



1 A bill to be entitled

2 An act relating to consumer protection in the construction
3 lien law; creating s. 713.015, F.S.; providing mandatory
4 contract provisions for residential construction
5 contracts; amending s. 713.06, F.S.; providing an
6 additional warning statement on a notice to owner;
7 providing a form for a contractor's final payment
8 affidavit; amending s. 713.08, F.S.; providing a warning
9 statement on a claim of lien; amending s. 713.135, F.S.;
10 requiring the lien law summary to contain an explanation
11 of owners' rights; requiring the issuing authority to mail
12 the lien law summary to the owner; amending s. 713.31,
13 F.S.; requiring a prosecuting entity to provide a copy of
14 the charging document to the Department of Business and
15 Professional Regulation; amending s. 713.345, F.S.;
16 providing permissive inferences that a person knowingly
17 and intentionally failed to properly apply construction
18 payments; requiring a prosecuting entity to provide a copy
19 of the charging document to the Department of Business and
20 Professional Regulation; amending s. 713.3471, F.S.;
21 requiring lenders to give certain notices regarding direct
22 loan disbursements to borrowers; amending s. 713.35, F.S.;
23 requiring a prosecuting entity to provide a copy of the
24 charging document to the Department of Business and
25 Professional Regulation; providing effective dates.

26
27 Be It Enacted by the Legislature of the State of Florida:
28



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

31 713.015 Mandatory provisions for direct contracts.--Any
32 direct contract between an owner and a contractor, related to
33 improvements to real property consisting of single or multiple
34 family dwellings up to and including four units, must contain
35 the following provision printed in no less than 18-point,
36 capitalized, boldfaced type:

37
38 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-
39 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR
40 PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO
41 ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS
42 CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A
43 SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS,
44 OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED
45 PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR
46 PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
47 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY
48 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED
49 YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR,
50 MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A
51 SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION
52 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A
53 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

54 Section 2. Paragraph (c) of subsection (2) of section
55 713.06, Florida Statutes, is amended to read:

56 713.06 Liens of persons not in privity; proper payments.--



57 (2)
 58 (c) The notice may be in substantially the following form
 59 and must include the information and the warning contained in
 60 the following form:

61
 62 WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID
 63 CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE
 64 LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT
 65 IN FULL.

66
 67 ~~WARNING TO OWNER:~~ UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE
 68 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND
 69 YOUR PAYING TWICE.

70
 71 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
 72 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

73
 74 NOTICE TO OWNER

75
 76 To ... (Owner's name and address) ...

77
 78 The undersigned hereby informs you that he or she has furnished
 79 or is furnishing services or materials as follows:

80 ... (General description of services or materials) ... for the
 81 improvement of the real property identified as ... (property
 82 description) ... under an order given by_____.

83



112 Copies to: ... (Those persons listed in Section 713.06(2)(a)
 113 and (b), Florida Statutes) ...
 114 The form may be combined with a notice to contractor given under
 115 s. 255.05 or s. 713.23 and, if so, may be entitled "NOTICE TO
 116 OWNER/NOTICE TO CONTRACTOR."

117 Section 3. Effective January 1, 2004, paragraph (d) of
 118 subsection (3) of section 713.06, Florida Statutes, is amended
 119 to read:

120 713.06 Liens of persons not in privity; proper payments.--

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

124 (d) When the final payment under a direct contract becomes
 125 due the contractor:

126 1. The contractor shall give to the owner a final payment
 127 ~~an~~ affidavit stating, if that be the fact, that all lienors
 128 under his or her direct contract who have timely served a notice
 129 to owner on the owner and the contractor have been paid in full
 130 or, if the fact be otherwise, showing the name of each such
 131 lienor who has not been paid in full and the amount due or to
 132 become due each for labor, services, or materials furnished. The
 133 affidavit must be in substantially the following form:

134
 135 CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

136 State of Florida

137 County of _____



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

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

144 2. Contractor, pursuant to a contract with (name of
 145 owner), hereinafter referred to as the "Owner," has furnished or
 146 caused to be furnished labor, materials, and services for the
 147 construction of certain improvements to real property as more
 148 particularly set forth in said contract.

149 3. This affidavit is executed by the Contractor in
 150 accordance with section 713.06 of the Florida Statutes for the
 151 purposes of obtaining final payment from the Owner in the amount
 152 of \$ _____.

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

156 NAME OF LIENOR _____ AMOUNT DUE

157 Signed, sealed, and delivered this day of,

158 By _____ (name of affiant)

159 _____ (title of affiant)

160 _____(name of contractor's business)

161
 162 Sworn to and subscribed before me thisday of ...by
 163 (name of affiant), who is personally known to me or
 164 produced..... as identification, and did take an oath.

165 _____ (name of notary public)



166 Notary Public
167 My Commission Expires:
168 (date of expiration of commission)

169
170 The contractor shall have no lien or right of action against the
171 owner for labor, services, or materials furnished under the
172 direct contract while in default for not giving the owner the
173 affidavit; however, the negligent inclusion or omission of any
174 information in the affidavit which has not prejudiced the owner
175 does not constitute a default that operates to defeat an
176 otherwise valid lien. The contractor shall execute the affidavit
177 and deliver it to the owner at least 5 days before instituting
178 an action as a prerequisite to the institution of any action to
179 enforce his or her lien under this chapter, even if the final
180 payment has not become due because the contract is terminated
181 for a reason other than completion and regardless of whether the
182 contractor has any lienors working under him or her or not.

183 2. If the contractor's affidavit required in this
184 subsection recites any outstanding bills for labor, services, or
185 materials, the owner may, after giving the contractor at least
186 10 days' written notice, pay such bills in full direct to the
187 person or firm to which they are due, if the balance due on a
188 direct contract at the time the affidavit is given is sufficient
189 to pay them and lienors giving notice, and shall deduct the
190 amounts so paid from the balance due the contractor. Lienors
191 listed in said affidavit not giving notice, whose 45-day notice
192 time has not expired, shall be paid in full or pro rata, as
193 appropriate, from any balance then remaining due the contractor;



194 but no lienor whose notice time has expired shall be paid by the
195 owner or by any other person except the person with whom that
196 lienor has a contract.

197 3. If the balance due is not sufficient to pay in full all
198 lienors listed in the affidavit and entitled to payment from the
199 owner under this part and other lienors giving notice, the owner
200 shall pay no money to anyone until such time as the contractor
201 has furnished him or her with the difference; however, if the
202 contractor fails to furnish the difference within 10 days from
203 delivery of the affidavit or notice from the owner to the
204 contractor to furnish the affidavit, the owner shall determine
205 the amount due each lienor and shall disburse to them the
206 amounts due from him or her on a direct contract in accordance
207 with the procedure established by subsection (4).

208 4. The owner shall have the right to rely on the
209 contractor's affidavit given under this paragraph in making the
210 final payment, unless there are lienors giving notice who are
211 not listed in the affidavit. If there are lienors giving notice
212 who are not so listed, the owner may pay such lienors and any
213 persons listed in the affidavit that are entitled to be paid by
214 the owner under subparagraph (d)2. and shall thereupon be
215 discharged of any further responsibility under the direct
216 contract, except for any balance that may be due to the
217 contractor.

218 5. The owner shall retain the final payment due under the
219 direct contract that shall not be disbursed until the
220 contractor's affidavit under subparagraph (d)1. has been
221 furnished to the owner.



250 consisting of _____ on the following described real property in
 251 _____ County, Florida:

252

253 (Legal description of real property)

254

255 owned by _____ of a total value of \$_____, of which there
 256 remains unpaid \$_____, and furnished the first of the items on
 257 _____, ... (year) ..., and the last of the items on _____, ...
 258 (year) ...; and (if the lien is claimed by one not in privity
 259 with the owner) that the lienor served her or his notice to
 260 owner on _____, ... (year) ..., by _____; and (if required)
 261 that the lienor served copies of the notice on the contractor on
 262 _____, ... (year) ..., by _____ and on the subcontractor,
 263 _____, on _____, ... (year) ..., by _____.

264 ... (Signature) ...

265

266 Sworn to (or affirmed) and subscribed before me this _____
 267 day of _____, ... (year) ..., by ... (name of person making
 268 statement)

269

270 ... (Signature of Notary Public - State of Florida) ...

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

272 ...

273

274 Personally Known _____ OR Produced Identification _____

275

276 Type of Identification Produced _____

277



278 However, the negligent inclusion or omission of any information
279 in the claim of lien which has not prejudiced the owner does not
280 constitute a default that operates to defeat an otherwise valid
281 lien.

282 Section 5. Effective January 1, 2004, paragraphs (b) and
283 (c) of subsection (1) of section 713.135, Florida Statutes, are
284 amended to read:

285 713.135 Notice of commencement and applicability of
286 lien.--

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

289 (b) Provide the applicant and the owner of the real
290 property upon which improvements are to be constructed with a
291 printed statement stating that the right, title, and interest of
292 the person who has contracted for the improvement may be subject
293 to attachment under the Construction Lien Law. The Department of
294 Business and Professional Regulation shall furnish, for
295 distribution, the statement described in this paragraph, and the
296 statement must be a summary of the Construction Lien Law and
297 must include an explanation of the provisions of the
298 Construction Lien Law relating to the recording, and the posting
299 of copies, of notices of commencement and a statement
300 encouraging the owner to record a notice of commencement and
301 post a copy of the notice of commencement in accordance with s.
302 713.13. The statement must also contain an explanation of the
303 owner's rights if a lienor fails to furnish the owner with a
304 notice as provided in s. 713.06(2) and an explanation of the
305 owner's rights as provided in s. 713.22. The authority that



306 issues the building permit must obtain from the Department of
307 Business and Professional Regulation the statement required by
308 this paragraph and must mail that statement to any owner making
309 improvements to real property consisting of a single or multiple
310 family dwelling up to and including 4 units. However, the
311 failure by the authorities to provide the summary does not
312 subject the issuing authority to liability.

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

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

322 713.31 Remedies in case of fraud or collusion.--

323 (3) Any person who willfully files a fraudulent lien, as
324 defined in this section, commits a felony of the third degree,
325 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
326 A state attorney or the statewide prosecutor, upon the filing of
327 an indictment or information against a contractor,
328 subcontractor, or sub-subcontractor which charges such person
329 with a violation of this subsection, shall forward a copy of the
330 indictment or information to the Department of Business and
331 Professional Regulation. The Department of Business and
332 Professional Regulation shall promptly open an investigation
333 into the matter, and if probable cause is found, shall furnish a



334 copy of any investigative report to the state attorney or
335 statewide prosecutor who furnished a copy of the indictment or
336 information and to the owner of the property which is the
337 subject of the investigation.

338 Section 7. Section 713.345, Florida Statutes, is amended
339 to read:

340 713.345 Moneys received for real property improvements;
341 penalty for misapplication.--

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

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

356 1. If the amount of payments misapplied have an aggregate
357 value of \$100,000 or more, the violator is guilty of a felony of
358 the first degree, punishable as provided in s. 775.082, s.
359 775.083, or s. 775.084.

360 2. If the amount of payments misapplied have an aggregate
361 value of \$20,000 or more but less than \$100,000, the violator is



362 guilty of a felony of the second degree, punishable as provided
363 in s. 775.082, s. 775.083, or s. 775.084.

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

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

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



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

394 Section 8. Present subsections (1) and (2) of section
 395 713.3471, Florida Statutes, are renumbered as subsections (2)
 396 and (3), respectively, and a new subsection (1) is added to said
 397 section, to read:

398 713.3471 Lender responsibilities with construction
 399 loans.--

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

404
 405 WARNING!

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

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

416 713.35 Making or furnishing false statement.--Any person,
 417 firm, or corporation who knowingly and intentionally makes or



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

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