

Business Practices: Liens (BSP)

Introduction

Construction liens are a critical tool for ensuring that contractors, subcontractors, and suppliers receive payment for their work on property improvement projects. These liens create a legal claim on the property in cases where payments are not made as agreed.

In Florida, construction lien regulations are governed by Chapter 713 of the Florida Statutes. This chapter outlines the procedures for creating, filing, and enforcing liens, providing a framework to balance the rights of property owners and construction professionals. A solid understanding of these regulations is essential for preventing conflicts and maintaining compliance with the law.

This course is designed to provide comprehensive insights into the lien process, emphasizing the steps for filing liens, meeting deadlines, and implementing measures to protect the interests of all parties involved.

What is a Lien?

A lien is a legal claim made by an individual or entity who has worked on real property and seeks to secure a portion of its value due to unpaid compensation. This claim arises when work has been performed to enhance the property, but the agreed-upon payment has not been received.

Anyone who contributes to a property improvement project and is not paid in full has the right to file a lien, regardless of the property owner's payments to others involved in the project. For example, if a property owner fully pays the main contractor, but the contractor fails to pay subcontractors, those subcontractors can file a lien against the property to recover the value of their labor or materials.

Florida law outlines specific requirements regarding construction liens to ensure the process of enforcement, collection, and dispute resolution remains fair and consistent.

According to Florida Statute 713.012, all notices, demands, and requests related to liens must be submitted in writing. However, there is an exception to this rule provided under Florida Statute 713.14.

For direct contracts exceeding \$2,500, the law mandates that a specific statement be included. This statement must appear in bold, capitalized, 12-point font on the first page of the contract or on a separate page. Additionally, the property owner must sign and date the document to confirm acknowledgment.

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

Duration of a Lien – Florida Statute 713.22

1. Under Florida law, a lien established under this section remains valid for up to one year after the claim of lien is recorded. If an amended claim of lien with a later date of the final provision of labor, services, or materials is recorded, the lien is valid for one year from that amended date. To extend the validity of the lien beyond this period, an enforcement action must be filed in a court with appropriate jurisdiction within the one-year timeframe. However, even if extended through legal action, the lien cannot be enforced against creditors or subsequent purchasers who paid value and had no notice of the lien unless a notice of *lis pendens* has been filed.
2. Property owners or their legal representatives have the option to reduce the one-year timeframe for filing an enforcement action. To do so, they must record a notice in the clerk's office. The notice must substantially follow the prescribed format provided in the statute and serves as a formal declaration to expedite the process.

NOTICE OF CONTEST OF LIEN

To:(Name and address of lienor)

You are notified that the undersigned contests the claim of lien filed by you on, (year), and recorded in Book , Page , of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This day of (year).

Signed: (Owner or Attorney)

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the notice and record the notice.

Notice of Commencement

A notice of commencement is a document that the owner of the property must file before beginning construction. This notice officially records the intent to improve, the location of the property, a description of the work, and the amount of any bonds.

Notice of Commencement- 713.13

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. A lessee who contracts for the improvements is an owner as defined under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond. Page 49/334

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(b) The owner, at his or her option, may designate a person in addition to himself or herself to receive a copy of the lienor's notice as provided in s. 713.06(2)(b), and if he or she does so, the name and address of such person must be included in the notice of commencement.

(c) If the contract between the owner and a contractor named in the notice of commencement expresses a period for completion for the construction of the improvement greater than 1 year, the notice of commencement must state that it is effective for a period of 1 year plus any additional period. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.

(d) A notice of commencement must be in substantially the following form:

Permit No. Tax Folio No.

NOTICE OF COMMENCEMENT

State of

County of

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property:(legal description of the property, and street address if available).2. General description of improvement:.3. Owner information or Lessee information if the Lessee contracted for the improvement: a. Name and address:.b. Interest in property:.c. Name and address of fee simple titleholder (if different from Owner listed above):.4.a. Contractor:(name and address).b. Contractor's phone number:.5. Surety (if applicable, a copy of the payment bond is attached):a. Name and address:.b. Phone number:.c. Amount of bond: \$.6.a. Lender:(name and address).b. Lender's phone number:.7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:a. Name and address:.b. Phone numbers of designated persons:.8.a. In addition to himself or herself, Owner designateso to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.b. Phone number of person or entity designated by owner:.9. Expiration date of notice of commencement (the expiration date will be 1 year Page 50/334 from the date of recording unless a different date is specified).

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)

(Signatory's Title/Office)

The foregoing instrument was acknowledged before me this day of, (year), by (name of person) as (type of authority, . . . e.g. officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed).

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced

(e) A copy of any payment bond must be attached at the time of recordation of the notice of commencement. The failure to attach a copy of the bond to the notice of commencement when the notice is recorded negates the exemption provided in s. 713.02(6). However, if a payment bond under s. 713.23 exists but was not attached at the time of recordation of the notice of commencement, the bond may be used to transfer any recorded lien of a lienor except that of the contractor by the recordation and service of a notice of bond pursuant to s. 713.23(2). The notice requirements of s. 713.23 apply to any claim against the bond; however, the time limits for serving any required notices shall, at the option of the lienor, be calculated from the dates specified in s. 713.23 or the date the notice of bond is served on the lienor.

(f) The giving of a notice of commencement is effective upon the filing of the notice in the clerk's office.

(g) The owner must sign the notice of commencement and no one else may be permitted to sign in his or her stead.

(2) If the improvement described in the notice of commencement is not actually commenced within 90 days after the recording thereof, such notice is void and of no further effect.

(3) The recording of a notice of commencement does not constitute a lien, cloud, or encumbrance on real property, but gives constructive notice that claims of lien under this part may be recorded and may take priority as provided in s. 713.07. The posting of a copy does not constitute a lien, cloud, or encumbrance on real property, nor actual or constructive notice of any of them.

(4) This section does not apply to an owner who is constructing improvements described in s. 713.04.

(5)(a) A notice of commencement that is recorded within the effective period may be amended to extend the effective period, change erroneous information in the original notice, or add information that was omitted from the original notice. However, in order to change contractors, a new notice of commencement or notice of recommencement must be executed and recorded.

(b) The amended notice must identify the official records book and page where the original notice of commencement is recorded, and a copy of the amended notice must be served by the owner upon the contractor and each lienor who serves notice before or within 30 days after the date the amended notice is recorded.

(6) Unless otherwise provided in the notice of commencement or a new or amended notice of commencement, a notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent purchasers for a valuable consideration, after 1 year after the date of recording the notice of commencement.

(7) A lender must, prior to the disbursement of any construction funds to the contractor, record the notice of commencement in the clerk's office as required by this section; however, the lender is not required to post a certified copy of the notice at the construction site. The posting of the notice at the construction site remains the owner's obligation. The failure of a lender to record the notice of commencement as required by this subsection renders the lender liable to the owner for all damages sustained by the owner because of the failure. Whenever a lender is required to record a notice of commencement, the lender shall designate the lender, in addition to others, to receive copies of notices from the owner. This subsection does not give any person other than the owner a claim or right of action against a lender for failure to record a notice of commencement

Notice to Owner

Professionals who do not have a direct contract with the owner must file a "notice to owner" before attempting to file any liens. This notice must be served within 45 days of commencing furnishing services and materials. If they do not file this form then they cannot file a lien against the property. For professionals who do have a direct contract with the owners the process of filing liens is simpler.

Liens of persons not in privity; proper payments - 713.06

(1) A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, has a lien on the real property improved for any money that is owed to him or her for labor, services, or materials furnished in accordance with his or her contract and with the direct contract and for any unpaid finance charges due under the lienor's contract. A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, also has a lien on the owner's real property for labor, services, or materials furnished to improve public property if the improvement of the public property is furnished in accordance with his or her contract and with the direct contract. The total amount of all liens allowed under this part for furnishing labor, services,

or material covered by any certain direct contract must not exceed the amount of the contract price fixed by the direct contract except as provided in subsection (3). No person may have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

(2)(a) All lienors under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, must serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. A sub-subcontractor or a materialman to a subcontractor must serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor must serve a copy of the notice to owner on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor shall serve the notice to owner on the subcontractor if the materialman knows the name and address of the subcontractor. The notice must be served before commencing, or not later than 45 days after commencing, to furnish his or her labor, services, or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit under subparagraph (3)(d)1. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and does not give to the lienor serving the notice any priority over other lienors in the same category; and the failure to serve the notice, or to timely serve it, is a complete defense to enforcement of a lien by any person. The serving of the notice does not dispense with recording the claim of lien. The notice is not a lien, cloud, or encumbrance on the real property nor actual or constructive notice of any of them.

(b) If the owner, in his or her notice of commencement, has designated a person in addition to himself or herself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(b), the lienor shall serve a copy of his or her notice on the person so designated. The failure by the lienor to serve such copy, however, does not invalidate an otherwise valid lien.

(c) The notice may be in substantially the following form and must include the information and the warning contained in the following form:

WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT IN FULL. Page 53/334 UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

NOTICE TO OWNER

To(Owner's name and address)

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

(General description of services or materials)for the improvement of the real property identified as(property description)under an order given by.

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section713.06, Florida Statutes.

IMPORTANT INFORMATION FOR

YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

PROTECT YOURSELF:

-RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice to Owner have been paid.

-LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

(Lienor's Signature)

(Lienor's Name)

(Lienor's Address)

Copies to:(Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)

The form may be combined with a notice to contractor given under s. 255.05 or s. 713.23 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

(d) A notice to an owner served on a lender must be in writing, must be served in accordance with s. 713.18, and shall be addressed to the persons designated, if any, and to the place and address designated in the notice of commencement. Any lender who, after receiving a notice provided under this subsection, pays a contractor on behalf of the owner for an improvement shall make proper payments as provided in paragraph (3)(c) as to each such notice received by the lender. The failure of a lender to comply with this paragraph renders the lender liable to the owner for all damages sustained by the owner as a result of that failure. This paragraph does not give any person other than an owner a claim or right of action against a lender for the failure of the lender to comply with this paragraph. Further, this paragraph does not prohibit a lender from disbursing construction funds at any time directly to the owner, in which event the lender has no obligation to make proper payments under this paragraph.

(e) A lienor, in the absence of a recorded notice of commencement, may rely on the information contained in the building permit application to serve the notice prescribed in paragraphs (a), (b), and (c).

(f) If a lienor has substantially complied with the provisions of paragraphs (a), (b), and (c), errors or omissions do not prevent the enforcement of a claim against a person who has not been adversely affected by such omission or error. However, a lienor must strictly comply with the time requirements of paragraph (a).

(3) The owner may make proper payments on the direct contract as to lienors under this section, in the following manner:

(a) If the description of the property in the notice prescribed by s. 713.13 is incorrect and the error adversely affects any lienor, payments made on the direct contract shall be held improperly paid to that lienor; but this does not apply to clerical errors when the description listed covers the property where the improvements are.

(b) The owner may pay to any laborers the whole or any part of the amounts that shall then be due and payable to them respectively for labor or services performed by them and

covered by the direct contract, and shall deduct the same from the balance due the contractor under a direct contract.

(c) When any payment becomes due to the contractor on the direct contract, except the final payment:

1. The owner shall pay or cause to be paid, within the limitations imposed by subparagraph 2., the sum then due to each lienor giving notice prior to the time of the payment. The owner may require, and, in such event, the contractor shall furnish as a prerequisite to requiring payment to himself or herself, an affidavit as prescribed in subparagraph (d)1., on any payment made, or to be made, on a direct contract, but the furnishing of the affidavit shall not relieve the owner of his or her responsibility to pay or cause to be paid all lienors giving notice. The owner shall be under no obligation to any lienor, except laborers, from whom he or she has not received a notice to owner at the time of making a payment.

2. When the payment due is insufficient to pay all bills of lienors giving notice, the owner shall prorate the amount then due under the direct contract among the lienors giving notice pro rata in the manner prescribed in subsection (4). Lienors receiving money shall execute partial releases, as provided in s. 713.20(2), to the extent of the payment received.

3. If any affidavit permitted hereunder recites any outstanding bills for labor, services, or materials, the owner may pay the bills in full direct to the person or firm to which they are due if the balance due on the direct contract at the time the affidavit is given is sufficient to pay the bills and shall deduct the amounts so paid from the balance of payment due the contractor. This subparagraph shall not create any obligation of the owner to pay any person who is not a lienor giving notice.

4. No person furnishing labor or material, or both, who is required to serve a notice under paragraph (2)(a) and who did not serve the notice and whose time for service has expired shall be entitled to be paid by the owner because he or she is listed in an affidavit furnished by the contractor under subparagraph (c)1.

5. If the contract is terminated before completion, the contractor shall comply with subparagraph (d)1.

(d) When the final payment under a direct contract becomes due the contractor:

1. The contractor shall give to the owner a final payment affidavit stating, if that be the fact, that all lienors under his or her direct contract who have timely served a notice to owner on the owner and the contractor have been paid in full or, if the fact be otherwise, showing the name of each such lienor who has not been paid in full and the amount due or to become

due each for labor, services, or materials furnished. The affidavit must be in substantially the following form:

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

State of Florida

County of

Before me, the undersigned authority, personally appeared (name of affiant), who, after being first duly sworn, deposes and says of his or her personal knowledge the

following:

1. He or she is the (title of affiant), of (name of contractor's business), which does business in the State of Florida, hereinafter referred to as the "Contractor."

2. Contractor, pursuant to a contract with (name of owner), hereinafter referred to as the "Owner," has furnished or caused to be furnished labor, materials, and services for the construction of certain improvements to real property as more particularly set forth in said contract.

3. This affidavit is executed by the Contractor in accordance with section 713.06 of the Florida Statutes for the purpose of obtaining final payment from the Owner in the amount of \$.

4. All work to be performed under the contract has been fully completed, and all liens under the direct contract have been paid in full, except the following listed liens:

NAME OF LIENOR AMOUNT DUE

Signed, sealed, and delivered this day of ,

By (name of affiant)

(title of affiant)

(name of contractor's business)

Sworn to and subscribed before me this day of by (name of affiant), who is personally known to me or produced as identification, and did take an oath.

(name of notary public)

Notary Public My Commission Expires:

(date of expiration of commission)

The contractor shall have no lien or right of action against the owner for labor, services, or materials furnished under the direct contract while in default for not giving the owner the affidavit; however, the negligent inclusion or omission of any information in the affidavit which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien. The contractor shall execute the affidavit and deliver it to the owner at least 5 days before instituting an action as a prerequisite to the institution of any action to enforce his or her lien under this chapter, even if the final payment has not become due because the contract is terminated for a reason other than completion and regardless of whether the contractor has any lienors working under him or her or not.

2. If the contractor's affidavit required in this subsection recites any outstanding bills for labor, services, or materials, the owner may, after giving the contractor at least 10 days' written notice, pay such bills in full direct to the person or firm to which they are due, if the balance due on a direct contract at the time the affidavit is given is sufficient to pay them and lienors giving notice, and shall deduct the amounts so paid from the balance due the contractor. Lienors listed in said affidavit not giving notice, whose 45-day notice time has not expired, shall be paid in full or pro rata, as appropriate, from any balance then remaining due the contractor; but no lienor whose notice time has expired shall be paid by the owner or by any other person except the person with whom that lienor has a contract.

3. If the balance due is not sufficient to pay in full all lienors listed in the affidavit and entitled to payment from the owner under this part and other lienors giving notice, the owner shall pay no money to anyone until such time as the contractor has furnished him or her with the difference; however, if the contractor fails to furnish the difference within 10 days from delivery of the affidavit or notice from the owner to the contractor to furnish the affidavit, the owner shall determine the amount due each lienor and shall disburse to them the amounts due from him or her on a direct contract in accordance with the procedure established by subsection (4).

4. The owner shall have the right to rely on the contractor's affidavit given under this paragraph in making the final payment, unless there are lienors giving notice who are not listed in the affidavit. If there are lienors giving notice who are not so listed, the owner may pay such lienors and any persons listed in the affidavit that are entitled to be paid by the owner under subparagraph 2. and shall thereupon be discharged of any further responsibility under the direct contract, except for any balance that may be due to the contractor.

5. The owner shall retain the final payment due under the direct contract that shall not be disbursed until the contractor's affidavit under subparagraph 1. has been furnished to the owner.

6. When final payment has become due to the contractor and the owner fails to withhold as required by subparagraph 5., the property improved shall be subject to the full amount of all valid liens of which the owner has notice at the time the contractor furnishes his or her affidavit.

(e) If the improvement is abandoned before completion, the owner shall determine the amount due each lienor giving notice and shall pay the same in full or prorate in the same manner as provided in subsection (4). ²

(f) No contractor shall have any right to require the owner to pay any money to him or her under a direct contract if such money cannot be properly paid by the owner to the contractor in accordance with this section.

(g) Except with written consent of the contractor, before paying any money directly to any lienor except the contractor or any laborer, the owner shall give the contractor at least 10 days' written notice of his or her intention to do so, and the amount he or she proposes to pay each lienor.

(h) When the owner has properly retained all sums required in this section to be retained but has otherwise made improper payments, the owner's real property shall be liable to all laborers, subcontractors, sub-subcontractors, and materialmen complying with this chapter only to the extent of the retentions and the improper payments, notwithstanding the other provisions of this subsection. Any money paid by the owner on a direct contract, the payment of which is proved to have caused no detriment to any certain lienor, shall be held properly paid as to the lienor, and if any of the money shall be held not properly paid as to any other lienors, the entire benefit of its being held not properly paid as to them shall go to the lienors.

(4)(a) In determining the amounts for which liens between lienors claiming under a direct contract shall be paid by the owner or allowed by the court within the total amount fixed by the direct contract and under the provisions of this section, the owner or court shall pay or allow such liens in the following order:

1. Liens of all laborers.
2. Liens of all persons other than the contractor.
3. Lien of the contractor.

(b) Should the total amount for which liens under such direct contract may be allowed be less than the total amount of liens under such contract in all classes above mentioned, all

liens in a class shall be allowed for their full amounts before any liens shall be allowed to any subsequent class. Should the amount applicable to the liens of any single class be insufficient to permit all liens within that class to be allowed for their full amounts, each lien shall be allowed for its pro rata share of the total amount applicable to liens of that class; but if the same labor, services, or materials shall be covered by liens of more than one class, such labor, services, or materials shall be allowed only in the earliest class by which they shall be covered; and also if the same labor, services, or materials shall be covered by liens of two or more lienors of the same class, such labor, services, or materials shall be allowed only in the lien of the lienor farthest removed from the contractor. This section shall not be construed to affect the priority of liens derived under separate direct contracts.

Liens for Individuals in Privity – Florida Statute 713.05

Under Florida law, material suppliers or laborers who have a direct contractual relationship (privity) with a property owner, as well as contractors who comply with the statute's provisions, can claim a lien on the improved real property. This lien secures payment for labor, services, materials, or other items specified in the direct contract, including any unpaid finance charges.

Additionally, individuals in privity with the owner may claim a lien for labor, services, or materials provided to enhance public property when such improvements are required as a condition for permitting the owner's real property improvement. However, the lien does not become effective until a formal claim of lien is filed.

If a subcontractor, sub-subcontractor, laborer, or material supplier begins work without being in privity with the owner but later enters such a relationship, they can claim a lien for the labor, services, or materials provided after establishing privity. In such cases, one claim of lien may cover both the work performed before and after privity is established.

Unlike some lienors, individuals under this statute are not required to serve a notice to the owner as outlined in Florida Statute 713.06(2). However, lienors in privity with the owner, except laborers or material suppliers, must provide the contractor's affidavit required by Florida Statute 713.06(3)(d).

Contractors can also claim liens for labor, services, or materials supplied by other lienors for which they are responsible. However, if another lienor successfully claims a valid lien, the contractor's lien claim may be reduced accordingly by court order. Only those lienors

explicitly mentioned in this statute, as defined in Florida Statute 713.01, are eligible to claim a lien under this section.

Release of Lien

After completing work on a property, homeowners must ensure they obtain a release lien from all parties with the right to file a lien against the property. A release of lien serves as a formal acknowledgment that the party no longer has the legal right to pursue a lien.

Best practices suggest that the primary contractor should pay all subcontractors and secure releases of lien from them. Once the contractor receives these releases, they can provide them to the property owner upon receiving payment. This process helps protect the homeowner from potential lien claims and ensures all parties involved are properly compensated.

Waiver or Release of Liens

Under Florida law, lien waivers or releases are crucial for managing construction payment disputes and ensuring all parties are protected. Here's an overview of key points related to waivers and releases:

1. Unsecured Notes and Waivers

2. Accepting an unsecured note for payment does not waive a lien unless explicitly agreed upon in writing. This agreement does not affect the timeline for filing notices or claims under applicable statutes.

3. Advance Waivers Prohibited

A lien right cannot be waived in advance. Waivers are valid only for labor, services, or materials already provided. Any agreement to waive a lien right before work is done is considered unenforceable.

4. Partial Waivers and Releases

A lienor can waive or release part of their lien at any time. This can include amounts due for specific labor or materials or for a defined portion of the property being improved, subject to stated exceptions.

5. Forms for Progress and Final Payments

- a. **Progress Payment Waiver:** Lienors may use a specific form to waive their lien rights for work completed through a specified date in exchange for progress payments.
- b. **Final Payment Waiver:** A separate form is used when lienors waive all lien rights after receiving full payment for their work.

6. Standardized Forms

Lien waivers or releases must align with the forms provided in the statute. Any deviation from these forms is unenforceable.

7. Conditional Waivers

Lienors may condition waivers on the clearance of payment checks. If a check remains unpaid, the property owner may withhold equivalent amounts from the contractor until payment is resolved.

8. Enforceability of Non-Standard Forms

Waivers or releases not following the statutory format are enforceable only as per their specific terms.

These provisions ensure fairness and clarity in handling lien rights, protecting both lienors and property owners in construction projects.

Filing Liens

To establish a lien on a property, a claim of lien must be officially filed.

Claim of lien - 713.08

(1) For the purpose of perfecting her or his lien under this part, every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this part may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom she or he was employed.

(c) The labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorporated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for identification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials and for unpaid finance charges due under the lienor's contract.

(h) If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner. If the lien is claimed by a person not in privity with the contractor or subcontractor, the date and method of service of the copy of the notice on the contractor or subcontractor.

(2) The claim of lien may be prepared by the lienor or the lienor's employee or attorney and shall be signed and sworn to or affirmed by the lienor or the lienor's agent acquainted with the facts stated therein.

(3) The claim of lien shall be sufficient if it is in substantially the following form, and includes the following warning:

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

State of

County of

Before me, the undersigned notary public, personally appeared, who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein), whose address is; and that in accordance with a contract with, lienor furnished labor, services, or materials consisting of on the following described real property in County, Florida:

(Legal description of real property)

owned by of a total value of \$, of which there remains unpaid \$, and furnished the first of the items on,(year), and the last of the items on,(year); and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on,(year), by; and (if required) that the lienor served copies of the notice on the contractor on,(year), by and on the subcontractor,, on,(year), by.

(Signature)

Sworn to (or affirmed) and subscribed before me this day of,(year), by (name of person making statement).

(Signature of Notary Public - State of Florida) (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced

However, the negligent inclusion or omission of any information in the claim of lien which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien.

(4)(a) The omission of any of the foregoing details or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

(b) Any claim of lien recorded as provided in this part may be amended at any time during the period allowed for recording such claim of lien, provided that such amendment shall not cause any person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally recorded. Any amendment of the claim of lien shall be recorded in the same manner as provided for recording the original claim of lien.

(c) The claim of lien shall be served on the owner. Failure to serve any claim of lien in the manner provided in s. 713.18 before recording or within 15 days after recording shall

render the claim of lien voidable to the extent that the failure or delay is shown to have been prejudicial to any person entitled to rely on the service.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor. However, if the original contract is terminated under s. 713.07(4), a claim for a lien attaching prior to such termination may not be recorded after 90 days following the date of such termination or 90 days after the final furnishing of labor, services, or materials by the lienor, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

Delivering the Claim of Lien

Each state has strict guidelines on how claims of lien must be delivered. Failure to adhere to these rules can render the claim unenforceable.



(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(a) By actual delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished.

(2) Notwithstanding subsection (1), service of a notice to owner or a preliminary notice to contractor under s. 255.05, s. 337.18, or s. 713.23 is effective as of the date of mailing if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at any of the addresses set forth in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, Page 64/334 or materials; and

(c)1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing; or

2. The person who served the notice maintains electronic tracking records generated by the United States Postal Service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3)(a) Service of an instrument pursuant to this section is effective on the date of mailing the instrument if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item. (b) If the address shown in the notice of commencement or any amendment to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the item may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record without affecting the validity of service under this section.

(4) A notice served by a lienor on one owner or one partner of a partnership owning the real property is deemed notice to all owners and partners.