

Bill No. CS for SB 2458

Amendment No. \_\_\_\_ Barcode 572418

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2	04/28/2003	.	
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	04:15 PM	.	
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11	Senator Argenziano moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Section 713.015, Florida Statutes, is		
18	created to read:		
19	<u>713.015 Mandatory provisions for direct</u>		
20	<u>contracts.--Any direct contract between an owner and a</u>		
21	<u>contractor, related to improvements to real property</u>		
22	<u>consisting of single or multiple family dwellings up to and</u>		
23	<u>including four units, must contain the following provision</u>		
24	<u>printed in no less than 18-point, capitalized, boldfaced type:</u>		
25			
26	<u>ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS</u>		
27	<u>713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR</u>		
28	<u>PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A</u>		
29	<u>RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR</u>		
30	<u>PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR</u>		
31	<u>CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,</u>		

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1 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE  
2 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY  
3 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID  
4 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,  
5 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS  
6 MEANS IF A LIEN IS FILED AGAINST YOUR PROPERTY, IT COULD BE  
7 SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER  
8 SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE  
9 FAILED TO PAY. FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND  
10 IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU  
11 CONSULT AN ATTORNEY.

12 Section 2. Paragraph (c) of subsection (2) of section  
13 713.06, Florida Statutes, is amended to read:

14 713.06 Liens of persons not in privity; proper  
15 payments.--

16 (2)

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

20

21 WARNING!

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

26

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

30

31 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN

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1 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

2

3

NOTICE TO OWNER

4

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

6

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

9

10 ... (General description of services or materials) ... for  
11 the improvement of the real property identified as  
12 ... (property description) ... under an order given  
13 by\_\_\_\_\_.

14

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

18

19 IMPORTANT INFORMATION FOR  
20 YOUR PROTECTION

21

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

26

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

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1 PROTECT YOURSELF:

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

5 --LEARN more about the Construction Lien Law, Chapter  
6 713, Part I, Florida Statutes, and the meaning of this notice  
7 by contacting an attorney or the Florida Department of  
8 Business and Professional Regulation.

9 ... (Lienor's Signature) ...

10 ... (Lienor's Name) ...

11 ... (Lienor's Address) ...

12

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

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

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

21 713.06 Liens of persons not in privity; proper  
22 payments.--

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

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

28 1. The contractor shall give to the owner a final  
29 payment ~~an~~ affidavit stating, if that be the fact, that all  
30 lienors under his or her direct contract who have timely  
31 served a notice to owner on the owner and the contractor have

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1 | been paid in full or, if the fact be otherwise, showing the  
2 | name of each such lienor who has not been paid in full and the  
3 | amount due or to become due each for labor, services, or  
4 | materials furnished. The affidavit must be in the following  
5 | form:

7 | CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

8 | State of Florida

9 | County of \_\_\_\_\_

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

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

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

22 | 3. This affidavit is executed by the Contractor in  
23 | accordance with section 713.06 of the Florida Statutes for the  
24 | purposes of obtaining final payment from the Owner in the  
25 | amount of \$ \_\_\_\_\_.

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

30 | NAME OF LIENOR AMOUNT DUE

31 | (Indicate any unpaid amounts which contractor

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disputes)

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 this ....day

of ....by (name of affiant), who is personally

known to me or produced..... as identification,

and did take an oath.

\_\_\_\_\_ (name of notary public)

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,

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1 or materials, the owner may, after giving the contractor at  
2 least 10 days' written notice, pay such bills in full direct  
3 to the person or firm to which they are due, if the balance  
4 due on a direct contract at the time the affidavit is given is  
5 sufficient to pay them and lienors giving notice, and shall  
6 deduct the amounts so paid from the balance due the  
7 contractor. Lienors listed in said affidavit not giving  
8 notice, whose 45-day notice time has not expired, shall be  
9 paid in full or pro rata, as appropriate, from any balance  
10 then remaining due the contractor; but no lienor whose notice  
11 time has expired shall be paid by the owner or by any other  
12 person except the person with whom that lienor has a contract.

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

25           4. The owner shall have the right to rely on the  
26 contractor's affidavit given under this paragraph in making  
27 the final payment, unless there are lienors giving notice who  
28 are not listed in the affidavit. If there are lienors giving  
29 notice who are not so listed, the owner may pay such lienors  
30 and any persons listed in the affidavit that are entitled to  
31 be paid by the owner under subparagraph (d)2. and shall

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1 thereupon be discharged of any further responsibility under  
2 the direct contract, except for any balance that may be due to  
3 the contractor.

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

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

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

15 713.08 Claim of lien.--

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

19 WARNING!

20 THIS LEGAL DOCUMENT REFLECTS THAT A  
21 CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL  
22 PROPERTY LISTED HEREIN. UNLESS THE OWNER OF  
23 SUCH PROPERTY SHORTENS THE TIME PERIOD WITH A  
24 NOTICE OF CONTEST OF LIEN OR A SHOW CAUSE  
25 ORDER, THIS LIEN MAY REMAIN VALID FOR ONE YEAR  
26 FROM THE DATE OF RECORDING, AND SHALL EXPIRE  
27 AND BECOME NULL AND VOID THEREAFTER UNLESS  
28 LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO  
29 FORECLOSE OR TO DISCHARGE THIS LIEN.

30  
31 CLAIM OF LIEN



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1 State of \_\_\_\_

2 County of \_\_\_\_

3 Before me, the undersigned notary public, personally  
4 appeared \_\_\_\_, who was duly sworn and says that she or he is  
5 (the lienor herein) (the agent of the lienor herein \_\_\_\_),  
6 whose address is \_\_\_\_; and that in accordance with a contract  
7 with \_\_\_\_, lienor furnished labor, services, or materials  
8 consisting of \_\_\_\_ on the following described real property  
9 in \_\_\_\_ County, Florida:

10

11 (Legal description of real property)

12

13 owned by \_\_\_\_ of a total value of \$\_\_\_\_, of which there  
14 remains unpaid \$\_\_\_\_, and furnished the first of the items on  
15 \_\_\_\_, ... (year) ..., and the last of the items on \_\_\_\_,  
16 ... (year) ...; and (if the lien is claimed by one not in  
17 privity with the owner) that the lienor served her or his  
18 notice to owner on \_\_\_\_, ... (year) ..., by \_\_\_\_; and (if  
19 required) that the lienor served copies of the notice on the  
20 contractor on \_\_\_\_, ... (year) ..., by \_\_\_\_ and on the  
21 subcontractor, \_\_\_\_, on \_\_\_\_, ... (year) ..., by \_\_\_\_.

22

... (Signature) ...

23

24 Sworn to (or affirmed) and subscribed before me this  
25 \_\_\_\_ day of \_\_\_\_, ... (year) ..., by ... (name of person  
26 making statement) ....

27

28 ... (Signature of Notary Public - State of  
29 Florida) ...

30

... (Print, Type, or Stamp Commissioned Name

31

of Notary Public) ...

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Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

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 issues the building permit must obtain from the Department of Business and Professional

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1 Regulation the statement required by this paragraph and must  
2 deliver that statement by mail, email, or in person to any  
3 owner initially constructing a new single-family or  
4 multifamily dwelling with no more than four units However, the  
5 failure by the authorities to provide the summary does not  
6 subject the issuing authority to liability.

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

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

16 713.31 Remedies in case of fraud or collusion.--

17 (3) Any person who willfully files a fraudulent lien,  
18 as defined in this section, commits a felony of the third  
19 degree, punishable as provided in s. 775.082, s. 775.083, or  
20 s. 775.084. A state attorney or the statewide prosecutor, upon  
21 the filing of an indictment or information against a  
22 contractor, subcontractor, or sub-subcontractor which charges  
23 such person with a violation of this subsection, shall forward  
24 a copy of the indictment or information to the Department of  
25 Business and Professional Regulation. The Department of  
26 Business and Professional Regulation shall promptly open an  
27 investigation into the matter, and if probable cause is found,  
28 shall furnish a copy of any investigative report to the state  
29 attorney or statewide prosecutor who furnished a copy of the  
30 indictment or information and to the owner of the property  
31 which is the subject of the investigation.

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

3 713.345 Moneys received for real property  
4 improvements; penalty for misapplication.--

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

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

19 1. If the amount of payments misapplied have an  
20 aggregate value of \$100,000 or more, the violator is guilty of  
21 a felony of the first degree, punishable as provided in s.  
22 775.082, s. 775.083, or s. 775.084.

23 2. If the amount of payments misapplied have an  
24 aggregate value of \$20,000 or more but less than \$100,000, the  
25 violator is guilty of a felony of the second degree,  
26 punishable as provided in s. 775.082, s. 775.083, or s.  
27 775.084.

28 3. If the amount of payments misapplied have an  
29 aggregate value of less than \$20,000, the violator is guilty  
30 of a felony of the third degree, punishable as provided in s.  
31 775.082, s. 775.083, or s. 775.084.

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

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

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

27       Section 8. Present subsections (1) and (2) of section  
28 713.3471, Florida Statutes, are renumbered as subsections (2)  
29 and (3), respectively, and a new subsection (1) is added to  
30 said section to read:

31       713.3471 Lender responsibilities with construction

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1 loans.--

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

7                               WARNING!

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

18       Section 9. Effective January 1, 2004, section  
19 713.35, Florida Statutes, is amended to read:

20           713.35 Making or furnishing false statement.--Any  
21 person, firm, or corporation who knowingly and intentionally  
22 makes or furnishes to another person, firm, or corporation, a  
23 written statement in the form of an affidavit, whether or not  
24 under oath, containing false information about the payment  
25 status of subcontractors, sub-subcontractors, or suppliers in  
26 connection with the improvement of real property in this  
27 state, knowing that the one to whom it was furnished might  
28 rely on it, and the one to whom it was furnished will part  
29 with draw payments or final payment relying on the truth of  
30 such statement as an inducement to do so is guilty of a felony  
31 of the third degree, punishable as provided in s. 775.082 or

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1 s. 775.083. A state attorney or the statewide prosecutor, upon  
 2 the filing of an indictment or information against a  
 3 contractor, subcontractor, or sub-subcontractor which charges  
 4 such person with a violation of this section, shall forward a  
 5 copy of the indictment or information to the Department of  
 6 Business and Professional Regulation. The Department of  
 7 Business and Professional Regulation shall promptly open an  
 8 investigation into the matter and, if probable cause is found,  
 9 shall furnish a copy of any investigative report to the state  
 10 attorney or statewide prosecutor who furnished a copy of the  
 11 indictment or information and to the owner of the property  
 12 which is the subject of the investigation.

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

17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete everything before the enacting clause

21 and insert:

22 A bill to be entitled  
 23 An act relating to consumer protection in the  
 24 construction lien law; creating s. 713.015,  
 25 F.S.; providing mandatory contract provisions  
 26 for residential construction contracts;  
 27 amending s. 713.06, F.S.; providing an  
 28 additional warning statement on a notice to  
 29 owner; providing a form for a contractor's  
 30 final payment affidavit; amending s. 713.08,  
 31 F.S.; providing a warning statement on a claim

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1 of lien; amending s. 713.135, F.S.; requiring  
2 the lien law summary to contain an explanation  
3 of owners' rights; requiring the issuing  
4 authority to mail the lien law summary to the  
5 owner; amending s. 713.31, F.S.; requiring a  
6 prosecuting entity to provide a copy of the  
7 charging document to the Department of Business  
8 and Professional Regulation; amending s.  
9 713.345, F.S.; providing permissive inferences  
10 that a person knowingly and intentionally  
11 failed to properly apply construction payments;  
12 requiring a prosecuting entity to provide a  
13 copy of the charging document to the Department  
14 of Business and Professional Regulation;  
15 amending s. 713.3471, F.S.; requiring lenders  
16 to give certain notices regarding direct loan  
17 disbursements to borrowers; amending s. 713.35,  
18 F.S.; requiring a prosecuting entity to provide  
19 a copy of the charging document to the  
20 Department of Business and Professional  
21 Regulation; providing effective dates.

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