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## Effective October 1, 2019, Florida General Contractors Have a Statutory Right to Recovery of Attorney Fees Against a Defaulted Subcontractor’s Surety

Florida contractors will soon have a level playing field, at least related to the right to recovery of attorney fees in certain circumstances. Effective October 1, 2019, the Florida statute by which legal fees may be recovered from insurers and sureties was amended to expressly afford that right to contractors.

Florida’s Insurance statute, Chapter 627, affords a right to recovery of attorney fees when a judgment is obtained against an insurer and in favor of any insured pursuant to a policy or contract executed by the insurer. See Fla. Stat. § 627.428. In the construction context, the Florida Legislature has also applied this right to the recovery of attorney fees from sureties, for example in circumstances where suit is brought against a surety under a payment or performance bond. See Fla. Stat. § 627.756.

But there was an oddity to this statute – it specifically provided this right for “owners” and “subcontractors”, but “contractors” were skipped over. For as long as Section 627.756, Florida Statutes has been on the books, the right to recovery of attorney fees against a surety under a payment or performance bond was only afforded to owners, subcontractors, laborers, and materialmen. Specifically, since at least 1977, Section 627.756, Florida Statutes substantially provided as follows (emphasis added):

Section 627.428 applies to suits brought by **owners, subcontractors**, laborers, and materialmen against a surety insurer under payment or performance bonds written by the insurer under the laws of this state to indemnify against pecuniary loss by breach of a building or construction contract. Owners, subcontractors, laborers, and materialmen shall be deemed to be insureds or beneficiaries for the purposes of this section.

**Fla. Stat. § 627.756(1) (2018)**

Notably absent and excluded from the text is the word “contractors”, which is surprising because the right to pursue a claim on a performance bond usually exists for both owners and contractors. Owners have a potential right to pursue a claim against the general contractor’s performance (and sometimes payment) bond and general contractors have a potential right to pursue claims against their subcontractor’s performance (and sometimes payment) bond. Unless the performance bond explicitly provided a right to recovery of attorney fees, the statute, for decades, afforded no such right to the general contractor. General contractors were left responsible for attorney fees when one or more subcontractors defaults, with no right to recover legal fees unless stated in the bond itself.

On May 2, 2019, the Florida Legislature modified Section 627.756, Florida Statutes, which now reads as follows (emphasis added):



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### **Fla. Stat. § 627.756 (Oct. 1, 2019)**

Under the new version of the statute, general contractors possess a right for the recovery of attorney fees in claims against a surety, a right that did not previously exist except where provided in the bond or, under certain circumstances, in the bonded contract. This small change – the addition of the word “contractors” – is impactful and now affords a significant right to general contractors when pursuing claims against a defaulted subcontractor and its surety.

The new law becomes effective on October 1, 2019 and applies only to payment and performance bonds issued after that date.

\*If you have any questions regarding this new law, please feel free to contact Warren E. Friedman at 305.358.2600 or [wfriedman@pecklaw.com](mailto:wfriedman@pecklaw.com).

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