



Building Permits and Contractors' Licenses

By Denise Evans, Butler Evans Education

A question came up recently in one of our Flipping classes. The person said they had been told that if you applied to the city for a permit to rehab your own property, it would be illegal to sell the property within one year. You can see why a flipper would be really concerned, but the question is relevant to a lot of investors and even homeowners.

Everyone must "pull permits" if the type and dollar amount of the work falls within local government's permitting requirements. Who owns the property is irrelevant. When you apply for one, you must indicate if you have a state license for that type of work, or you are exempt. Licensing and exemptions are determined at the state level, not local government. Local government will ask, but the actual licensing is by the state.

For most of you, licensing means the Home Builders Licensure Board, which requires passing a test and paying fees, among other things. It applies to residential builders and remodelers. There are exemptions for people who do not need to have a license.

One of the licensing exemptions is for people who build or improve one-family or two-family residences on their own property for their own occupancy or use and not offered for sale. Your own "use" can include using the property as a rental. In those cases, you can act as your own homebuilder or remodeler but do not need a state license. You still need local government permits, though.

Suppose you apply for a permit and tell the city you are exempt from needing a state license. In other words, you claim that you intend to use the property as a rental. Then, a week later, you miraculously "change your mind" and decide to sell it. Can you do that? Will anybody ever find out? If they do find out, is it just a matter of paying a fine?

No you can't do that!

Yes, somebody will find out! And, I've been informed that this issue is considered very important and massive crackdowns are coming. Even if you've gotten away with it before, you can't count on it in the future.

The consequences can range from refusal to grant a Certificate of Occupancy to criminal felony charges. SOMEBODY will be charged with a felony, if only to make an example out of them. Do you want to be the test case?

The same law that gives the exemption, puts a little trap in there for people who try to game the system. It says that if you sell a property within one year after completion of the work, or offer it for sale within one year of completion, that is presumptive evidence that the construction was done for the purposes of sale.

Presumptive evidence means the courts will assume you intended to sell the property. You can prove you did not have that intention, but that's often a hard thing to prove. You have the burden of proof.

That means YOU must persuade the court about your intentions. Basically, you have to prove you are innocent. The State does not have to prove you are guilty.

How will they find out? People match up building permits against recorded sales, that's how. Computers make that pretty much automatic, don't they? Plus, think about this: If ANYTHING goes wrong with that property, and the new owner sues you over it, they will certainly check into the permitting and find out. Then they will tell court and jury that you lied when you pulled your permits and said you were exempt. The jury will hate you. If you have insurance, they might deny coverage. There might be criminal charges. It will all be downhill from there.

Subcontractors hired by a property owner claiming the exemption must have their own specialty licenses if the cost of that portion is more than \$10,000. Even if the sub charges \$8,000 for labor, and you personally spend another \$3,000 for supplies, that portion is more than \$10,000. The sub will have to be licensed. As far as state regulations go, ALL plumbing, electrical and HVAC must be done by licensed subs, no matter what the dollar value is. Some local jurisdictions include other specialty subcontractors in that requirement.

The licensing exemption is not transferrable. That means the property owner cannot hire an unlicensed person to supervise construction or remodeling. There are some exceptions in special cases, such as when an older homeowner asks one of their children to supervise remodeling. That would be very rare, though.

Those are the rules, and the exemption. Please don't play games with licenses and permits. If you truly intend to keep a property as a rental, make sure you have good records about income and expense projections. Market it to potential tenants. Obtain permanent financing. Someone who makes no income and expense projections, obtains no permanent financing, and does nothing to get tenants, is probably a flipper, not a keeper.

Note: Lawyers who want to research this further should look at Alabama Code Sections 34-14A-1 *et seq.* and at the Home Builders Licensure Board website at <https://hblb.alabama.gov/>, including its links to their regulations.

RETURN TO WEBSITE AT www.ButlerEvansEducation.com

January 16, 2019 All rights reserved for this article. May not be reprinted without attribution to Denise Evans at www.ButlerEvansEducation.com