



# CONTRACT ISSUES RELATED TO CHAPTER 481, FLORIDA STATUTES

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## *Introduction*

A Florida licensed interior designer receives a notice to appear before the Florida Board of Architecture and Interior Design because either her or his contract was vague on the scope of the project, did not clearly set forth the method of compensation, offered architectural services or offered services the interior designer was not licensed to perform. The Board reprimands her or his license and imposes a \$1,000.00 fine plus costs. This discipline becomes a public record and can be found on the web by anyone searching the interior designer's name for the remainder of her or his professional career.





All Florida licensed interior designers are governed by Chapter 481, Florida Statutes. Chapter 481 contains many provisions that regulate contracting for interior design services in our state. This article will set forth the basic requirements to avoid having a disciplinary action brought against your interior design license. This is different than attempting to protect yourself from civil liability. Most local attorneys can assist you with drafting a contract to limit liability, however it is your responsibility as a licensed design professional to know the basic requirements to protect your professional license.

It is important to familiarize yourself with Chapter 481, Florida Statutes. As a licensed professional, you are required to know and understand the statutes which govern your profession. Florida licensed interior designers spend a large amount of resources to become licensed, both financially and the time to acquire the necessary education. It can be very troubling for an individual to have their licensed discipline for a violation they were unaware of, simply because they never took the time to read Chapter 481. Further, this discipline will become a public blemish for the remainder of their professional career. If you take nothing more from this article, please at the very least read Chapter 481, Florida Statutes.

#### **Section 481.2131(2), Florida Statutes**

Section 481.2131(2), Florida Statutes is the main provision governing

contracting issues for Florida licensed interior designers. This section states:

An interior designer shall, before entering into a contract, verbal or written, clearly determine the scope and nature of the project and the method of compensation. The

interior designer may offer professional services to the client as a consultant, specifier, or supplier on the basis of a fee, percentage, or markup. The interior designer shall have the responsibility of fully disclosing to the client the manner in which all compensation is to be paid. Unless the client knows and agrees, the interior designer shall not accept any form of compensation from a supplier or goods and services in cash or in kind.

It is important to breakdown this statute in parts to confirm an interior design contract is in compliance.

It is very common for people to think they do not have a contract because nothing was in writing. This is simply not true. A contract can be oral. The obvious problem with oral contracts is that it is simply the licensed design professional's word against the client if a dispute arises. It is very difficult for the licensee to prove she or he has met the requirements of Florida law if nothing is in writing, but it does not mean there was not a contract. Therefore, even though oral contracts are recognized under Florida law, they are highly discouraged if your goal is avoid discipline against your licensed.

The statute goes on to provide the contract must clearly determine the scope and nature of the project and methods of compensation. This once again is not only a requirement of Florida law but also a good general practice. Some projects take years to complete

and if the contract at the beginning of the project does not set forth clearly the scope and method of compensation, disputes can arise because individual's perceptions change over time. When the contract specifically states the services that will be provided by the licensed interior designer and how she or he will be paid, it makes this less likely to occur.

It is not uncommon for a complaint to be filed against the interior designer license when the client feels the project is getting off track and the first thing our office will do is request a copy of the contract. If the licensed interior designer has breached the terms of the contract or the contract is not clear, disciplinary action can be brought against her or his license for failing to perform a legal obligation which is set forth in in Section 481.2251(1)(g), Florida Statutes. The best way to avoid such a violation, is to draft a written contract that clearly sets forth the scope of work and method of compensation.

The interior designer may offer professional services to the client as a consultant, specifier, or supplier on the basis of a fee, percentage, or markup. This provision gives the interior designer many options in terms of their role on the project and the method of compensation. However, the role and method of compensation should be clearly set forth in a written contract for those reasons described above. Rarely, if ever, does this provision come into play regarding disciplinary actions against an individual's license, but does give guidance on the basic requirements for the contract in terms of stating one's role on the project and choosing the method of compensation.

Section 481.213(2), Florida Statutes goes on to emphasize the interior designer shall have the responsibility of fully disclosing to the client the manner in which all compensation is to be paid. The term "shall" leaves little doubt who the contract is going to be construed against if there is a dispute regarding compensation. In any dispute regarding





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compensation, the courts and our office are going to look to the contract because this section gives the interior designer an affirmative duty to set forth how she or he is going to be paid. In such a dispute, if there is not a document clearly setting forth the method of compensation, the interior designer is going to probably lose based on this provision.

Finally, Section 481.213(2) states unless the client knows and agrees, the interior designer shall not accept any form of compensation from a supplier of goods and services in cash or in kind. This situation arises when an interior designer buys a large quantity of goods from a particular supplier and the supplier gives the interior designer a trip or other "gift" based on the purchase. The question becomes can the interior designer accept the trip or gift? The answer is yes, if the client is made aware of the gift and agrees. This section attempts to protect the public from the interior designer choosing a particular product in exchange for receiving a gift. As a licensed design professional, the client should be the priority, not which trip the supplier will offer if you purchase their goods. However, the public is protected if the client is made aware of the arrangement. It is recommended that the designer document the client's knowledge and consent before accepting anything from a supplier.

#### **Offering Architectural Services**

Moving on to other provisions of Chapter 481, Florida Statutes, Section 481.2251(1)(n) prohibits a licensed interior designer from rendering or offering to render architectural services. Therefore, an interior designer needs to refrain from using the words architecture, architectural, interior architecture or architect in all contracts. This includes using these words as adjectives such as architectural drafting, architectural detailing or architectural draftsman. Under no circumstances should a licensed interior designer use these words in their contracts. It should also be noted that not only should

such terms not be used in any contract, but they should also be avoided in all advertising mediums including web sites. This is a very common violation which is taken very seriously.

#### **Practicing Beyond the Scope of Your License**

A potential new client walks in your office and he wants to completely remodel his condominium which he uses as his winter home. He tells you that he is heading north after the winter season and wants the work completed before he returns later in the year.

After agreeing on a conceptual design which will include extensive electrical work to the unit, you enter into a contract to perform all services required to complete the remodeling project. The client gives you the key to his condominium and heads back to his northern home. You contact an electrician and enter into a contract with him to move and add outlets throughout the condominium. You turn around and bill your client for the services of the electrician, which your client promptly pays.

Several months later you receive a letter from our law firm notifying you that an investigation has been initiated regarding allegations that you have provided professional responsibilities which you are not licensed to perform. Your immediate response is that you hired a licensed electrician so there must be some mistake. Unfortunately, you are wrong because you are not licensed to perform electrical contracting services. The violation occurred when you contracted to perform electrical contracting services with your client.

Section 489.531(1), Florida Statutes, prohibits a person from practicing contracting unless the person is licensed. Section 489.505(9), Florida Statutes defines contacting to include "the offering, negotiation for a bid, or attempted sale" of services that require a license. Although architects are generally exempted from the requirements of the

contracting chapter, interior designers are not.

This is also true for the other construction industry professions regulated by the Department of Business and Professional Regulation. A list of those professions regulated by the Department can be at [www.myflorida.com](http://www.myflorida.com). An interior designer cannot enter into a contract to perform architectural services, engineering services, plumbing services, electrical services, or services of a licensed general contractor. The general rule is that if the industry is licensed by the State of Florida, an interior designer cannot enter into a contract with a client for those services. An interior designer needs to make sure that the client themselves contract directly with the licensee for such services to avoid a possible disciplinary action.

Those professions that are not regulated by the State of Florida can be offered by an interior designer. A few examples include, wall paper, painting, floor coverings, cabinet installations, counter installations, and any other service that do not require a license from the State of Florida.

#### **Conclusion**

In order to maintain your status as a licensed design professional in the State of Florida, the Florida legislature has established strict guidelines a licensed interior designer must follow to protect the health, safety, and welfare of its citizens. It is the licensed interior designer's responsibility to know and understand these guidelines. This article has outlined those provisions governing contracting. However, there are many other sections governing other areas of practice within Chapter 481, Florida Statutes. It is important to review these requirements at least once a year. When you think about the time and money required to become licensed, one or two hours a year to help protect your license is minimal.