



HB 1719

2003
CS

CHAMBER ACTION

The Committee on Judiciary recommends the following:

Committee Substitute

Remove the entire bill and insert:

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 residential construction contracts; amending s. 713.06, F.S.; providing an additional warning statement on a notice to owner; providing a form for a contractor's final payment affidavit; amending s. 713.08, F.S.; providing a warning statement on 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



HB 1719

2003
CS

29 Professional Regulation; amending s. 713.3471, F.S.;
30 requiring lenders to give certain notices regarding direct
31 loan disbursements to borrowers; amending s. 713.35, F.S.;
32 requiring a prosecuting entity to provide a copy of the
33 charging document to the Department of Business and
34 Professional Regulation; providing effective dates.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 713.015, Florida Statutes, is created
39 to read:

40 713.015 Mandatory provisions for direct contracts.--Any
41 direct contract between an owner and a contractor, related to
42 improvements to real property consisting of single or multiple
43 family dwellings up to and including four units, must contain
44 the following provision printed in no less than 18-point,
45 capitalized, boldfaced type:

46
47 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-
48 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR
49 PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO
50 ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS
51 CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A
52 SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS,
53 OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED
54 PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR
55 PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
56 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY



HB 1719

2003
CS

57 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED
 58 AGAINST YOUR PROPERTY, IT COULD BE SOLD AGAINST YOUR WILL TO PAY
 59 FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR
 60 A SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION
 61 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A
 62 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

63 Section 2. Paragraph (c) of subsection (2) of section
 64 713.06, Florida Statutes, is amended to read:

65 713.06 Liens of persons not in privity; proper payments.--

66 (2)

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

70

71 WARNING!

72 FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID CONTRACTORS,
 73 SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE LIENS AGAINST
 74 YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT IN FULL.

75

76 ~~WARNING TO OWNER:~~ UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE
 77 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND
 78 YOUR PAYING TWICE.

79

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

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83 NOTICE TO OWNER

84



HB 1719

2003
CS

85 To ... (Owner's name and address) ...

86

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

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

92

93 Florida law prescribes the serving of this notice and restricts
94 your right to make payments under your contract in accordance
95 with Section 713.06, Florida Statutes.

96

97 IMPORTANT INFORMATION FOR
98 YOUR PROTECTION

99

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

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

108

109 PROTECT YOURSELF:

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



HB 1719

2003
CS

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

144 CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

145 State of Florida

146 County of _____

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

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

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

158 3. This affidavit is executed by the Contractor in
159 accordance with section 713.06 of the Florida Statutes for the
160 purposes of obtaining final payment from the Owner in the amount
161 of \$ _____.

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

165 NAME OF LIENOR _____ AMOUNT DUE

166 (Indicate any unpaid amounts which contractor disputes)

167 Signed, sealed, and delivered this day of,

168 By _____ (name of affiant)



HB 1719

2003
CS

169 _____(title of affiant)
170 _____(name of contractor's business)

171
172 Sworn to and subscribed before me thisday ofby
173 (name of affiant), who is personally known to me or
174 produced..... as identification, and did take an oath.

175 _____(name of notary public)

176 Notary Public

177 My Commission Expires:

178 (date of expiration of commission)

179
180 The contractor shall have no lien or right of action against the
181 owner for labor, services, or materials furnished under the
182 direct contract while in default for not giving the owner the
183 affidavit; however, the negligent inclusion or omission of any
184 information in the affidavit which has not prejudiced the owner
185 does not constitute a default that operates to defeat an
186 otherwise valid lien. The contractor shall execute the affidavit
187 and deliver it to the owner at least 5 days before instituting
188 an action as a prerequisite to the institution of any action to
189 enforce his or her lien under this chapter, even if the final
190 payment has not become due because the contract is terminated
191 for a reason other than completion and regardless of whether the
192 contractor has any lienors working under him or her or not.

193 2. If the contractor's affidavit required in this
194 subsection recites any outstanding bills for labor, services, or
195 materials, the owner may, after giving the contractor at least
196 10 days' written notice, pay such bills in full direct to the



HB 1719

2003
CS

197 person or firm to which they are due, if the balance due on a
198 direct contract at the time the affidavit is given is sufficient
199 to pay them and lienors giving notice, and shall deduct the
200 amounts so paid from the balance due the contractor. Lienors
201 listed in said affidavit not giving notice, whose 45-day notice
202 time has not expired, shall be paid in full or pro rata, as
203 appropriate, from any balance then remaining due the contractor;
204 but no lienor whose notice time has expired shall be paid by the
205 owner or by any other person except the person with whom that
206 lienor has a contract.

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

218 4. The owner shall have the right to rely on the
219 contractor's affidavit given under this paragraph in making the
220 final payment, unless there are lienors giving notice who are
221 not listed in the affidavit. If there are lienors giving notice
222 who are not so listed, the owner may pay such lienors and any
223 persons listed in the affidavit that are entitled to be paid by
224 the owner under subparagraph (d)2. and shall thereupon be



225 discharged of any further responsibility under the direct
 226 contract, except for any balance that may be due to the
 227 contractor.

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

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

237 Section 4. Subsection (3) of section 713.08, Florida
 238 Statutes, is amended to read:

239 713.08 Claim of lien.--

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

243 WARNING!

244 THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS
 245 BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE
 246 OWNER OF SUCH PROPERTY SHORTENS THE TIME PERIOD WITH A
 247 NOTICE OF CONTEST OF LIEN OR A SHOW CAUSE ORDER, THIS LIEN
 248 MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING,
 249 AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS
 250 LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO
 251 DISCHARGE THIS LIEN.
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HB 1719

2003
CS

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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)



HB 1719

2003
CS

309 713.13. The statement must also contain an explanation of the
 310 owner's rights if a lienor fails to furnish the owner with a
 311 notice as provided in s. 713.06(2) and an explanation of the
 312 owner's rights as provided in s. 713.22. The authority that
 313 issues the building permit must obtain from the Department of
 314 Business and Professional Regulation the statement required by
 315 this paragraph and must mail that statement to the owner.

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

318 (c) In addition to providing the owner with the statement
 319 as required by paragraph (b), inform each applicant who is not
 320 the person whose right, title, and interest is subject to
 321 attachment that, as a condition to the issuance of a building
 322 permit, the applicant must promise in good faith that the
 323 statement will be delivered to the person whose property is
 324 subject to attachment.

325 Section 6. Effective January 1, 2004, subsection (3) of
 326 section 713.31, Florida Statutes, is amended to read:

327 713.31 Remedies in case of fraud or collusion.--

328 (3) Any person who willfully files a fraudulent lien, as
 329 defined in this section, commits a felony of the third degree,
 330 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 331 A state attorney or the statewide prosecutor, upon the filing of
 332 an indictment or information against a contractor,
 333 subcontractor, or sub-subcontractor which charges such person
 334 with a violation of this subsection, shall forward a copy of the
 335 indictment or information to the Department of Business and
 336 Professional Regulation. The Department of Business and



HB 1719

2003
CS

337 Professional Regulation shall promptly open an investigation
 338 into the matter, and if probable cause is found, shall furnish a
 339 copy of any investigative report to the state attorney or
 340 statewide prosecutor who furnished a copy of the indictment or
 341 information and to the owner of the property which is the
 342 subject of the investigation.

343 Section 7. Section 713.345, Florida Statutes, is amended
 344 to read:

345 713.345 Moneys received for real property improvements;
 346 penalty for misapplication.--

347 (1)(a) A person, firm, or corporation, or an agent,
 348 officer, or employee thereof, who receives any payment on
 349 account of improving real property must apply such portion of
 350 any payment to the payment of all amounts then due and owing for
 351 services and labor which were performed on, or materials which
 352 were furnished for, such improvement prior to receipt of the
 353 payment. This paragraph does not prevent any person from
 354 withholding any payment, or any part of a payment, in accordance
 355 with the terms of a contract for services, labor, or materials,
 356 or pursuant to a bona fide dispute regarding the amount due, if
 357 any, for such services, labor, or materials.

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

361 1. If the amount of payments misapplied have an aggregate
 362 value of \$100,000 or more, the violator is guilty of a felony of
 363 the first degree, punishable as provided in s. 775.082, s.
 364 775.083, or s. 775.084.



HB 1719

2003
CS

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

369 3. If the amount of payments misapplied have an aggregate
370 value of less than \$20,000, the violator is guilty of a felony
371 of the third degree, punishable as provided in s. 775.082, s.
372 775.083, or s. 775.084.

373 (c) A permissive inference that a person knowingly and
374 intentionally misapplied construction funds in violation of
375 subsection (1) is created when a valid lien has been recorded
376 against the property of an owner for labor, services, or
377 materials; the person who ordered the labor, services, or
378 materials has received sufficient funds to pay for such labor,
379 services, or materials; and the person has failed, for a period
380 of at least 45 days, to remit sufficient funds to pay for such
381 labor, services, or materials, except for funds withheld
382 pursuant to paragraph (1)(a).

383 (d) A state attorney or the statewide prosecutor, upon the
384 filing of an indictment or information against a contractor,
385 subcontractor, or sub-subcontractor which charges such person
386 with a violation of paragraph (b), shall forward a copy of the
387 indictment or information to the Department of Business and
388 Professional Regulation. The Department of Business and
389 Professional Regulation shall promptly open an investigation
390 into the matter and, if probable cause is found, shall furnish a
391 copy of any investigative report to the state attorney or
392 statewide prosecutor who furnished a copy of the indictment or



HB 1719

2003
CS

393 information and to the owner of the property which is the
394 subject of the investigation.

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

399 Section 8. Present subsections (1) and (2) of section
400 713.3471, Florida Statutes, are renumbered as subsections (2)
401 and (3), respectively, and a new subsection (1) is added to said
402 section to read:

403 713.3471 Lender responsibilities with construction
404 loans.--

405 (1) Prior to a lender making any loan disbursement
406 directly to the owner, or jointly to the owner and any other
407 party, the lender shall give the following written notice to the
408 borrowers in bold type larger than any other type on the page:

410 WARNING!

411 YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU
412 AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY. TO
413 PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME
414 LABOR, SERVICES, OR MATERIALS USED IN MAKING THE
415 IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE
416 YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM EACH LIENOR
417 WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME YOU MAKE A
418 PAYMENT TO YOUR CONTRACTOR.

419 Section 9. Effective January 1, 2004, section 713.35,
420 Florida Statutes, is amended to read:



HB 1719

2003
CS

421 713.35 Making or furnishing false statement.--Any person,
422 firm, or corporation who knowingly and intentionally makes or
423 furnishes to another person, firm, or corporation, a written
424 statement in the form of an affidavit, whether or not under
425 oath, containing false information about the payment status of
426 subcontractors, sub-subcontractors, or suppliers in connection
427 with the improvement of real property in this state, knowing
428 that the one to whom it was furnished might rely on it, and the
429 one to whom it was furnished will part with draw payments or
430 final payment relying on the truth of such statement as an
431 inducement to do so is guilty of a felony of the third degree,
432 punishable as provided in s. 775.082 or s. 775.083. A state
433 attorney or the statewide prosecutor, upon the filing of an
434 indictment or information against a contractor, subcontractor,
435 or sub-subcontractor which charges such person with a violation
436 of this section, shall forward a copy of the indictment or
437 information to the Department of Business and Professional
438 Regulation. The Department of Business and Professional
439 Regulation shall promptly open an investigation into the matter
440 and, if probable cause is found, shall furnish a copy of any
441 investigative report to the state attorney or statewide
442 prosecutor who furnished a copy of the indictment or information
443 and to the owner of the property which is the subject of the
444 investigation.

445 Section 10. Except as otherwise provided herein, this act
446 shall take effect October 1, 2003.