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A bill to be entitled

An act relating to consumer protection in the construction lien law; creating s. 713.015, F.S.; providing mandatory contract provisions for construction contracts; amending s. 713.06, F.S.; limiting lien amounts of persons not in privity; providing a contractor's affidavit form; amending s. 713.08, F.S.; providing a time limit for recording a claim of lien; amending s. 713.135, F.S.; requiring the lien law summary to contain an explanation of owners' rights; requiring the issuing authority to mail the lien law summary to the owner; amending s. 713.31, F.S.; requiring a prosecuting entity to provide a copy of the charging document to the Department of Business and Professional Regulation; amending s. 713.345, F.S.; providing permissive inferences that a person knowingly and intentionally failed to properly apply construction payments; requiring a prosecuting entity to provide a copy of the charging document to the Department of Business and Professional Regulation; amending s. 713.3471, F.S.; requiring contracts between lenders and owners to contain clauses providing owners with the option to be endorsers of checks on construction loans; requiring contractors to provide a list of unpaid entities to the lender and owner before seeking disbursements under construction loans; amending s. 713.35, F.S.; requiring a prosecuting entity to provide a copy of the charging document to the Department of Business and Professional Regulation; providing an effective date.

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



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Section 1. Section 713.015, Florida Statutes, is created to read:

713.015 Mandatory provisions for direct contracts.--Any direct contract between an owner and a contractor, related to improvements to real property governed by the provisions in this part, must contain the following provision printed in no less than 18-point, capitalized, boldfaced type:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES,) THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND 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 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. THIS MEANS IF A LIEN IS FILED AGAINST YOUR PROPERTY, IT COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

Section 2. Subsection (1) and paragraph (d) of subsection (3) of section 713.06, Florida Statutes, are amended to read:

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



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61 improved for any money that is owed to him or her for labor,
62 services, or materials furnished in accordance with his or her
63 contract and with the direct contract and for any unpaid finance
64 charges due under the lienor's contract. A materialman or
65 laborer, either of whom is not in privity with the owner, or a
66 subcontractor or sub-subcontractor who complies with the
67 provisions of this part and is subject to the limitations
68 thereof, also has a lien on the owner's real property for labor,
69 services, or materials furnished to improve public property if
70 the improvement of the public property is furnished in
71 accordance with his or her contract and with the direct
72 contract. The lien amount of any person who has a lien under
73 this section may not exceed the amount the owner owes the
74 contractor at the time the owner receives the notice of lien.
75 When multiple notices of liens are received by the owner on the
76 same date, the amounts of each lien must be prorated in
77 accordance with subsection (3) and s. 713.07, but the total
78 amount of all liens may not exceed the amount the owner owes the
79 contractor at the time the owner receives the notices of liens.
80 The total amount of all liens allowed under this part for
81 furnishing labor, services, or material covered by any certain
82 direct contract must not exceed the amount of the contract price
83 fixed by the direct contract except as provided in subsection
84 (3). No person may have a lien under this section except those
85 lienors specified in it, as their designations are defined in s.
86 713.01.

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



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

92 1. The contractor shall give to the owner an affidavit
 93 stating, if that be the fact, that all lienors under his or her
 94 direct contract who have timely served a notice to owner on the
 95 owner and the contractor have been paid in full or, if the fact
 96 be otherwise, showing the name of each such lienor who has not
 97 been paid in full and the amount due or to become due each for
 98 labor, services, or materials furnished. The affidavit must be
 99 in the following form:

100 CONTRACTOR'S AFFIDAVIT

101 State of Florida

102 County of

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

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

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

114 3. This affidavit is executed by the Contractor in
 115 accordance with section 713.06 of the Florida Statutes for the
 116 purpose of obtaining payment from the Owner in the amount of
 117



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

121
 122 NAME OF LIENOR AMOUNT DUE

123 Signed, sealed, and delivered this day of.....,

124 By (name of affiant) (title of affiant)
 125 (name of contractor's business)

126
 127 Sworn to and subscribed before me this day of,
 128 by (name of affiant), who is personally known to me or produced
 129 as identification, and did take an oath.

130 (name of notary public)

131 Notary Public

132 My Commission Expires:

133 (date of expiration of commission)

134
 135 The contractor shall have no lien or right of action against the
 136 owner for labor, services, or materials furnished under the
 137 direct contract while in default for not giving the owner the
 138 affidavit; however, the negligent inclusion or omission of any
 139 information in the affidavit which has not prejudiced the owner
 140 does not constitute a default that operates to defeat an
 141 otherwise valid lien. The contractor shall execute the affidavit
 142 and deliver it to the owner at least 5 days before instituting
 143 an action as a prerequisite to the institution of any action to
 144 enforce his or her lien under this chapter, even if the final
 145 payment has not become due because the contract is terminated
 146 for a reason other than completion and regardless of whether the
 147 contractor has any lienors working under him or her or not.



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148 2. If the contractor's affidavit required in this
149 subsection recites any outstanding bills for labor, services, or
150 materials, the owner may, after giving the contractor at least
151 10 days' written notice, pay such bills in full direct to the
152 person or firm to which they are due, if the balance due on a
153 direct contract at the time the affidavit is given is sufficient
154 to pay them and lienors giving notice, and shall deduct the
155 amounts so paid from the balance due the contractor. Lienors
156 listed in said affidavit not giving notice, whose 45-day notice
157 time has not expired, shall be paid in full or pro rata, as
158 appropriate, from any balance then remaining due the contractor;
159 but no lienor whose notice time has expired shall be paid by the
160 owner or by any other person except the person with whom that
161 lienor has a contract.

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

173 4. The owner shall have the right to rely on the
174 contractor's affidavit given under this paragraph in making the
175 final payment, unless there are lienors giving notice who are
176 not listed in the affidavit. If there are lienors giving notice
177 who are not so listed, the owner may pay such lienors and any



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178 persons listed in the affidavit that are entitled to be paid by
 179 the owner under subparagraph (d)2. and shall thereupon be
 180 discharged of any further responsibility under the direct
 181 contract, except for any balance that may be due to the
 182 contractor.

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

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

192 Section 3. Subsection (5) of section 713.08, Florida
 193 Statutes, is amended to read:

194 713.08 Claim of lien.--

195 (5) The claim of lien may be recorded at any time during
 196 the progress of the work or thereafter but not later than 45 ~~90~~
 197 days after the final furnishing of the labor or services or
 198 materials by the lienor; or, with respect to rental equipment,
 199 within 45 ~~90~~ days after the date that the rental equipment was
 200 last on the job site available for use; however, ~~provided~~ if the
 201 original contractor defaults or the contract is terminated under
 202 s. 713.07(4), a ~~ne~~ claim for a lien attaching prior to such
 203 default may not ~~shall~~ be recorded more than 45 ~~after 90~~ days
 204 after ~~from~~ the date of such default or 90 days after the final
 205 performance of labor or services or furnishing of materials,
 206 whichever occurs first. The time period for recording a claim of
 207 lien shall be measured from the last day of furnishing labor,



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208 services, or materials by the lienor and shall not be measured
 209 by other standards, such as the issuance of a certificate of
 210 occupancy or the issuance of a certificate of substantial
 211 completion. The claim of lien shall be recorded in the clerk's
 212 office. If such real property is situated in two or more
 213 counties, the claim of lien shall be recorded in the clerk's
 214 office in each of such counties. The recording of the claim of
 215 lien shall be constructive notice to all persons of the contents
 216 and effect of such claim. The validity of the lien and the right
 217 to record a claim therefor shall not be affected by the
 218 insolvency, bankruptcy, or death of the owner before the claim
 219 of lien is recorded.

220 Section 4. Paragraphs (b) and (c) of subsection (1) of
 221 section 713.135, Florida Statutes, are amended to read:

222 713.135 Notice of commencement and applicability of
 223 lien.--

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

226 (b) Provide the applicant and the owner of the real
 227 property upon which improvements are to be constructed with a
 228 printed statement stating that the right, title, and interest of
 229 the person who has contracted for the improvement may be subject
 230 to attachment under the Construction Lien Law. The Department of
 231 Business and Professional Regulation shall furnish, for
 232 distribution, the statement described in this paragraph, and the
 233 statement must be a summary of the Construction Lien Law and
 234 must include an explanation of the provisions of the
 235 Construction Lien Law relating to the recording, and the posting
 236 of copies, of notices of commencement and a statement
 237 encouraging the owner to record a notice of commencement and



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238 post a copy of the notice of commencement in accordance with s.
239 713.13. The statement must also contain an explanation of the
240 owner's rights if a lienor fails to furnish the owner with a
241 notice as provided in s. 713.06(2) and an explanation of the
242 owner's rights as provided in s. 713.22. The authority that
243 issues the building permit must obtain from the Department of
244 Business and Professional Regulation the statement required by
245 this paragraph and must mail that statement to the owner.

246 However, the failure by the authorities to provide the summary
247 does not subject the issuing authority to liability.

248 (c) In addition to providing the owner with the statement
249 as required by paragraph (b), inform each applicant who is not
250 the person whose right, title, and interest is subject to
251 attachment that, as a condition to the issuance of a building
252 permit, the applicant must promise in good faith that the
253 statement will be delivered to the person whose property is
254 subject to attachment.

255 Section 5. Subsection (3) of section 713.31, Florida
256 Statutes, is amended to read:

257 713.31 Remedies in case of fraud or collusion.--

258 (3) Any person who willfully files a fraudulent lien, as
259 defined in this section, commits a felony of the third degree,
260 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
261 A state attorney or the statewide prosecutor, upon the filing of
262 an indictment or information against a contractor,
263 subcontractor, or sub-subcontractor which charges such person
264 with a violation of this subsection, shall forward a copy of the
265 indictment or information to the Department of Business and
266 Professional Regulation.



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267 Section 6. Section 713.345, Florida Statutes, is amended
268 to read:

269 713.345 Moneys received for real property improvements;
270 penalty for misapplication.--

271 (1)(a) A person, firm, or corporation, or an agent,
272 officer, or employee thereof, who receives any payment on
273 account of improving real property must apply such portion of
274 any payment to the payment of all amounts then due and owing for
275 services and labor which were performed on, or materials which
276 were furnished for, such improvement prior to receipt of the
277 payment. This paragraph does not prevent any person from
278 withholding any payment, or any part of a payment, in accordance
279 with the terms of a contract for services, labor, or materials,
280 or pursuant to a bona fide dispute regarding the amount due, if
281 any, for such services, labor, or materials.

282 (b) Any person who knowingly and intentionally fails to
283 comply with paragraph (a) is guilty of misapplication of
284 construction funds, punishable as follows:

285 1. If the amount of payments misapplied have an aggregate
286 value of \$100,000 or more, the violator is guilty of a felony of
287 the first degree, punishable as provided in s. 775.082, s.
288 775.083, or s. 775.084.

289 2. If the amount of payments misapplied have an aggregate
290 value of \$20,000 or more but less than \$100,000, the violator is
291 guilty of a felony of the second degree, punishable as provided
292 in s. 775.082, s. 775.083, or s. 775.084.

293 3. If the amount of payments misapplied have an aggregate
294 value of less than \$20,000, the violator is guilty of a felony
295 of the third degree, punishable as provided in s. 775.082, s.
296 775.083, or s. 775.084.



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297 (c) An affidavit executed under s. 713.06 which does not
298 comply with paragraph (a) creates a permissive inference that
299 the person executing the affidavit knowingly and intentionally
300 misapplied construction funds in violation of paragraph (b).

301 (d) A permissive inference that a person knowingly and
302 intentionally misapplied construction funds in violation of
303 paragraph (b) is created when a valid lien has been recorded
304 against the property of a contractor's customer for supplies or
305 services ordered by the contractor for the contractor's job; the
306 contractor has remitted funds to pay for the supplies or
307 services; and the contractor has not had the lien removed from
308 the property by 30 days after the date any valid lien has been
309 recorded.

310 (e) A state attorney or the statewide prosecutor, upon the
311 filing of an indictment or information against a contractor,
312 subcontractor, or sub-subcontractor which charges such person
313 with a violation of paragraph (b), shall forward a copy of the
314 indictment or information to the Department of Business and
315 Professional Regulation.

316 (2) ~~The provisions of~~ This section does ~~de~~ not apply to
317 mortgage bankers or their agents, servants, or employees for
318 their acts in the usual course of the business of lending or
319 disbursing mortgage funds.

320 Section 7. Present subsections (1) and (2) of section
321 713.3471, Florida Statutes, are redesignated as subsections (3)
322 and (4), respectively, and new subsections (1) and (2) are added
323 to that section, to read:

324 713.3471 Lender responsibilities with construction
325 loans.--



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326 (1) A contract between a lender and an owner must contain
327 a clause providing the owner with the option of being a required
328 endorser on all checks issued pursuant to a construction loan.

329 (2) Five business days before requesting a disbursement
330 pursuant to a construction loan, the contractor must provide the
331 lender and the owner with a list of all subcontractors, sub-
332 subcontractors, and suppliers who have a contract with the
333 contractor and who have not been paid, in part or in full, as of
334 the date the list is provided to the lender and the owner.

335 Section 8. Section 713.35, Florida Statutes, is amended to
336 read:

337 713.35 Making or furnishing false statement.--Any person,
338 firm, or corporation who knowingly and intentionally makes or
339 furnishes to another person, firm, or corporation, a written
340 statement in the form of an affidavit, whether or not under
341 oath, containing false information about the payment status of
342 subcontractors, sub-subcontractors, or suppliers in connection
343 with the improvement of real property in this state, knowing
344 that the one to whom it was furnished might rely on it, and the
345 one to whom it was furnished will part with draw payments or
346 final payment relying on the truth of such statement as an
347 inducement to do so is guilty of a felony of the third degree,
348 punishable as provided in s. 775.082 or s. 775.083. A state
349 attorney or the statewide prosecutor, upon the filing of an
350 indictment or information against a contractor, subcontractor,
351 or sub-subcontractor which charges such person with a violation
352 of this section, shall forward a copy of the indictment or
353 information to the Department of Business and Professional
354 Regulation.

355 Section 9. This act shall take effect July 1, 2003.