



“One Sided Construction Contracts May Not Be Enforced By The Courts.”



By: Houston Short



In the current construction climate builders often dictate the terms of a construction contract. For some large builders form contracts are the norm. However, smaller contractors often negotiate the terms and don't rely on form contracts.

However, all builders attempt to exact complete freedom and flexibility in the performance of the contract. Builders insert language in default clauses which are designed to make the builder immune from litigation or recovery.

One such device is a default clause that provides that if the builder cannot perform or will not perform, the buyer's sole recourse is the recovery of the initial deposit.

Such default clauses are problematic because they are one sided and essentially allow the builder to build the home if it wants to and to sell the home to the buyer if it wants to.

The courts will not enforce such one-sided agreements.

In the case of Ocean Dunes of Hutchison Island Development v. Colangelo, 462 So.2d 437 (4th DCA 1985) the court ruled for the buyer and against the builder finding that this type of clause created a disparity in the obligations of the parties which is appalling. The court found that the builder's obligations were illusory and struck the clause because there was no mutual obligation for performance between the parties.¹

Thus, a buyer faced with the prospect of a builder who will not perform should consult an attorney. The builder's self-serving and over reaching contract terms may not be enforceable.

(Footnotes)

¹ Other cases with similar holdings against the builder's position are Hackett v. J.R.L. Development, Inc., 566 So.2d 601 (Fla. 2nd DCA 1990); and Blue Lakes Apartments, Ltd. v. George Gowing, 464 So.2d 705 (Fla. 4th DCA 1985).

