remain unlicensed.

Unlicensed contractors put the homeowner at financial risk since most unlicensed contractors fail to carry the workmen's compensation and liability insurance required of licensed contractors. If a workman is injured on the job of an unlicensed contractor, the homeowner may be liable.

While some unlicensed contractors may be competent, many are not. Licensing provides a minimum level of competence below which a contractor cannot fall. The homeowner who hires an unlicensed contractor bears a substantial risk for work performed below that standard. This includes the risk that the work may not be to code, resulting in the issuance of notices of violation and the need for expensive corrective measures.

The Construction Complaints Study Committee Report makes nine recommendations which deserve serious consideration and which are generally consistent with the testimony we have heard. Of these nine, two deserve special attention and priority. The penalty for unlicensed contracting should be made more severe for repeat violators and the Department of Professional Regulation (DPR) should develop the implementation of the unlicensed citation program as set forth in Section 489.127 (3) of the Florida Statutes.

Misdemeanor penalties (\$500 maximum fine and sixty days maximum jail sentence which is rarely actually assessed) are ineffective in deterring the repeat offenders for whom small fines are considered a reasonable cost of doing business. For casual offenders, an effective citation program exists in a few counties, such as Palm Beach County. Palm Beach County's program has a staff of six special deputies, three trained police and three trained construction investigators. The major advantage is that all of these special deputies can issue citations "on the spot" as they witness violations without going through the time consuming process of filing a misdemeanor complaint and then attempting to relocate the violator.

All complaints are investigated. Cases are referred by agencies such as the Better Business Bureau, Consumers' Affairs,

State Attorney's Office as well as from the thirty Building Departments throughout the County. During the fiscal year of 1987-1988 the Department generated \$138,900 above expenses, so the program is cost effective. This system seems to work much better than ours. Dade County can implement this same citation program by passing an enabling ordinance, appointing the requisite inspectors and contracting for police services.

We agree with the commission that the investigation and enforcement arms of DPR are too weak and that criminal, civil and administrative enforcement of the contracting laws are inadequate. We support the recommendations of the committee concerning improving criminal penalties and administrative resources. However, we would go further than the commission did by expanding the jurisdiction of the regulatory agencies to cover unlicensed contractors. We would also deny the unlicensed contractors access to the courts to collect fees for their work and deny them the right to place liens on property, even when they are the prime contractor.

Construction is supposed to be undertaken by persons qualified to do the work. Unfortunately, many construction companies are formed by unlicensed and inexperienced people utilizing the license of a contractor, called a qualifier, who permits his name and license to be used for a fee. Corporations should be required to have at least one responsible official who is an officer, principal stockholder, or both, who is licensed as a contractor before the corporation engages in the business of contracting. Contracting is ultimately done by people, not by corporations and the competence and responsibility of the people must be guaranteed.

The regulatory agencies, having authority over licensed contractors, should have the same disciplinary authority over the responsible corporate officers, principal shareholders of a construction company and over the company itself. This includes the authority to assess fines and penalties and to disqualify the persons or company from the contracting business.

SPECIFIC RECOMMENDATIONS

1. Criminal penalties should be increased for repeat violations from a misdemeanor to a third degree felony.
2. Enabling ordinances should be passed to implement the issuance of citations to unlicensed contractors by code enforcement officers pursuant to Florida Statute 489.127(3).
3. Unlicensed contractors should be denied access to the courts for the enforcement of contracts or liens.
4. Agencies regulating licensed contractors should have their jurisdiction expanded to include unlicensed contractors.
5. The person who has the license and pulls the permit on a construction job should be required to be personally present at the site for inspections. Companies may only use qualifiers who have some significant management or financial interest in the company.
6. The law should require that any corporation that contracts construction business must have a licensed contractor as an officer or a principal stockholder.

THE REMODELING INDUSTRY

A housing developer generally has such a large financial interest to protect that he hires an architect, an engineer and a lawyer to assist in assuring that the work done is both legal and competent. He possesses the professional knowledge and experience to select a reliable and competent contractor to insure the successful completion of his development.

A homeowner seeking remodeling shares the developer's concern for successful completion and also has a substantial financial interest. Unlike a developer, the average homeowner generally lacks the resources to hire the professionals to assist in his common remodeling. The homeowner does not have the inside knowledge of the industry to insure the selection of a reliable contractor. Typically, a homeowner will select a contractor from the Yellow Pages or from a flyer distributed to his home. Cost and ability to do the work are the main concerns.

The homeowner may be unaware of local permit requirements for his job and of the mechanisms required for obtaining such permits. He will be unaware of the inspections required and will usually rely on the contractor to take care of these items. The homeowner may also be unaware of the practice of subcontracting work out and will almost certainly be unaware of the financial obligations towards the subcontractors that the Florida Mechanics Lien Law places on him.

Home improvement contracting is where many widespread abuses occur through the use and proliferation of unlicensed contractors. It is also the area where even licensed contractors may act in a financially irresponsible manner. Too often financial irresponsibility results in the homeowner having to pay twice for the same work when the contractor, with whom they originally signed their agreement, fails to pay subcontractors for the completed work.

The two most complained about home improvement industries are the roofing industry and the swimming pool industry. We heard testimony concerning swimming pool contractors who have accepted large down payments, sometimes in excess of \$10,000 and left the homeowners with holes in the ground costing tens of thousands of additional dollars to remedy the situation. One such company took hundreds of thousands of dollars from customers leaving almost a hundred jobs unfinished and \$400,000 in debts. The principals left town and are now operating in the pool industry in Central Florida. Again, we are reminded of the pool company which lost its Dade County license but operates today under its state license. Our hearts go out to the unsuspecting homeowners who may hire them.

In the roofing industry, we heard testimony about general contractors hiring incompetent and unlicensed workmen to do roofing and then failing to correct the shoddy work they performed. Instead of correcting the problems, these contractors responded to complaints by filing liens against the property in an attempt to compel the homeowner to pay for the shoddy roofing

work. As one contractor told us, "I don't think the homeowner has a shot at fairness."

We strongly urge specific legislation which can better protect homeowners. They include revising Florida's Mechanics Lien Law and initiating bonding requirements by all contractors.

MECHANICS LIEN LAW

Generally, contractors hire subcontractors to do part or all of the actual construction. The homeowner may not even be aware of this until a "Notice of Lien" arrives. The Florida Mechanics Lien Law gives the subcontractor the right to place a lien on the homeowner's property and to collect payment from the homeowner if the contractor fails to pay the subcontractor. Even if the homeowner has already paid the contractor in full and even if the work is incomplete, this lien still applies. When a contractor becomes insolvent, or misappropriates the payments, or simply neglects to pay, the homeowner pays again.

The Florida Legislature recognized a problem with the present Mechanic's Lien Law. In September 1989, it established a commission to study the law. In January 1990 the commission published its report. Some of the recommendations are substantive, some superficial. Unfortunately, the solutions to the Mechanic's lien law proposed by the commission appear to miss the problems the present law creates for the average consumer. Rather, the bulk of the recommendations appear aimed at resolving problems for those in the construction and construction lending industries.

There are recommendations of the Commission with which we agree. We agree that the title is confusing and that "Construction Lien Law" would be more appropriate. Likewise, we agree that public education about the requirements and protections of the law are greatly needed. Unfortunately, the present lien law is very complex. We have considered a simple solution which involves less government resources, greater

protection for property owners and subcontractors and less time spent in legal disputes.

We believe that the legislature should replace the existing mechanic's lien law with a requirement that all general contractors post payment and performance bonds for each job undertaken. Requiring all general contractors to post a performance and payment bond for each job would solve a host of problems and we highly recommend it. Surprisingly, most of our witnesses, including contractors, said that the cost would not be prohibitive for responsible contractors. The payment and performance bond would allow only the prime contractor with whom the homeowner dealt directly to place a lien on his property. All subcontractors and materialmen would file their liens against the contractor's bond. The contractor would receive all the notices filed by the subcontractors and materialmen. The homeowner would not be responsible for these highly technical matters. The bond would guarantee the subcontractors payment for their work and would also guarantee the homeowner completion of his work. While Section 713.02 (6) of the Florida Statutes permits the owner to require the contractor to furnish a payment bond, it places too many obscure requirements on the homeowner. Requirements that the homeowner file notices of commencement and the sanctions that attach for failure to file should be eliminated. A homeowner should not be penalized for ignorance of a system which is already too complicated. The bond should be posted by the contractor when the contractor pulls the permits and the bond. The permits and the contractor's lien should be filed and available together in the public records. This would relieve the homeowner from any filing requirements and would place that responsibility on someone knowledgeable of the system.

The bonding requirement would merely make mandatory what is already optional under Section 713.23 Florida Statutes. This would enable the Mechanics Lien Law (Chapter 713, Part I) to be simplified and essentially eliminate the threat of double payment by homeowners while guaranteeing the payments to subcontractors and materialmen. It would provide financial

responsibility to the homeowner in case of abandonment, bankruptcy or fraud by the contractor. Only the contractor could place a lien on the property which would be offset by payments and damages creditable to the homeowner. It requires no bureaucracy to enforce its provisions and therefore no cost to the taxpayer.

Bonding is not an unfair burden on the contractor, because we believe that a contractor should not undertake to do work beyond his financial or technical ability. The existence of the bond would serve to filter out those contractors who are undercapitalized, unlicensed or otherwise incapable of performing. The various contractors and building officials who testified indicated that reputable financially stable contractors would not find the bonding requirement unduly oppressive. The only objection made was that this would slightly raise the cost of construction. The cost of the bonding outweighs the losses which are regularly and repeatedly incurred by homeowners under the present system. Bonding is a form of insurance and insurance has its cost, but it also has its benefits.

The commission also considered the creation of a fund which would be used to compensate victims of contractors who after receiving full payment, failed to pay their subcontractors and leave the victim subject to mechanics liens. Such a fund is unnecessary if our recommended bonding requirements are established. If the present mechanics lien law is retained, we recommend such a fund be established. It would protect homeowners who are required to pay twice for work done on their property. The fund could be financed from additional permit fees, or from penalties assessed on offending contractors as well as from unlicensed contractors.

SPECIFIC RECOMMENDATIONS:

1. Simplify the law and afford greater protection to homeowners, contractors and materialmen alike by instituting required payment and performance bonds for contractors. Liens would be filed against the bond by anyone not in privity with the owner.

2. Require the contractor, rather than the homeowner, to make all required filings in the public records.
3. For clarity, the Florida Mechanics Lien Law should be renamed the Construction Lien Law.
4. If recommendation 1 is not adopted, then create a victim's fund to reimburse those forced to pay twice for the same work under the present law.

CONCLUSIONS

The quality and beauty of Dade County's commercial and residential construction is a tribute to the industry and to the regulatory agencies. This should not be jeopardized. We hope that our critique and the suggestions issued herein will be useful, constructive criticism.

We are grateful to all of the industry and regulatory individuals for their assistance and candor. While our time constraints prohibited us from delving deeper into the problems faced by the municipalities, we would hope that this report may serve as a useful tool for them as well.