

By Representative Merchant

1 A bill to be entitled
2 An act relating to construction liens and
3 bonds; amending s. 255.05, F.S., relating to
4 payment bonds of contractors constructing
5 public buildings; providing that the time
6 periods required for providing certain notices
7 or bringing certain actions are not determined
8 by the issuance of a certificate of occupancy
9 or a certificate of substantial completion;
10 amending s. 713.06, F.S.; clarifying certain
11 notice requirements with respect to perfecting
12 a lien for labor, services, or materials
13 furnished under contract; amending s. 713.08,
14 F.S.; providing that the time period required
15 for recording a claim of lien is not determined
16 by the issuance of a certificate of occupancy
17 or a certificate of substantial completion;
18 amending s. 713.135, F.S.; clarifying
19 circumstances under which an entity issuing a
20 building permit is subject to disciplinary
21 procedures; amending s. 713.18, F.S., relating
22 to service of notices and other instruments;
23 providing for overnight delivery or second-day
24 delivery under certain circumstances; amending
25 s. 713.23, F.S.; providing that the time
26 periods required for serving a notice of
27 nonpayment or bringing certain actions are not
28 determined by the issuance of a certificate of
29 occupancy or a certificate of substantial
30 completion; providing an effective date.
31

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

2

3 Section 1. Paragraph (a) of subsection (2) of section
4 255.05, Florida Statutes, 1998 Supplement, is amended to read:

5 255.05 Bond of contractor constructing public
6 buildings; form; action by materialmen.--

7 (2)(a)1. If a claimant is no longer furnishing labor,
8 services, or materials on a project, a contractor or the
9 contractor's agent or attorney may elect to shorten the
10 prescribed time in this paragraph within which an action to
11 enforce any claim against a payment bond provided pursuant to
12 this section may be commenced by recording in the clerk's
13 office a notice in substantially the following form:

14

15 NOTICE OF CONTEST OF CLAIM
16 AGAINST PAYMENT BOND

17

18

19 To: ...(Name and address of claimant)...

20

21 You are notified that the undersigned contests your
22 notice of nonpayment, dated,, and served
23 on the undersigned on,, and that the
24 time within which you may file suit to enforce your claim is
25 limited to 60 days after the date of service of this notice.

25

26 DATED on,

27

28

29 Signed:...(Contractor or Attorney)...

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1 The claim of any claimant upon whom such notice is served and
2 who fails to institute a suit to enforce his or her claim
3 against the payment bond within 60 days after service of such
4 notice shall be extinguished automatically. The clerk shall
5 mail a copy of the notice of contest to the claimant at the
6 address shown in the notice of nonpayment or most recent
7 amendment thereto and shall certify to such service on the
8 face of such notice and record the notice. Service is complete
9 upon mailing.

10 2. A claimant, except a laborer, who is not in privity
11 with the contractor shall, before commencing or not later than
12 45 days after commencing to furnish labor, materials, or
13 supplies for the prosecution of the work, furnish the
14 contractor with a notice that he or she intends to look to the
15 bond for protection. A claimant who is not in privity with the
16 contractor and who has not received payment for his or her
17 labor, materials, or supplies shall deliver to the contractor
18 and to the surety written notice of the performance of the
19 labor or delivery of the materials or supplies and of the
20 nonpayment. The notice of nonpayment may be served at any time
21 during the progress of the work or thereafter but not before
22 45 days after the first furnishing of labor, services, or
23 materials, and not later than 90 days after the final
24 furnishing of the labor, services, or materials by the
25 claimant or, with respect to rental equipment, not later than
26 90 days after the date that the rental equipment was last on
27 the job site available for use. No action for the labor,
28 materials, or supplies may be instituted against the
29 contractor or the surety unless both notices have been given.
30 An action, except for an action exclusively for recovery of
31 retainage, must be instituted against the contractor or the

1 surety on the payment bond or the payment provisions of a
2 combined payment and performance bond within 1 year after the
3 performance of the labor or completion of delivery of the
4 materials or supplies. An action exclusively for recovery of
5 retainage must be instituted against the contractor or the
6 surety within 1 year after the performance of the labor or
7 completion of delivery of the materials or supplies, or within
8 90 days after the contractor's receipt of final payment (or
9 the payment estimate containing the owner's final
10 reconciliation of quantities if no further payment is earned
11 and due as a result of deductive adjustments) by the
12 contractor or surety, whichever comes last. A claimant may not
13 waive in advance his or her right to bring an action under the
14 bond against the surety. In any action brought to enforce a
15 claim against a payment bond under this section, the
16 prevailing party is entitled to recover a reasonable fee for
17 the services of his or her attorney for trial and appeal or
18 for arbitration, in an amount to be determined by the court,
19 which fee must be taxed as part of the prevailing party's
20 costs, as allowed in equitable actions. The time periods for
21 service of a notice of nonpayment or for bringing an action
22 against a contractor or a surety may not be determined by the
23 issuance of a certificate of occupancy or the issuance of a
24 certificate of substantial completion.

25 Section 2. Subsection (2) of section 713.06, Florida
26 Statutes, 1998 Supplement, is amended to read:

27 713.06 Liens of persons not in privity; proper
28 payments.--

29 (2)(a) All lienors under this section, except
30 laborers, as a prerequisite to perfecting a lien under this
31 chapter and recording a claim of lien, must serve a notice on

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

28 (b) If the owner, in his or her notice of
29 commencement, has designated a person in addition to himself
30 or herself to receive a copy of such lienor's notice, as
31 provided in s. 713.13(1)(b), the lienor shall serve a copy of

1 his or her notice on the person so designated. The failure by
2 the lienor to serve such copy, however, does not invalidate an
3 otherwise valid lien.

4 (c) The notice must be in substantially the following
5 form and must contain the required information. The notice may
6 differ in format from the format set forth in this section,
7 and may contain additional information if the title of the
8 form, "Notice to Owner," is prominently displayed.†

9
10 WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE
11 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY
12 AND YOUR PAYING TWICE.

13
14 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
15 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

16
17 NOTICE TO OWNER

18
19 To ...(Owner's name and address)...

20
21 The undersigned hereby informs you that he or she has
22 furnished or is furnishing services or materials as follows:
23 ...(General description of services or materials)... for the
24 improvement of the real property identified as ...(property
25 description)... under an order given by.....

26
27 Florida law prescribes the serving of this notice and
28 restricts your right to make payments under your contract in
29 accordance with Section 713.06, Florida Statutes.

30
31 IMPORTANT INFORMATION FOR

1 YOUR PROTECTION

2
3 Under Florida's laws, those who work on your property
4 or provide materials and are not paid have a right to enforce
5 their claim for payment against your property. This claim is
6 known as a construction lien.

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

12
13 PROTECT YOURSELF:

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

17 --LEARN more about the Construction Lien Law, Chapter
18 713, Part I, Florida Statutes, and the meaning of this notice
19 by contacting an attorney or the Florida Department of
20 Business and Professional Regulation.

21 ... (Lienor's Signature)...

22 ... (Lienor's Name)...

23 ... (Lienor's Address)...

24
25 Copies to: ... (Those persons listed in Section 713.06(2)(a)
26 and (b), Florida Statutes)...

27
28 (d) A notice to an owner served on a lender must be in
29 writing, must be served in accordance with s. 713.18, and
30 shall be addressed to the persons designated, if any, and to
31 the place and address designated in the notice of

1 commencement. Any lender who, after receiving a notice
2 provided under this subsection, pays a contractor on behalf of
3 the owner for an improvement shall make proper payments as
4 provided in paragraph (3)(c) as to each such notice received
5 by the lender. The failure of a lender to comply with this
6 paragraph renders the lender liable to the owner for all
7 damages sustained by the owner as a result of that failure.
8 This paragraph does not give any person other than an owner a
9 claim or right of action against a lender for the failure of
10 the lender to comply with this paragraph. Further, this
11 paragraph does not prohibit a lender from disbursing
12 construction funds at any time directly to the owner, in which
13 event the lender has no obligation to make proper payments
14 under this paragraph.

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

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

25 Section 3. Subsection (5) of section 713.08, Florida
26 Statutes, 1998 Supplement, is amended to read:

27 713.08 Claim of lien.--

28 (5) The claim of lien may be recorded at any time
29 during the progress of the work or thereafter but not later
30 than 90 days after the final furnishing of the labor or
31 services or materials by the lienor; or, with respect to

1 rental equipment, within 90 days after the date that the
2 rental equipment was last on the job site available for use;
3 provided if the original contractor defaults or the contract
4 is terminated under s. 713.07(4), no claim for a lien
5 attaching prior to such default shall be recorded after 90
6 days from the date of such default or 90 days after the final
7 performance of labor or services or furnishing of materials,
8 whichever occurs first. The time period for recording a claim
9 of lien may not be determined by the issuance of a certificate
10 of occupancy or the issuance of a certificate of substantial
11 completion.The claim of lien shall be recorded in the clerk's
12 office. If such real property is situated in two or more
13 counties, the claim of lien shall be recorded in the clerk's
14 office in each of such counties. The recording of the claim
15 of lien shall be constructive notice to all persons of the
16 contents and effect of such claim. The validity of the lien
17 and the right to record a claim therefor shall not be affected
18 by the insolvency, bankruptcy, or death of the owner before
19 the claim of lien is recorded.

20 Section 4. Subsections (1) and (4) of section 713.135,
21 Florida Statutes, 1998 Supplement, are amended to read:

22 713.135 Notice of commencement and applicability of
23 lien.--

24 (1) When any person applies for a building permit, the
25 authority issuing such permit shall:

26 (a) Print on the face of each permit card in no less
27 than 18-point, capitalized, boldfaced type: "WARNING TO
28 OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY
29 RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.
30 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR
31 AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

1 (b) Provide the applicant and the owner of the real
2 property upon which improvements are to be constructed with a
3 printed statement stating that the right, title, and interest
4 of the person who has contracted for the improvement may be
5 subject to attachment under the Construction Lien Law. The
6 Department of Business and Professional Regulation shall
7 furnish, for distribution, the statement described in this
8 paragraph, and the statement must be a summary of the
9 Construction Lien Law and must include an explanation of the
10 provisions of the Construction Lien Law relating to the
11 recording, and the posting of copies, of notices of
12 commencement and a statement encouraging the owner to record a
13 notice of commencement and post a copy of the notice of
14 commencement ~~thereof~~ in accordance with s. 713.13. However,
15 the failure by the authorities to provide the summary does not
16 subject the issuing authority to liability.

17 (c) Inform each applicant who is not the person whose
18 right, title, and interest is subject to attachment that, as a
19 condition to the issuance of a building permit, the applicant
20 must promise in good faith that the statement will be
21 delivered to the person whose property is subject to
22 attachment.

23 (d) Furnish to the applicant two or more copies of a
24 form of notice of commencement conforming with s. 713.13. If
25 the direct contract is greater than \$2,500, the applicant
26 shall file with the issuing authority prior to the first
27 inspection either a certified copy of the recorded notice of
28 commencement or a notarized statement that the notice of
29 commencement has been filed for recording, along with a copy
30 thereof. In the absence of the filing of a certified copy of
31 the recorded notice of commencement, the issuing authority

1 shall not perform or approve subsequent inspections until the
2 applicant files by mail, facsimile, hand delivery, or any
3 other means such certified copy with the issuing authority.
4 This subsection does not require ~~Nothing herein shall be~~
5 ~~interpreted as requiring or encouraging~~ the recording of a
6 notice of commencement prior to the issuance of a building
7 permit. If a local government requires a separate permit or
8 inspection for installation of temporary electrical service or
9 other temporary utility service, land clearing, or other
10 preliminary site work, such permits may be issued and such
11 inspections may be conducted without providing the issuing
12 authority with a certified copy of a recorded notice of
13 commencement or a notarized statement regarding a recorded
14 notice of commencement.

15 (4) An issuing authority under subsection (1) is not
16 liable in any civil action for the failure to verify that a
17 certified copy of the recorded notice of commencement has been
18 filed in accordance with this section. If an issuing authority
19 fails to obtain a certified copy of the recorded notice of
20 commencement in accordance with paragraph (1)(d), the building
21 code administrator or building official is in violation of s.
22 468.621(1)(g) and is subject to discipline in accordance with
23 s. 468.621(2). Any lienor may file a complaint against the
24 building code administrator or building official for a
25 violation of paragraph (1)(d).

26 Section 5. Section 713.18, Florida Statutes, 1998
27 Supplement, is amended to read:

28 713.18 Manner of serving notices and other
29 instruments.--

30 (1) Service of notices, claims of lien, affidavits,
31 assignments, and other instruments permitted or required under

1 this part, or copies thereof when so permitted or required,
2 unless otherwise specifically provided in this part, must be
3 made by one of the following methods:

4 (a) By actual delivery to the person to be served; or,
5 if a partnership, to one of the partners; or, if a
6 corporation, to an officer, director, managing agent, or
7 business agent thereof.

8 (b) By mailing the same, postage prepaid, by
9 registered or certified mail to the person to be served at her
10 or his last known address and evidence of delivery. If a
11 notice to owner, a preliminary notice under s. 713.23, or a
12 preliminary notice under s. 255.05 is mailed pursuant to this
13 paragraph within 40 days after the date the lienor first
14 furnishes labor, services, or materials, service of that
15 notice is effective as of the date of mailing if the person
16 who served the notice maintains a registered or certified mail
17 log that shows the date the notice was served, the registered
18 or certified mail number issued by the United States Postal
19 Service, the name and address of the person served, and the
20 date stamp of the United States Postal Service confirming the
21 date of mailing. If an instrument served pursuant to this
22 paragraph to the last address shown in the notice of
23 commencement or any amendment thereto or, in the absence of a
24 notice of commencement, to the last address shown in the
25 building permit application is not received, but is returned
26 by the United States Postal Service as being "refused,"
27 "moved, not forwardable," or "unclaimed," or is otherwise not
28 delivered or deliverable through no fault of the person
29 serving the item, then service is effective as of the date of
30 mailing.

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1 (c) By overnight delivery or second-day delivery using
2 a delivery service that maintains, in the ordinary course of
3 business, records that specify when and where delivery was
4 made.

5 ~~(d)(c)~~ If none ~~neither~~ of the foregoing methods can be
6 accomplished, by posting on the premises.

7 (2) If the real property is owned by more than one
8 person, a lienor may serve any notices or other papers under
9 this part on any one of such owners, and such notice is deemed
10 notice to all owners.

11 (3) Service of notices or copies thereof, permitted or
12 required under this part, may be made by facsimile
13 transmission when the person being served has listed that
14 person's facsimile phone number in the Notice of Commencement.
15 The lienor's facsimile confirmation sheet with the correct
16 facsimile phone number shall be proof of the date and time the
17 notice was served.

18 Section 6. Paragraphs (d) and (e) of subsection (1) of
19 section 713.23, Florida Statutes, 1998 Supplement, are amended
20 to read:

21 713.23 Payment bond.--

22 (1)

23 (d) In addition, a lienor is required, as a condition
24 precedent to recovery under the bond, to serve a written
25 notice of nonpayment to the contractor and the surety not
26 later than 90 days after the final furnishing of labor,
27 services, or materials by the lienor. A written notice
28 satisfies this condition precedent with respect to the payment
29 described in the notice of nonpayment and with respect to any
30 other payments which become due to the lienor after the date
31 of the notice of nonpayment. The time period for serving a

1 written notice of nonpayment may not be determined by the
2 issuance of a certificate of occupancy or the issuance of a
3 certificate of substantial completion.The failure of a lienor
4 to receive retainage sums not in excess of 10 percent of the
5 value of labor, services, or materials furnished by the lienor
6 is not considered a nonpayment requiring the service of the
7 notice provided under this paragraph. The notice under this
8 paragraph may be in substantially the following form:

9

10 NOTICE OF NONPAYMENT

11

12 To ...(name of contractor and address)...

13

14 ...(name of surety and address)...

15

16 The undersigned notifies you that he or she has furnished
17 ...(describe labor, services, or materials)... for the
18 improvement of the real property identified as ...(property
19 description).... The amount now due and unpaid is \$.....

20

21 ...(signature and address of lienor)...

22

23 (e) No action for the labor or materials or supplies
24 may be instituted or prosecuted against the contractor or
25 surety unless both notices have been given. No action shall
26 be instituted or prosecuted against the contractor or against
27 the surety on the bond under this section after 1 year from
28 the performance of the labor or completion of delivery of the
29 materials and supplies. The time period for bringing an action
30 against the contractor or surety on the bond may not be
31 determined by the issuance of a certificate of occupancy or

1 the issuance of a certificate of substantial completion.A
2 contractor or the contractor's agent or attorney may elect to
3 shorten the prescribed time within which an action to enforce
4 any claim against a payment bond provided pursuant to this
5 section or s. 713.245 may be commenced by recording in the
6 clerk's office a notice in substantially the following form:

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8 NOTICE OF CONTEST OF CLAIM
9 AGAINST PAYMENT BOND

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11 To: ...(Name and address of lienor)...

12 You are notified that the undersigned contests your
13 notice of nonpayment, dated,, and served on the
14 undersigned on,, and that the time within which you
15 may file suit to enforce your claim is limited to 60 days from
16 the date of service of this notice.

17

18 DATED on,

19

20 Signed: ...(Contractor or Attorney)...

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22

23 The claim of any lienor upon whom such notice is served and
24 who fails to institute a suit to enforce his or her claim
25 against the payment bond within 60 days after service of such
26 notice shall be extinguished automatically. The clerk shall
27 mail a copy of the notice of contest to the lienor at the
28 address shown in the notice of nonpayment or most recent
29 amendment thereto and shall certify to such service on the
30 face of such notice and record the notice. Service is complete
31 upon mailing.

1 Section 7. This act shall take effect October 1, 1999.

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LEGISLATIVE SUMMARY

Revises various provisions governing construction liens and bonds. Clarifies that the time periods required for providing notice, recording a claim, or bringing an action are not determined by the issuance of a certificate of occupancy or a certificate of substantial completion. Clarifies notice requirements for perfecting a lien for labor, services, or materials. Provides that the authority issuing building permits is subject to disciplinary procedures for failing to obtain a certified copy of the notice of commencement. Authorizes the use of overnight delivery or second-day delivery for serving notices and other instruments. (See bill for details.)