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# The Florida Architect

Volume 24 Number 2 March/April 1974

## COVER

Alexander Montessori School In South Dade County  
Architect John W. Totty, AIA. Photo by Jerry Cobb.

## 4

Advertisers

## 5

Small Office Practice Series

Lien Laws Are For Architects

H. Samuel Kruse, FAIA

## 7

Alexander Montessori School, Miami

John W. Totty, AIA, Architect

## 10

Legal Notes

J. Michael Huey

FAAIA General Counsel

## 11

Is An Architect Worth It?

## 12

Residence, Jacksonville

American Plywood Association

Honor Award

Peter Rumpel, AIA, Architect

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JUN. 4 1974

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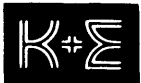
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## Lien Laws Are For Architects

Before the enactment of lien laws, workmen often had to sue their employers, if they had money owing them. Few workmen had the time and money needed to get satisfaction from the courts, so not many workmen sued, and thereby, many were cheated.

Lien laws were enacted to be sure that workmen on construction projects got paid. If an employer, who had a contract with an owner to improve the owner's property, failed to pay his workmen, workmen could lien the property and force the owner to pay the workmen. Even if the owner had paid the employer sums sufficient to pay the workmen, under the lien laws, the owner was not relieved of the responsibility for non-payment by the contractor.

Over the years, lien laws were expanded to cover not only workmen, but also materialmen, subcontractors and contractors.

With the expansion of the number of people covered by lien laws, abuses of the lien privilege became legion. Suppliers of labor, services or materials for projects soon learned that, if there was a claim or lien against the owner's property, the encumbrance prevented him from closing his mortgage arrangement at a critical time. At a time when the owner was paying the greatest payments on his construction loan, when he had drawn heavily on his cash on hand and when he needed the mortgage money to make him healthy again, workmen, suppliers and subcontractors especially placed specious claims against the property, knowing that the owner would rather pay the money claimed and get rid of the encumbrances than to have long and costly court cases fighting the false claims. This kind of blackmail led to the revision of lien laws for the protection for owners of property, as well as workmen.

IN 1965 THE FLORIDA LIEN LAW (FLORIDA STATUTES CHAPTER 84 — MECHANICS LIEN LAW) WAS REVISED TO ESTABLISH A UNIQUE PROCEDURE FOR THE PROTECTION OF ALL PERSONS INVOLVED IN THE

IMPROVEMENT OF REAL PROPERTY. THIS LAW PROTECTS THE OWNER OF REAL PROPERTY, IF HE ABIDES BY HIS OBLIGATIONS UNDER THE LAW, IT PROVIDES LIEN RIGHTS TO ALL PERSONS NOT IN PRIVACY, AS WELL AS THOSE IN PRIVACY WITH THE OWNER. (PERSONS WHO HAVE A DIRECT CONTRACT WITH THE OWNER TO FURNISH MATERIALS, LABOR OR SERVICES, SUCH AS A CONTRACTOR, ARE SAID TO BE IN PRIVACY WITH THE OWNER.)

Persons, who are not in privity with the owner (materialmen, or laborers or subcontractors, who have no direct contract with the owner but who furnish materials or labor or services to a person or persons who have a direct contract with the owner to improve his real property) may file liens against the property improved for non-payment of money owed them. However, before a lien can be filed in the County Clerk's Office, all lienors, except laborers, are required to serve a notice on the owner describing the nature of the services or materials furnished before or within 45 days, from commencing to furnish services or materials. This notice does not constitute a lien, cloud or encumbrance on the real property, but does put the owner on notice that, "If I don't get paid my money from the guy who hired me to improve your property, I'm looking to you for the bread, man!" If liens are filed, they must be filed in the office of the County Clerk within 90 days after the final performance, and action taken to enforce the lien in a court of competent jurisdiction within one year of filing.

The filing notices protects the owner. The owner can collect the "Notices to the Owner" (stock forms for notices are sold in practically every stationery shop in Florida now) and know that if these potential lienors, who sent notices, are paid and he has proof of their being paid (waiver of lien for each notice), then no

lien can be filed to encumber his property. No other materialmen and subcontractors can encumber his property with a claim of lien. However, to earn this protection, the owner must at the beginning of the work file in the County Clerk's Office and post on the site of the work, a "Notice of Commencement," which shall include a legal description of the property to be improved, a general description of the improvement, the name and address of the owner, the contractor, the surety on the payment bond (if any), and the persons to whom "Notices to the Owner" shall be sent by registered or certified mail or by messenger.

Laborers need not serve notices to owners. Neither do persons in privity with the owner, (those like architects, landscape architects, engineers, land surveyors and contractors) have to send notices to preserve lien rights. But liens must be filed within 90 days of final performance and action taken to enforce the liens within one year of filing.

Under the Florida law, money owing to professionals for their services to the owner for the the improvement of the owner's property is subject for liens, regardless of whether such real property is actually improved. (In many states work must actually be started on the site before a professional, as a laborer, has lien rights.) This should hearten those architects who have clients reluctant to pay for professional service. The surveyor and architect can always be the first priority in a list of claimants, provided that they can promptly file liens on their clients' property and still serve the client. This does, however, emphasize the importance in having the real property accurately described on site plans (or to include the surveys in the drawings) and having identical titles and terminology on drawings, specifications and related contract documents. If the architect takes these precautions, then, if he has a client

# LIEN LAWS

who says, "I'm not going to pay you 'cause the job ain't gonna be built," he can counter, "I'll plank a lien on your land and you can't sell it. And, if you don't pay me in a hurry, I'll get the court to sell your property and pay me!" This is legal and a good last-resort method of collection, but not much good for establishing a clientel.

**THE ARCHITECT'S REAL INTEREST IN THE FLORIDA LIEN LAW IS NOT FOR THE COLLECTION OF MONEY OWING HIM. THE REAL INTEREST IS THE PROTECTION (AND POTENTIAL LIABILITIES) IT AFFORDS HIM IN THE ADMINISTRATION OF CONSTRUCTION.**

Unless he is a very unusual person, the owner knows nothing about the lien law. From the beginning of a project he expects the architect to become his agent in lien law matters. The architect will file the Notice of Commencement for him in his name and designate himself as well as the owner as recipients of all Notices to the Owner. The architect will be expected to post the Notice of Commencement, to obtain waivers of lien from all those who sent Notice to the Owner before authorizing payment to the contractor. The architect will be expected to, and will want to take advantage of all the nuances of the lien law which protect the prerogatives of the owner and makes the administration of construction less risky for the architect. The architect will do all the things which the owner should do under the law to make proper payments to the contractor, but the architect will also avoid doing those things that increase his risk for liability as an agent of the owner and that of his client.

According to the Florida lien law the owner should not make a payment unless it is a proper payment. A proper payment is one which makes certain that all persons who have given notice to the owners and laborers are paid, if not by

the contractor, (and that the contractor is not paid if he hasn't paid his employees and suppliers.) This is done as the job progresses by retaining 10 percent of the payments to the contractor, checking his payrolls to see that each name listed bears a signature attesting to receipt of payment, and receiving a waiver of lien rights from each of the persons who have given notice to the owner.

The list of precautions required by the lien law for proper payment is a lot of administrative work for the architect. But the sad part is, that having scrupulously done all the things described, the architect cannot be certain that the handful of waivers of lien he holds, the payrolls checked, etc. are complete. If he issues a certificate for payment he cannot be certain that he might not be authorizing an improper payment, exposing the owner and himself to liability. This is especially true with regard to sub-contractors and sub-suppliers to suppliers and dealers.

Fortunately the Florida lien law provides an alternative to the cumbersome and risky procedures. If the owner requires the contractor to furnish a material/labor payment bond equal to the full amount or more of the contract to guarantee payment of claims of non-payment, then the owner's payments are proper payments without detailed and complete accounting of bills and waivers. The law states that the bond must be with a surety registered in Florida, furnished before construction begins, and covering all claims made in writing within 90 days after delivery of materials or supplies or labor has been completed (but not claims made after one year). Every architect can see the advantage of this option. Any architect, who does not require material/labor payment bonds for each of their projects, likes to live dangerously. Architects have many things to worry them, without adding avoidable lien law risks.

**ANOTHER PROTECTION FOR THE OWNER BUILT INTO THE LIEN LAW (PROTECTION ALSO FOR THE ARCHITECT, AS OWNER'S AGENT) IS THAT FALSE CLAIMS SUBJECT CLAIMANTS TO ACTION UNDER THE CRIMINAL LAWS, NOT CIVIL LAWS. A FAKER CAN BE PUT IN JAIL!**

Having a surety in the building process, does not eliminate all architect traps. Sureties have a subtle way of acting like owners, requesting from the owner prognostications, progress reports and payment information. They also do not hesitate to hold architects liable for "misinformation," should approximations be given without accountancy accuracy on a project gone sour. Sureties work for contractors; let them go to contractors for counsel.

Nearly all agency roles are risky and should not be taken unnecessarily, certainly, not without compensation. An agent does acts for others who for some reason do not do those acts for which they are responsible. In doing these acts, the agent accepts the liability of the acts he does for his client. Agency must be carefully described and limited. An architect serving the owner as an agent in the matter of contract payments certainly does not agree to accept all of the owner's obligations. He should be careful not to accept greater responsibility than what is defined and paid for.

**IF YOU ARE SUPPOSED TO KISS YOUR WIFE EVERY NIGHT AND, FOR SOME COGENT REASON, SELECT ME TO BE YOUR AGENT IN DISCHARGING THAT OBLIGATION, I SHALL WANT TWO CONDITIONS: (1) I WANT IT CLEARLY DEFINED THAT MY ONLY AGENT OBLIGATION IS TO KISS YOUR WIFE EVERY NIGHT BETWEEN 7 PM AND 11 PM, AND (2) TO BE VERY CERTAIN THAT I DO NO MORE THAN KISS HER. THIS IS HOW TROUBLE IS AVOIDED.**

# MIAMI

## MONTESSORI SCHOOL NESTLES SEVEN "CHILDREN'S HOUSES" IN A WOODED PARK

Architects usually build for other people. They see their efforts realized, they walk in them, touch them, are sometimes praised for them; but, they seldom utilize them.

John Totty is a happy exception with his design for the Alexander Montessori School on Old Cutler Road in Miami. His children are now learning in the building their father designed.

Based on extensive observation, by the owners, of the school facilities in this country and abroad, the plan consists of seven "children's houses" with an administration building which rounds out the complex. Two of the "children's houses" are separated by sound-proof folding doors which, when opened, provide a large meeting room. The school, as well as teaching 210 two to six year olds, also serves as a training facility for Montessori teachers. The key to its versatile success is a tightly-structured plan which allows maximum freedom and utilization of space. Each "children's house" is a self-contained classroom for thirty children. Each 36' x 40' space features floor to ceiling windows and sliding glass doors on all four sides to allow for natural light and ventilation. More natural light pours down from clearstory windows. In this sunny atmosphere, the teacher has complete visibility of all inside and outside areas. Areas and facilities have been provided for the teaching stations necessary in the Montessori method, from the "learning lines" on the floor to a child-sized counter with sink, for home life activities.



Each house has its own enclosed patio featuring a variety of materials; trees, rocks, gravel, room for the children to grow their own plants. During clement weather the patios provide open-air extensions of the classrooms.

The houses are arranged around a lushly landscaped central court, an area designed for meeting and relaxing where a reflecting pool and a fountain provide natural music. Grouped around the courtyard are the seven similar houses; all alike, except for their brilliantly-hued doors. Thus, the architect saved construction costs and provided complete equality of facilities for teachers and students.

The school is in a residential neighborhood nestled into a wooded two-acre site, flanked on two sides by heavily-trafficked roads. Great effort has been made to save all possible greenery. As well as providing its own beauty, vegetation provides natural sound baffles for children at play. Greenery that had to be removed is presently being filled in with careful plantings. As a result, the building and site are nearly one with the school maintaining a definite residential character greatly pleasing to its neighbors.

It is a school that works for its students, that is respected and welcomed by its neighbors, a school that fulfills the needs of its teacher and staff in a well-designed, flexible administration building.

John Totty *knows* it works. He watches his children learn in an environment formulated for them. He talks to their teachers on Parent's Night, walks in the quiet, wooded neighborhood. And he has the singular pleasure of enjoying the Alexander Montessori School both as its architect and as the father of Jay, Jan, Celeste, Joel and Jeffery. ■

KATHY RAMSEY/PAT MORTON

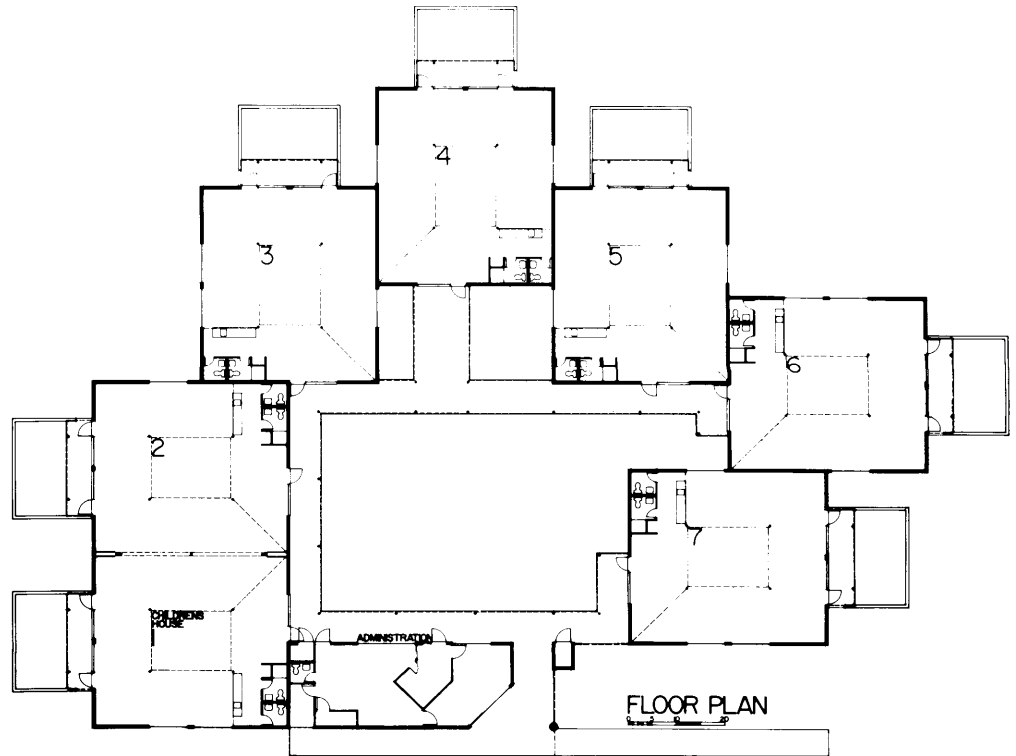


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PHOTOS: JERRY COBB







# LEGAL NOTES

by J. Michael Huey  
FAAIA General Counsel

The Supreme Court of Florida recently answered certain questions of law of great significance to practicing architects in Florida. In mid 1971, the United States Court of Appeals, 5th Circuit, certified the following questions of law to the Florida Supreme Court.

I. Under Florida Law, may a general contractor maintain a direct action against the supervising Architect or Engineer or both, for the general contractor's damages proximately caused by the negligence of the Architect or Engineer, or both for said building project, where there is an absence of direct privity of contract between the parties.

II. Would the answer to Question I be the same if any one or all of the following circumstances were present:

(a) The Architect or Engineer, or both were negligent in the preparation of the plans and specifications.

(b) The Architect or Engineer, or both, negligently caused delays in preparation of corrected plans and specifications.

(c) The Architect or Engineer, or both, were negligent in preparing and supervising corrected plans and specifications.

(d) The Architect or Engineer, or both, were negligent in failing and refusing to provide the general contractor with final acceptance of the building project in the form of an Architect Certificate upon the completion of the building.

(e) The Architect or Engineer, or both, undertook to exercise control and supervision over the general contractor in the performance of his duties to construct the building project.

(f) The Architect or Engineer, or both, negligently exercised control and supervision over the general contractor.

III. Under the Florida Law, may a general contractor enjoy the status of a creditor or donee beneficiary, or both, of a contract between the owner and the designing and supervising Architect or Engineer, or both, where the general contractor, under his contract with the owner, is obligated to construct the building project in accordance with the Architects—Engineers plans and specifications.

Basically, the facts upon which the Florida Supreme Court was to base its opinion were as follows:

On this particular construction project, the supervising architect or engineer was negligent in the preparation and presentation of plans, designs and specifications. This negligence was the proximate cause of economic damages sustained by the general contractor; there was no direct privity of contract between the supervising architect or engineer and the general contractor.

The Supreme Court, on the basis of the facts synopsisized above, answered certified questions I, II (a) (b) (c) and (f) all in the affirmative and answered question III in the negative. Prior to this opinion, it was generally felt that there was a basic distinction between the liability of a professional for economic damages suffered by a third party with whom he was not in privity of contract and the liability of a manufacturer for economic damages sustained by such a third party. The latter of these two established a body of case law generally known as "products liability". In such cases, the requirement of privity of contract between the ultimate buyer of the product and the manufacturer of same has been eliminated in Florida. However, it was generally believed that a contractual relationship had

to exist between one rendering a professional service and another party for that party to have a cause of action against the professional for economic damages.

The Supreme Court of Florida, in its opinion, indicates that privity of contract is no longer a necessary requirement in order to hold a professional liable for economic damages. This represents a substantial extension of the law and Florida architects must now be prepared to withstand actions brought directly against them by general contractors claiming economic damages due to the architect's omissions or negligence.

There was a dissenting opinion by one member of the Court. The dissenting opinion stated that questions I, II, and III should have been answered in the negative because to extend professional liability generally beyond the one who contracts, pays for and receives and relies upon that professional skill is a dangerous enlargement of the law and is unsound. The last paragraph of the dissenting opinion is as follows:

The liability of the architect should follow logical and mutually agreed or reasonably implied lines of responsibility between contractor and architect, within which framework an architect's failures can then be asserted in a proper claim. Moreover, such claims can, of course, be pursued by the owner against the architect where the contractor has successfully asserted the claim or defense against the owner. Bonds are also traditionally provided for such contingencies. Neglect to agree in advance on responsibilities or to take available precautions should not be the basis for corrupting established and well founded principles of liability.

The above paragraph is a perfect synopsis of the brief which was prepared on behalf of the Florida Association of American Institute of Architects and was filed with the Florida Supreme Court prior to the rendering of its opinion in this case. Unfortunately, for architects in Florida, a majority of the Court did not adopt this position. ■

'SO I GO TO AN ARCHITECT AND GET A FANCY BUILDING. IT TAKES FOREVER TO PUT UP, IT COSTS ME A FORTUNE, AND WHAT DO I GET? A FANCY BUILDING.

'I GO TO A BUILDER AND I GET A PLAIN, SIMPLE BUILDING. FOUR WALLS AND A ROOF. IT'S CHEAP, IT GOES UP FAST, AND IT DOES THE JOB. LOOK, I'VE GOT A BUSINESS TO THINK OF. CAN I AFFORD TO WASTE MONEY ON A FANCY BUILDING WHEN THE PLAIN ONE WILL DO JUST AS WELL?

## Is An Architect Worth It?

A fair enough question, and one that a lot of businessmen are asking these days. It is a difficult question too for an architect to answer since, simply because he is an architect, his arguments are obviously suspect. However, there are figures to prove that engaging an architect does not necessarily mean that a building will cost more, or take longer to build. But there are no figures to prove how much a building designed by a qualified architect can do for a business. Or that a well designed building that does cost more than a plain four walls and a roof is actually a good investment.

To fill in this information void, and incidentally explain some of the lesser known services provided by architects, the American Institute of Architects has compiled a series of ten case histories, written by the clients themselves, which illustrate some of the fringe benefits to be obtained through competent design.

This is no ordinary promotional brochure. The businesses represented are of all sizes and varieties. There is even one governmental client, included on the theory that at the local level at least, government and industry share many problems. Let's take a look.

### CASE HISTORY

The first example is the North Carolina National Bank, in Charlotte, N.C., designed by Wolf Associates. Located on a corner site in a shopping center, with a natural pedestrian way cutting across the corner, the architect designed the bank as a triangle in plan, with the open side and the entrances facing the interior of the property rather than the street, just opposite of the usual solution, but so right for the site. By designing a little minipark on the shopping center side, he reinforced the natural pedestrian traffic

flow and made it a magnet for the banks' customers who naturally park and shop on that side of the bank. Is it successful? The bank thinks so. And so do its clientele.

### DIFFERENT PROBLEM

In the Cities Service Building, in Tulsa, Oklahoma, architects Stevens and Wilkinson had a very different problem. How to design a 30 story building in which 85 per cent of the gross area must be usable space, at a cost not to exceed \$23 per square foot. The architects solved the problem by utilizing the firm's capabilities in construction management to start construction on the building during the time final working drawings were being prepared. Now, the owner is one of America's largest contractors, the Henry

C. Beck Company, and very cost conscious.

According to their estimates, they saved approximately \$1 million over conventional construction with the truss design and an additional \$1.2 million by finishing the building approximately eight months ahead of schedule. And that figure does not include the added income from eight months extra rentals. A very worthwhile savings by anybody's standards.

But, you say, these are all big examples. What can the architect do for the little business? The answer is, the same thing, only on a smaller scale, as the owner of the Clover Farms Dairy in Norwalk, Conn., found out, to his profit and surprise.

The owner of a home-delivery dairy business, he faced the problem of competition from supermarkets and other stores selling milk at a price he couldn't meet on a home delivery basis. Taking the problem to the firm of Richard Bergmann, Architects, he found an ally who didn't just design him a building. The architect helped him to devise a whole new way of merchandising. Together they visited dairies around the country, picking up ideas. Together, they went into the profit and loss picture. The result of their joint research was to abandon the home delivery idea altogether and design a combined production and sales building for milk and related products.

The final design was an efficient, automated dairy plant and a store designed to move customers in and out quickly. The plant has a balcony around it, so that customers, particularly the kids, can quickly see the milk being processed. The architect assisted the owner in finding the

site, one on a major highway, with 22,000 cars per day passing the store. He designed the building to look the part, like a farm building, complete with silo. The result? His business has increased 5 times over the home delivery days and he is now selling a greater volume of milk and milk products than any other single store in New England.

Sometimes, the architect's solutions are of a technical nature. When the Lexington, Ky., water company retained Chrisman-Miller-Wallace, Architects, they planned to build two buildings a quarter of a mile apart. One was to house the administrative and engineering staff. The other was for the maintenance department, which had traditionally been in a separate facility, because it was dirty, greasy work, with lots of trucks and trailers scattered around in various stages of disassembly.

Because the site was on a hillside, the architect came up with the idea of a building with entrances on two sides, at two different levels. The lower level is the public entrance, for rate payers and administrative activities. Out of sight, behind the building, the machine shop operates, unseen and unheard. The advantage in coordinating the two activities is incalculable. As an added bonus, the company now has space to double its staff before becoming overcrowded, which could not have been done with the original proposal.

These are but a few examples. There are many more. Like the architect who saved his client \$60,000 by suggesting a different way to mount a machine shop crane. Or the architect who designed a 20,000 square foot building with no interior columns, so that the owner could shift his manufacturing process at will without structural interference.

It is an interesting brochure for anyone contemplating a new business or industrial construction. Copies may be obtained by writing: The American Institute of Architects, 1735 New York Avenue, N.W. Washington, D.C. 20006. Ask for "10 Businessmen Talk About Their Architects." It's free. ■

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## ARCHITECT'S OWN HOME TAKES TOP HONORS IN AMERICAN PLYWOOD ASSOCIATION DESIGN AWARDS PROGRAM

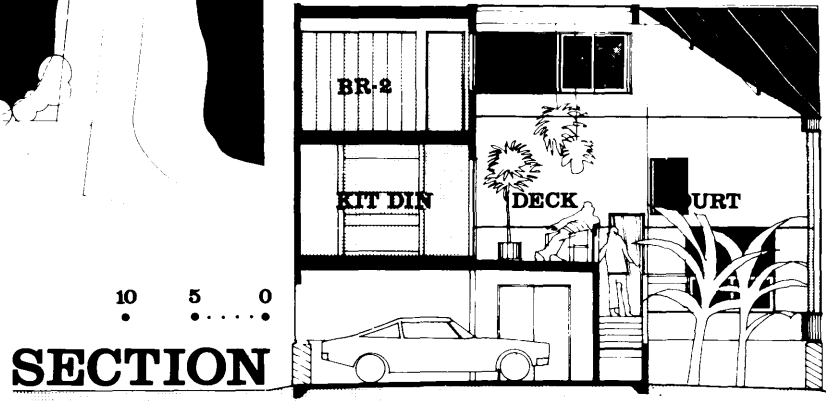
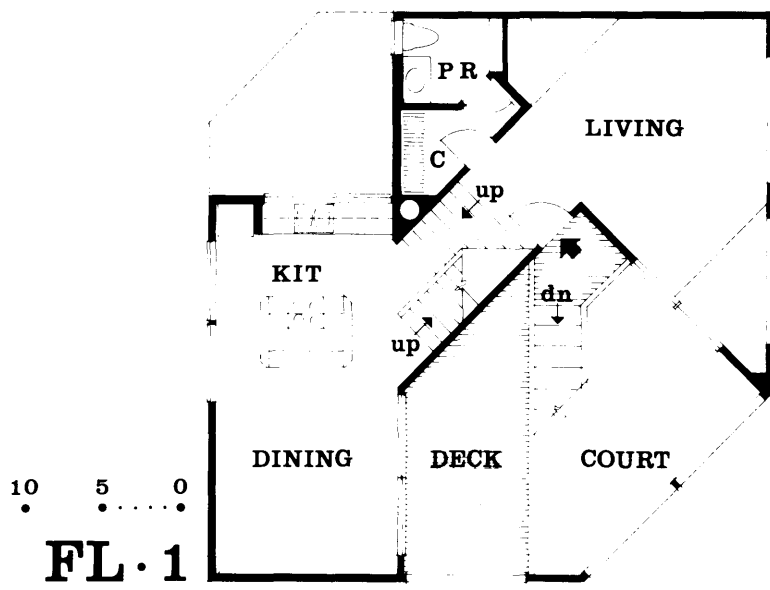
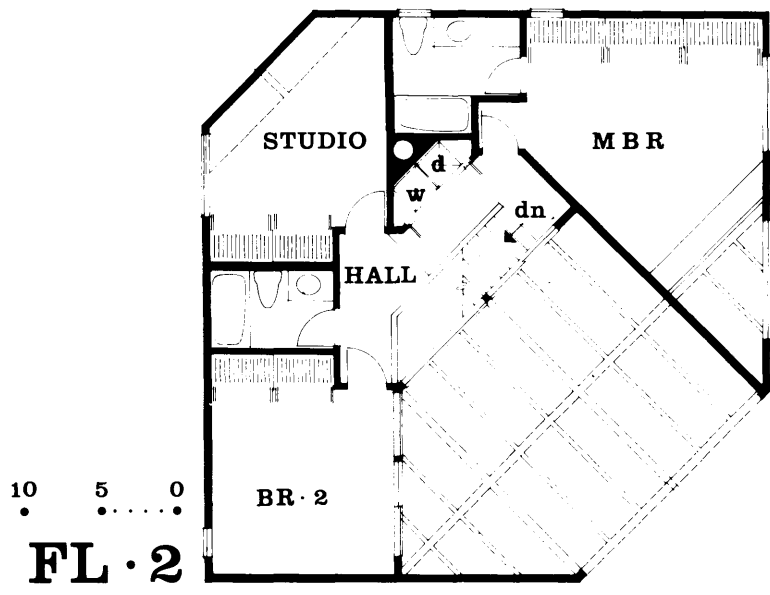
Peter Rumpel, of Freedman/Clements/Rumpel Architects/Planners, Inc., used innovative design, respect for the environment of a difficult site, and a marriage of large windows to rough sawn plywood siding to win first place in the Residential/Single family category.

Taking a swampy site in an older established neighborhood near downtown Jacksonville that had long been considered unbuildable, over half of the site was covered by six inches to three feet of water and muck, the architect-owner created a pastoral ¼ acre pond by selectively deepening the low areas of the swamp and leaving most of the natural vegetation. To conserve the remaining land area and trees, Rumpel elevated the three-story house and its 1,700 sq. ft. of air conditioned area high enough to take advantage of the view.

"Plywood was chosen for the exterior to achieve the added lateral stability needed in a three-story house and to emphasize the sculptural quality of the glass and plywood skin," Rumpel said.

Jury Comment: "This highly individualized plywood house seems to take advantage of the natural appeal of a very challenging Florida site. The house is imaginative, yet simply executed."

PHOTOS: BELTON S. WALL



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Roster of AIA Member Firms in Florida is now available for sale to manufacturers and/or product representatives. The cost is \$15.00 plus tax and may be obtained by writing to FAAIA, Suite 203, N. Kendall Drive, Miami, Florida 33156.

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## Florida's Executive Director Elected Honorary Member of AIA



Fotis N. Karousatos, Executive Director of the Florida Association of the American Institute of Architects for the past eleven years, has been elected to Honorary Membership of the American Institute of Architects.

Only ten persons outside the architectural profession are elected annually for distinguished service to the profession of architecture.

Karousatos will receive his membership during the national AIA convention in May, at Washington, D.C.

LOOK FOR -



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SHOWROOM OF MASONRY SURFACES-

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IN LOS ANGELES - INTRESTADO TILE FROM  
INTERSTATE IN SALT LAKE CITY - CAST TILE  
AND CLAY PAVERS FROM TERRA FIRMA  
IN HOUSTON - PAVERS AND FACING UNITS FROM  
PEE DEE AND PLANT CITY - MEXICAN CLAY  
TILE FROM SALTILLO -

IN OUR VIA AND PATIO WE DISPLAY CAST  
COBBLE STONES AND SOME OF THE SEVERAL BRICK  
AND TILE WE RECOMMEND FOR EXTERIOR PAVING-  
WE ALSO SHOW SOME OF THE FACING STONES  
THAT ARE AVAILABLE -

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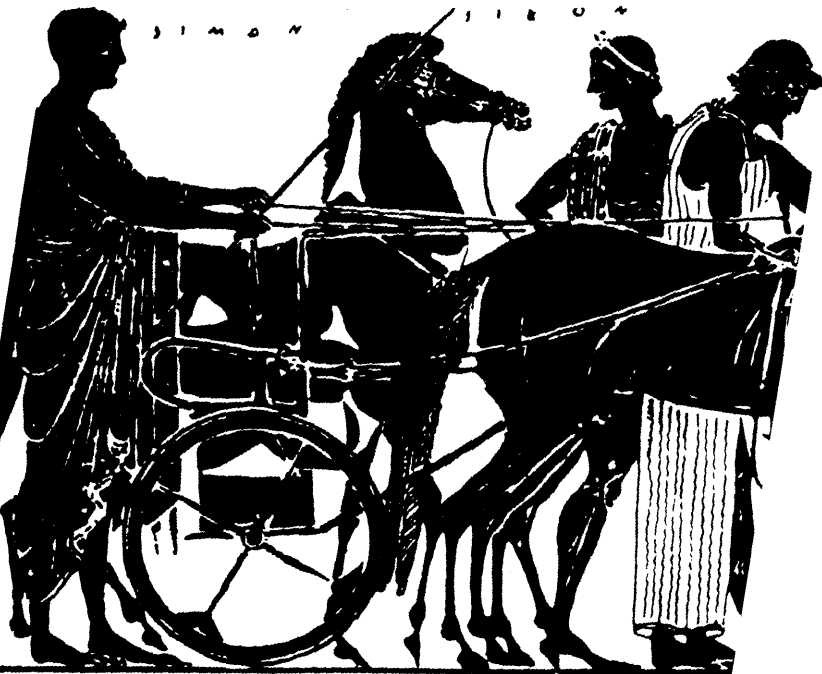
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10

