

Using Florida's Agricultural Bond laws as a collection tool

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As our firm represents many materials suppliers and site work contractors/subcontractors, we are often presented with payment issues that require us to pursue unconventional avenues of recovery to obtain payment. One area in which we have had a good success is through making claims on Agricultural Bonds through the Florida Department of Agriculture. According to Florida law, any person who is engaged within the state in the business of buying, receiving, soliciting, handling, or negotiating agricultural products from or for Florida producers, or their agents, must be licensed and bonded. The Bureau of Agricultural Dealer's Licenses is responsible for the licensing of dealers in agricultural products. Per the Department of Agriculture, "Florida License and Bond Law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults. The purpose of the law is to help assure that the producers of products covered by the law receive proper accounting and payment for their products." If you do business with nurseries, landscaping companies, or virtually anyone who deals in green goods and you like to get paid the money you are rightfully owed, this post should be required reading.

Governing Laws in Florida

a. Who is required to be licensed and bonded?

Any person, unless specifically exempt, who is engaged within the state in the business of buying, receiving, soliciting, handling, or negotiating agricultural products from or for Florida producers, or their agents, must be licensed and bonded. Producers who buy or handle agricultural products from other producers or their agents for resale must also comply. Chapter 604 of the Florida Statutes governs agricultural laws and section 604.17 addresses the requirement of a license, and states that "[i]t shall be unlawful for any dealer in agricultural products who comes within the terms of this law to engage in such business in this state without a state license issued by the department." Fla. Stat. § 604.17.

Fla. Stat. §604.15(2) defines (2) "Dealer in agricultural products" as:

"any person, partnership, corporation, or other business entity, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer's agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer's agent or representative and the buyer."

"Agricultural products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); sod; tropical foliage;

horticulture; hay; livestock; milk and milk products; poultry and poultry products; the fruit of the saw palmetto (meaning the fruit of the *Serenoa repens*); limes (meaning the fruit *Citrus aurantifolia*, variety Persian, Tahiti, Bearss, or Florida Key limes); and any other nonexempt agricultural products produced in the state, except tobacco, sugarcane, timber and timber byproducts, forest products as defined in section 591.17, and citrus other than limes. 604.15(1).

This broad definition and licensure requirement encompasses virtually anyone who traffics in green goods (plant nurseries, sod companies, landscape companies, etc.). There are 4 articulated exemptions of licensure requirements as set forth in Fla. Stat. § 604.16.

b. The licensure process

In order to secure a license, one must: file a properly completed application; pay the required license fee; and post an adequate surety bond or certificate of deposit. Fla. Stat. §604.18 addresses the application rules and regulations, and states that anyone conducting business with a Florida producer, dealer, or agent thereof must have filed an application for an agricultural license. After filing for the license, the interested party must secure a surety bond, and upon verification of having the surety bond, the state is compelled to issue the license for one year. Fla. Stat. § 604.19 (2010). Fla. Stat. § 604.20 requires that before any license is issued, the applicant must make and deliver to the Department a surety bond or certificate of deposit in the amount of at least \$5,000 or in such greater amount as the Department may determine. The penal sum of the bond or certificate of deposit to be furnished to the Department by an applicant for license as a dealer in agricultural products must be in an amount equal to twice the dollar amount of agricultural products handled during the month of maximum transaction in agricultural products during the preceding 12-month period. If the applicant has not handled agricultural products in the preceding 12 months it is permitted to use estimated amounts during the month of maximum transaction during the next immediate 12 months.

The amount of such bond or certificate of deposit is subject to increase in the department's discretion, if the Department finds such increase to be warranted by the dollar amount of agricultural products being handled, by purchase or otherwise, by the licensee. Fla. Stat. § 604.20. In the same manner, the amount of such bond or certificate of deposit may be decreased when a decrease in the dollar amount of products handled, by purchase or otherwise, warrants such decrease. In order to ensure compliance with proper bonding amount, the Department or its agents may require from any applicant or licensee verified statements of the dollar amount of the applicant's or licensee's business or may review the applicant's or licensee's records at the applicant's or licensee's place of business to determine the actual dollar amount of agricultural products handled, by purchase or otherwise.

c. Complaint filing for aggrieved businesses

Florida Statute §627.751-9 governs surety insurance contracts, while Section 604.21 details the filing procedures for complaints, investigations, and hearings relating to surety bonds. In short, any producer or producer's agent who feels he/she has been

damaged by a dealer's failure to make proper accounting or payment for agricultural products may file a complaint. Most of the information regarding the complaint process is included in the [Florida Department of Agriculture's Agricultural Dealer Products Complaint Packet](#).

Section 604.21, Florida Statutes, provides that any person, partnership, corporation, or other business entity (Claimant) claiming to be damaged by a dealer in agricultural products may file a written claim with the Department against a dealer in agricultural products (Respondent). The Claimant may include all agricultural products covered by Section 604.15(1), Florida Statutes, together with any additional charges necessary to effectuate the sale, unless the additional charges are already included in the total delivered price. The transactions in each claim must total at least \$500 and have occurred in a single license year.

A claim must be filed within six months from the date of sale in instances involving direct sales or within six months from the date on which the agricultural products were received by the Respondent, as agent, to be sold for the Producer. Claims may be filed by e-mail as attachments, fax, U.S. mail, or private delivery service. However, if claims are filed by e-mail or fax, the original documents must be received in the Department by close of business on the tenth business day following the electronic filing.

A Claimant must submit the original and two copies of the claim form (each bearing original signatures and notarizations) together with three copies of all evidence documenting the sale(s). In cases where there are multiple invoices being claimed, a summary list of all claimed invoices must accompany the claim. Claims against a licensed dealer involving multiple invoices could cover more than one license year. In those cases, it will be necessary to file two separate claims.

The Claimant must provide a \$50 filing fee for each claim filed with the Department. The filing fee will be added to the total claim amount. In the event that the Claimant is successful, the Respondent will be responsible for reimbursing the filing fee as part of the settlement.

Any complaint must be filed within 6 months of the date of sale, and when multiple claims exist by a producer, dealer, or agent thereof and the combined amounts exceed the total amount of any bond and certificate of deposit, sales occurring 120 or more days after the oldest sale stated in any complaint filed by the same producer, dealer, or agent thereof, will not be considered for payment from the proceeds of the bond in the event that the surety company or financial institution is called on to make payment.

A dealer in agricultural products who is licensed with the Department may file a claim against another dealer. However, payment from a surety bond or certificate of deposit to a dealer will occur only after all claims of producers or producer's agents or representatives have been paid in full.

When a claim is filed, the Department of Agriculture sends a notification to both the entity that is in default and that entity's insurance company; from there the State is no longer involved unless the entity is not bonded. Thereafter there is an administrative process to adjudicate the merits of the claim. Once a final order is issued, the Respondent or the surety (in most cases) is required to pay some or all of the bond claim. Fla. Stat. § 604.21 states that "the surety company or financial institution shall be responsible for payment of properly established complaints filed against a dealer, notwithstanding the dealer's filing of a bankruptcy proceeding." The sureties will then look to the licensee for indemnification. A penalty against a bond does not necessarily mean that licensure will be revoked by the State. See Fla. Stat. § 604.21.

It is important to note that filing a complaint with the Department does not constitute an election of remedies when the same or similar complaint is filed in another venue. Fla. Stat. § 604.21.

It should be noted that all that is necessary in order to trigger the investigative and adjudicative powers of the Department of Agriculture, is the existence of a complaint by a producer that a licensed dealer has received agricultural products but has failed to make proper and true accounts and settlements at prompt and regular intervals, or failed to make payment for goods received, regardless of whether the dealer was a purchaser or was acting as an agent or handler. *Southern Cucumber Co. v. Henderson*, 432 So. 2d 771 (Fla. 1st DCA June 10, 1983.).

d. Penalties for violations of the statute

Section 604.30 of the Florida Statutes covers the penalties, injunctive relief, and administrative fines, and deems a violation of Florida's requirement to be licensed and bonded as a misdemeanor of the second degree. § 604.30(1), Fla. Stat. (2010). Section 775.082-083 determines that a violation that constitutes a misdemeanor of the second degree to be punishable by imprisonment up to but not exceeding sixty (60) days. § 775.082(4)(b), Fla. Stat. (2010). When the department has probable cause to believe that any person, partnership, corporation, or other business entity has violated any provision of Chapter 604, the department may issue a notice to cease and desist from such violation and file a proceeding seeking an injunction for violation of the order. Violation of the statutes may also result in a maximum fine of twenty-five hundred dollars (\$2500.00). § 604.30(3), Fla. Stat. (2010).

How do these laws affect my business practices?

If you are a plant supplier or "producer" (as defined by statute), your management, sales and credit departments should have a functional knowledge of the way that Florida's Agricultural Bond laws operate. The law gives you protection against buyers who fail to pay on account, write bad checks, or declare bankruptcy. It gives you confidence that your customers have been pre-qualified and transactions are secured. Should a licensed dealer fail to pay you, the Department will take the money from the bonds that agricultural dealers are required to post with us and return the unpaid balance

to you. According to a 2009 Department of Agriculture publication, the program has reimbursed over \$3.8 million to Florida producers over the last five years.

As we have learned over the past few years, even some of your oldest and most trusted customers can fall on hard times, and trusted relationships can end in bitter court battles when finances get tight. Making the Agricultural Dealer's license a condition will ensure that all of your buyers are properly licensed and you are provided with a streamlined avenue for collection in the event of credit default.

Your credit applications should be drafted to request information from the dealer regarding its agricultural bond and licensure. If they do not provide you with this information, then you should strongly consider not selling to the dealer until they provide the confirmation from the Department of Agriculture that they are licensed and bonded. A prudent credit department will enforce these standards when selling or buying any agricultural product grown in Florida, except citrus-other than limes, tobacco and sugar cane.

Once the Dealer does provide you with information, you should verify it through The Florida Department of Agriculture and Consumer Services, Bureau of Agricultural Dealer's Licenses online listing of those licensed to conduct business as Dealer in Agricultural Products in Florida. Though the database is regularly updated, it is advisable to contact the Department's Tallahassee office to ensure you are working with current and accurate information.

Please reference the Florida Department of Agriculture website for more information about the online database:

<http://app1.florida-agriculture.com/bond/DealerSearch.aspx>

Once you confirm licensure, you should take it one step further and check to make sure that there have not been claims issued against the licensee's bond. The Florida Department of Agriculture provides an updated list of Florida Agricultural Dealers that currently have at least one outstanding claim for non-payment filed against them. Detailed information for each claim is available by clicking the claim amount on the [web database](#). It is important to note that liability has not been adjudicated for those listed claims.

If your company has been "stiffed" by a bonded company, it is very important to follow the claims process and submit your complaint within the date of sale. That means that as soon as your first product is sold, you are setting your internal reminders to tickle you at the five month point to determine payment status. Note that the statute does not provide for claims within 6 months of the last date of sale; rather, the operative date is first date of sale.

Hopefully in this process you also have maintained a properly documented file (invoicing, delivery tickets, key correspondence, purchase orders, change orders, pay applications, file notes, etc...) with valid contract claims against the company and its

officers as guarantors. This file and evidence will come in handy in any disputed bond claim proceeding.

It should also be noted that while pursuing these Agricultural Bond claims, an aggrieved creditor should also be pursuing any remedies against properly perfected construction liens under Fla. Stat. §713 and any available civil actions at law.

If you are a dealer and you are unlicensed, get licensed! Failure to obtain licensure can result in severe penalties as set forth above. With a new agricultural commission leadership in place, I doubt you want be the one to test the limits of their authority.

Lastly, it is worth noting that the collection process can be very complicated when multifaceted approaches (ag bond, lien law, commercial litigation) are taken to prosecute your rights as a creditor. It is important to engage an attorney who understands the importance of handling debt collections handled timely and appropriately. Jimerson & Wilson's Business and Construction Litigation attorneys have been instrumental in providing creditors with professional, ethical and expeditious recovery of debts owed throughout the State of Florida and the Southeast United States for many years

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