

By the Committees on Commerce and Tourism; and Regulated Industries; and Senator Bogdanoff

577-04923-11

20111196c2

1 A bill to be entitled
2 An act relating to construction liens; amending s.
3 713.10, F.S.; specifying that a lessor's interest in
4 property is not subject to a construction lien for
5 improvements made by a lessee if certain documents
6 containing specific information and meeting certain
7 criteria are recorded in the official records of the
8 county before the recording of a notice of
9 commencement; authorizing certain contractors and
10 lienors to demand that a lessor serve verified copies
11 of a lease prohibiting liability for improvements made
12 by a lessee; subjecting the interest of a lessor to a
13 specified lien for failing to serve such verified
14 copies or serving a false or fraudulent copy;
15 requiring that the demand include a specified warning;
16 amending s. 713.13, F.S.; revising the form for notice
17 of commencement to include information relating to the
18 obligations of a lessee who contracts for improvements
19 to property; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 713.10, Florida Statutes, is amended to
24 read:

25 713.10 Extent of liens.—

26 (1) Except as provided in s. 713.12, a lien under this part
27 shall extend to, and only to, the right, title, and interest of
28 the person who contracts for the improvement as such right,
29 title, and interest exists at the commencement of the

577-04923-11

20111196c2

30 improvement or is thereafter acquired in the real property. When
31 an improvement is made by a lessee in accordance with an
32 agreement between such lessee and her or his lessor, the lien
33 shall extend also to the interest of such lessor.

34 (2) (a) When the lease expressly provides that the interest
35 of the lessor shall not be subject to liens for improvements
36 made by the lessee, the lessee shall notify the contractor
37 making any such improvements of such provision or provisions in
38 the lease, and the knowing or willful failure of the lessee to
39 provide such notice to the contractor shall render the contract
40 between the lessee and the contractor voidable at the option of
41 the contractor.

42 (b) The interest of the lessor shall not be subject to
43 liens for improvements made by the lessee when:

44 1. The lease, or a short form or a memorandum of the lease
45 that contains the specific language in the lease prohibiting
46 such liability, is recorded in the official records of the
47 county where the premises are located before the recording of a
48 notice of commencement for improvements to the premises

49 ~~(1) The lease or a short form thereof is recorded in the~~
50 ~~clerk's office and the terms of the lease expressly prohibit~~
51 ~~such liability; or~~

52 2. (2) The terms ~~All~~ of the lease expressly prohibit such
53 liability and a notice advising that leases ~~entered into by a~~
54 lessor for the rental of premises on a parcel of land prohibit
55 such liability ~~has been and a notice which sets forth the~~
56 ~~following~~ is recorded by the lessor in the official ~~public~~
57 records of the county in which the parcel of land is located
58 before the recording of a notice of commencement for

577-04923-11

20111196c2

59 improvements to the premises and the notice includes the
60 following:

61 a.~~(a)~~ The name of the lessor.

62 b.~~(b)~~ The legal description of the parcel of land to which
63 the notice applies.

64 c.~~(c)~~ The specific language contained in the various leases
65 prohibiting such liability.

66 d.~~(d)~~ A statement that all or a majority of the leases
67 entered into for premises on the parcel of land expressly
68 prohibit such liability ~~contain the language identified in~~
69 ~~paragraph (c).~~

70 3. The lessee is a mobile home owner who is leasing a
71 mobile home lot in a mobile home park from the lessor.

72 (3) Any contractor or lienor under contract to furnish
73 labor, services, or materials for improvements being made by a
74 lessee may serve written demand on the lessor for a copy of the
75 provision in the lease prohibiting liability for improvements
76 made by the lessee, which copy shall be verified under s.
77 92.525. The demand must identify the lessee and the premises
78 being improved and must be in a document that is separate from
79 the notice to the owner as provided in s. 713.06(2). The
80 interest of any lessor who does not serve a verified copy of the
81 lease provision within 30 days after demand, or who serves a
82 false or fraudulent copy, is subject to a lien under this part
83 by the contractor or lienor who made the demand if the
84 contractor or lienor is otherwise entitled to a lien under this
85 part and did not have actual notice that the interest of the
86 lessor was not subject to a lien for improvements made by the
87 lessee. The written demand must include a warning in conspicuous

577-04923-11

20111196c2

88 type in substantially the following form:

89 WARNING

90 YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY
91 WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY
92 RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF
93 LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

94 ~~(3) The lessee is a mobile home owner who is leasing a~~
95 ~~mobile home lot in a mobile home park from the lessor.~~

96 Section 2. Paragraphs (a) and (d) of subsection (1) of
97 section 713.13, Florida Statutes, are amended to read:

98 713.13 Notice of commencement.—

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

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

116 2. A general description of the improvement.

577-04923-11

20111196c2

117 3. The name and address of the owner, the owner's interest
 118 in the site of the improvement, and the name and address of the
 119 fee simple titleholder, if other than such owner. A lessee who
 120 contracts for the improvements is an owner as defined under s.
 121 713.01(23) and must be listed as the owner together with a
 122 statement that the ownership interest is a leasehold interest.

123 4. The name and address of the contractor.

124 5. The name and address of the surety on the payment bond
 125 under s. 713.23, if any, and the amount of such bond.

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

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

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

135
 136 Permit No..... Tax Folio No.....

137 NOTICE OF COMMENCEMENT

138 State of....

139 County of....

140
 141 The undersigned hereby gives notice that improvement will be
 142 made to certain real property, and in accordance with Chapter
 143 713, Florida Statutes, the following information is provided in
 144 this Notice of Commencement.

145 1. Description of property: ...(legal description of the

577-04923-11

20111196c2

146 property, and street address if available)....

147 2. General description of improvement:.....

148 3. Owner information or Lessee information if the Lessee

149 contracted for the improvement:

150 a. Name and address:.....

151 b. Interest in property:.....

152 c. Name and address of fee simple titleholder (if different

153 from Owner listed above ~~other than Owner~~):.....

154 4.a. Contractor: ...(name and address)....

155 b. Contractor's phone number:.....

156 5. Surety (if applicable, a copy of the payment bond is

157 attached):

158 a. Name and address:.....

159 b. Phone number:.....

160 c. Amount of bond: \$.....

161 6.a. Lender: ...(name and address)....

162 b. Lender's phone number:.....

163 7.~~a~~. Persons within the State of Florida designated by

164 Owner upon whom notices or other documents may be served as

165 provided by Section 713.13(1)(a)7., Florida Statutes:

166 a. Name and address:...(name and address)....

167 b. Phone numbers of designated persons:.....

168 8.a. In addition to himself or herself, Owner designates

169 of to receive a copy of the Lienor's

170 Notice as provided in Section 713.13(1)(b), Florida Statutes.

171 b. Phone number of person or entity designated by

172 Owner:.....

173 9. Expiration date of notice of commencement (the

174 expiration date may not be before the completion of construction

577-04923-11

20111196c2

175 and final payment to the contractor, but will be ~~is~~ 1 year from
 176 the date of recording unless a different date is specified).....

177
 178 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 179 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 180 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 181 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 182 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 183 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 184 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 185 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 186 COMMENCEMENT.

187
 188 Under penalty of perjury, I declare that I have read the
 189 foregoing notice of commencement and that the facts stated
 190 therein are true to the best of my knowledge and belief.

191
 192 ...(Signature of Owner or Lessee, or Owner's or Lessee's
 193 Authorized Officer/Director/Partner/Manager)...

194
 195 ...(Signatory's Title/Office)...

196
 197 The foregoing instrument was acknowledged before me this
 198 day of, ...(year)...., by ...(name of person)... as ...(type
 199 of authority, . . . e.g. officer, trustee, attorney in fact)...
 200 for ...(name of party on behalf of whom instrument was
 201 executed)....

202
 203 ...(Signature of Notary Public - State of Florida)...

577-04923-11

20111196c2

204
205
206
207
208
209
210
211
212
213
214
215
216
217
218

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

Personally Known OR Produced Identification

Type of Identification Produced.....

~~Verification pursuant to Section 92.525, Florida Statutes.~~

~~Under penalties of perjury, I declare that I have read the
foregoing and that the facts stated in it are true to the best
of my knowledge and belief.~~

~~...(Signature of Natural Person Signing Above)...~~

Section 3. This act shall take effect October 1, 2011.