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FLORIDA'S BUSINESS LAW FIRM

ADMINISTRATIVE LAW IN FLORIDA

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By: Colin M. Roopnarine

Welcome to Florida! Unlike many states, Florida is an "agency intensive" state. This means that quite often, if you want to do anything, get anything, build anything, sell anything, or practice anything professionally, it is highly likely that you will need a license or a permit and/or you will need to have a significant amount of contact with a state agency. The "why?" is no longer important as this method of operation has been firmly entrenched in the state for many decades. The real question will be "how?" This will be the first in a series of short articles exploring "Administrative Law in the State of Florida."

"Agency" can be loosely defined as a unit of government with a statewide function.[i]As an example of the pervasiveness of administrative law in the lives of Floridians, one can look at the Florida Office of Financial Regulation ("OFR"), for which I was the General Counsel prior to joining Berger Singerman. In life it is highly likely that one will open a bank account, finance a vehicle, obtain a mortgage, plan retirement through an investment advisor, and possibly dabble in the stock market. Each of those actions will cause the individual to be "touched" by the OFR. The OFR regulates banks and credit unions, motor vehicle installment dealers, mortgage brokers and securities dealers/brokers. Thus recourse or questions would be directed to this agency. The same is true for anyone attempting to be licensed, permitted or registered in any of these areas. This pattern is prevalent in Florida. It is no coincidence then that while the substance cases may range from statewide environmental to land use law (as distinguished from the more local variety) to real estate appraiser licensing to veterinarian disciplinary issues, a practitioner in these areas should also have sound understanding of the more general and foundational "administrative law."

As a former Deputy General Counsel at the State of Florida Department of Business and Professional Regulation I was tasked with supervising a staff of over twenty attorneys as we regulated professionals ranging from general contractors to accountants to harbor pilots to mixed martial arts to condominium association managers/management companies. Licenses must be applied for, and disciplinary action must be processed typically though the administrative process as articulated in Ch. 120, Florida Statutes, and its attendant rules. Many states have reached out the State of Florida in an effort to model its own administrative law program after the Florida model which itself is very different from the federal model. These differences are important because expertise in one does not necessarily translate into expertise in the other. It is thus advised that one seek the advice of counsel who has experience and expertise in administrative law in all matters related to state agencies.

For more information on this topic, please contact the author, Colin Roopnarine, on the firm's Government and Regulatory team.

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[i] "Agency" is defined in Section 120.52(1), Florida Statutes, as follows:

(1)?"Agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a)?The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b)?Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c)?Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of chapter 361; a metropolitan planning organization created pursuant to s. 339.175; a separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority or commission under chapter 343 or chapter 349; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

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Colin M. Roopnarine

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