

By Representative Livingston

1 A bill to be entitled
2 An act relating to construction dispute
3 resolution; creating s. 715.125, F.S.;
4 providing for a procedure whereby an owner and
5 a contractor who have a contract for the
6 improvement of real property for which a
7 construction lien is authorized under pt. I of
8 ch. 713, F.S., may agree on the final draw
9 request by the contractor; providing an
10 effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 715.125, Florida Statutes, is
15 created to read:

16 715.125 Dispute resolution.--

17 (1) This section applies only to written contracts to
18 improve real property entered into after October 1, 1997, and
19 for which a construction lien is authorized under part I of
20 chapter 713.

21 (2) In order for a lienor to have the protections
22 afforded by this section, the contract between the owner of
23 the real property and the contractor (the direct contract)
24 must include in the contract a provision that refers to this
25 section.

26 (3) The owner of the real property being improved
27 under a contract governed by this section shall, within 15
28 days after receiving a final draw request from the contractor:

29 (a) Perform a walk-through with the contractor and
30 provide a complete punch list of unperformed or defective work
31 requiring repair.

1 (b) Provide to the contractor an itemized list of the
2 amounts that the owner believes are due to the contractor. Any
3 reductions, objections, or setoffs that the owner believes are
4 legally appropriate must be set forth in the itemized list.

5 (c) The owner must pay the full amount requested if
6 the owner agrees with the contractor's final pay request. If
7 the owner disagrees with the final amount requested by the
8 contractor, the owner must pay to the contractor the
9 undisputed amount and then must deposit into an escrow
10 account, with the mortgage lender or a title insurer or
11 attorney, the amount which is disputed. Such payments must be
12 made prior to the owner occupying the improvements to the real
13 property.

14 (d) If the owner takes possession of the improvements
15 without making the payments as described in this subsection,
16 the owner shall have waived his or her rights to recover
17 attorney's fees and costs, including the rights which were
18 derived under the contract, the rights derived from the
19 construction lien law, and from other legal sources, and shall
20 be required to pay the contractor's legal fees and interest at
21 the highest interest rate permitted by law if the contractor
22 prevails in the subsequent dispute.

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24 In the event that the owner does not provide the punch list
25 described in this subsection and make the required payments as
26 described in this subsection, the owner shall also be deemed
27 to have waived his or her defenses related to extras and
28 change orders.

29 (4) This section does not affect the rights of the
30 parties under any other contract, statute, or warranty.

31 Section 2. This act shall take effect October 1, 1997.

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HOUSE SUMMARY

Provides a procedure whereby an owner and a contractor, with respect to a contract for the improvement of real property for which a construction lien is authorized under pt. I of ch. 713, F.S., can agree on the final draw request from the contractor. See bill for details.