

14.12 MISAPPLICATION OF CONSTRUCTION FUNDS

§ 713.345(1), Fla. Stat.

To prove the crime of Misapplication of Construction Funds, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) received a payment on account of improving real property.**
- 2. (Defendant) knowingly and intentionally failed to apply such portion of any payment to the payment of all amounts then due and owing for [services and labor which were performed on] [materials which were furnished for] such improvement prior to receipt of the payment.**
- 3. At the time of element #2, (defendant) was a person, firm, or corporation, or an agent, officer, or employee of a firm or a corporation.**

Give as applicable.

If you find the defendant guilty of Misapplication of Construction Funds, you must also determine if the State proved beyond a reasonable doubt that:

- a. the amount of payments misapplied had an aggregate value of \$100,000 or more.**
- b. the amount of payments misapplied had an aggregate value of \$1,000 or more but less than \$100,000.**
- c. the amount of payments misapplied had an aggregate value of less than \$1,000.**

§ 192.001(12), Fla. Stat.

“Real property” means land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably.

“Knowingly” means that the defendant is aware of the act and is not acting through ignorance, mistake or accident.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

§ 713.345(1), Fla. Stat.

You may infer that the defendant knowingly and intentionally misapplied construction funds if a valid lien had been recorded against the property of an owner for labor, services, or materials; or if the person who ordered the labor, services, or materials had received sufficient funds to pay for such labor,

services, or materials; and the person failed, for a period of at least 45 days from receipt of the funds, to remit sufficient funds to pay for such labor, services, or materials.

This inference does not apply if the defendant withheld any payment, or any part of any payment, in accordance with the terms of a contract for services, labor or materials or pursuant to a genuine dispute regarding the amount due, if any, for such services labor, or materials.

Lesser Included Offense

14.12 MISAPPLICATION OF CONSTRUCTION FUNDS – 713.345(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
None			
	Theft	812.014	14.1

Comments

The crime in § 713.345(1), Fla. Stat. does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials. As of February 2026, it was unclear whether this provision will be treated as an affirmative defense, and if so, which party has the burden of persuasion and by what standard of proof. A special instruction will be necessary if there is evidence of one of these circumstances.

§ 713.345(2), Fla. Stat. states that the crime does not apply to mortgage bankers or their agents, servants, or employees for their acts in the usual course of the business of lending or disbursing mortgage funds. As of February 2026, it was unclear whether this provision will be treated as an affirmative defense, and if so, which party has the burden of persuasion and by what standard of proof. A special instruction will be necessary if there is evidence of this circumstance.

This instruction was adopted on March 20, 2026.