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HB 1719, Engrossed 1

2003 Legislature

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 Professional Regulation; amending s. 713.3471, F.S.; requiring lenders to give certain notices regarding direct loan disbursements to borrowers; 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 effective dates.

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 consisting of single or multiple family dwellings up to and including four units, 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 OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-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. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR 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. Paragraph (c) of subsection (2) of section 713.06, Florida Statutes, is amended to read:

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



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(2)

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

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

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

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

NOTICE TO OWNER

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

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

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



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

IMPORTANT INFORMATION FOR
 YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid 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.

PROTECT YOURSELF:

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

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

... (Lienor's Signature) ...
 ... (Lienor's Name) ...
 ... (Lienor's Address) ...



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

The form may be combined with a notice to contractor given under s. 255.05 or s. 713.23 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

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

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

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

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

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

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

State of Florida

County of _____



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

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

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

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

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

<u>NAME OF LIENOR</u>	<u>AMOUNT DUE</u>
-----------------------	-------------------

Signed, sealed, and delivered this day of,

By _____ (name of affiant)

_____ (title of affiant)

_____(name of contractor's business)

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

_____ (name of notary public)



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Notary Public

My Commission Expires:

(date of expiration of commission)

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

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



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

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

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

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



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

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

713.08 Claim of lien.--

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

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

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



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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)

... (Signature of Notary Public - State of Florida) ...
... (Print, Type, or Stamp Commissioned Name of Notary Public)
...

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____



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

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

713.135 Notice of commencement and applicability of lien.--

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

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



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

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

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

713.31 Remedies in case of fraud or collusion.--

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



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

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

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

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

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

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

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



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

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

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

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



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

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

713.3471 Lender responsibilities with construction loans.--

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

WARNING!

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

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

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



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

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