

By Senator Argenziano

3-1397-03

1 A bill to be entitled
2 An act relating to consumer protection in the
3 construction lien law; creating s. 713.015,
4 F.S.; providing mandatory contract provisions
5 for construction contracts; amending s. 713.06,
6 F.S.; limiting lien amounts of persons not in
7 privity; providing a contractor's affidavit
8 form; amending s. 713.08, F.S.; providing a
9 time limit for recording a claim of lien;
10 amending s. 713.135, F.S.; requiring the lien
11 law summary to contain an explanation of
12 owners' rights; requiring the issuing authority
13 to mail the lien law summary to the owner;
14 amending s. 713.31, F.S.; requiring a
15 prosecuting entity to provide a copy of the
16 charging document to the Department of Business
17 and Professional Regulation; amending s.
18 713.345, F.S.; providing permissive inferences
19 that a person knowingly and intentionally
20 failed to properly apply construction payments;
21 requiring a prosecuting entity to provide a
22 copy of the charging document to the Department
23 of Business and Professional Regulation;
24 amending s. 713.3471, F.S.; requiring contracts
25 between lenders and owners to contain clauses
26 providing owners with the option to be
27 endorsers of checks on construction loans;
28 requiring contractors to provide a list of
29 unpaid entities to the lender and owner before
30 seeking disbursements under construction loans;
31 amending s. 713.35, F.S.; requiring a

1 prosecuting entity to provide a copy of the
2 charging document to the Department of Business
3 and Professional Regulation; providing an
4 effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

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

10 713.015 Mandatory provisions for direct
11 contracts.--Any direct contract between an owner and a
12 contractor, related to improvements to real property governed
13 by the provisions in this part, must contain the following
14 provision printed in no less than 18-point, capitalized,
15 boldfaced type:
16

17 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
18 713.001-713.37, FLORIDA STATUTES,) THOSE WHO WORK ON YOUR
19 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID-IN-FULL HAVE A
20 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR
21 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR
22 CONTRACTOR FAILS TO PAY SUBCONTRACTORS OR MATERIAL SUPPLIERS
23 OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE
24 PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR
25 PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL. THIS
26 MEANS IF A LIEN IS FILED AGAINST YOUR PROPERTY, IT COULD BE
27 SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER
28 SERVICES THAT YOUR CONTRACTOR MAY HAVE FAILED TO PAY.
29 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS
30 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU
31 CONSULT AN ATTORNEY.

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

4 713.06 Liens of persons not in privity; proper
5 payments.--

6 (1) A materialman or laborer, either of whom is not in
7 privity with the owner, or a subcontractor or
8 sub-subcontractor who complies with the provisions of this
9 part and is subject to the limitations thereof, has a lien on
10 the real property improved for any money that is owed to him
11 or her for labor, services, or materials furnished in
12 accordance with his or her contract and with the direct
13 contract and for any unpaid finance charges due under the
14 lienor's contract. A materialman or laborer, either of whom
15 is not in privity with the owner, or a subcontractor or
16 sub-subcontractor who complies with the provisions of this
17 part and is subject to the limitations thereof, also has a
18 lien on the owner's real property for labor, services, or
19 materials furnished to improve public property if the
20 improvement of the public property is furnished in accordance
21 with his or her contract and with the direct contract. The
22 lien amount of any person who has a lien under this section
23 may not exceed the amount the owner owes the contractor at the
24 time the owner receives the notice of lien. When multiple
25 notices of liens are received by the owner on the same date,
26 the amounts of each lien must be prorated in accordance with
27 subsection (3) and s. 713.07, but the total amount of all
28 liens may not exceed the amount the owner owes the contractor
29 at the time the owner receives the notices of liens.The total
30 amount of all liens allowed under this part for furnishing
31 labor, services, or material covered by any certain direct

1 contract must not exceed the amount of the contract price
2 fixed by the direct contract except as provided in subsection
3 (3). No person may have a lien under this section except those
4 lienors specified in it, as their designations are defined in
5 s. 713.01.

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

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

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

19 CONTRACTOR'S AFFIDAVIT

20 State of Florida

21 County of

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

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

29 2. Contractor, pursuant to a contract dated
30,, with (name of owner), hereinafter
31 referred to as the "Owner," has furnished or

1 caused to be furnished labor, materials, and
2 services for the construction of certain
3 improvements to real property as more
4 particularly set forth in said contract.
5 3. This affidavit is executed by the
6 Contractor in accordance with section 713.06 of
7 the Florida Statutes for the purpose of
8 obtaining payment from the Owner in the amount
9 of
10 4. All work to be performed under the contract
11 has been fully completed, and all lienors under
12 the direct contract have been paid in full,
13 except the following listed lienors:

14
15

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

16 _____
17 _____
18 Signed, sealed, and delivered this day of.....,
19

20 _____ By _____ (name of affiant)
21 _____ (title of affiant)
22 _____ (name of contractor's business)

23
24 Sworn to and subscribed before me this day
25 of,, by (name of affiant), who is personally
26 known to me or produced as identification, and
27 did take an oath.

28 _____ (name of notary public)
29 _____ Notary Public

30 My Commission Expires:
31 (date of expiration of commission)

1
2 The contractor shall have no lien or right of action against
3 the owner for labor, services, or materials furnished under
4 the direct contract while in default for not giving the owner
5 the affidavit; however, the negligent inclusion or omission of
6 any information in the affidavit which has not prejudiced the
7 owner does not constitute a default that operates to defeat an
8 otherwise valid lien. The contractor shall execute the
9 affidavit and deliver it to the owner at least 5 days before
10 instituting an action as a prerequisite to the institution of
11 any action to enforce his or her lien under this chapter, even
12 if the final payment has not become due because the contract
13 is terminated for a reason other than completion and
14 regardless of whether the contractor has any lienors working
15 under him or her or not.

16 2. If the contractor's affidavit required in this
17 subsection recites any outstanding bills for labor, services,
18 or materials, the owner may, after giving the contractor at
19 least 10 days' written notice, pay such bills in full direct
20 to the person or firm to which they are due, if the balance
21 due on a direct contract at the time the affidavit is given is
22 sufficient to pay them and lienors giving notice, and shall
23 deduct the amounts so paid from the balance due the
24 contractor. Lienors listed in said affidavit not giving
25 notice, whose 45-day notice time has not expired, shall be
26 paid in full or pro rata, as appropriate, from any balance
27 then remaining due the contractor; but no lienor whose notice
28 time has expired shall be paid by the owner or by any other
29 person except the person with whom that lienor has a contract.

30 3. If the balance due is not sufficient to pay in full
31 all lienors listed in the affidavit and entitled to payment

1 from the owner under this part and other lienors giving
2 notice, the owner shall pay no money to anyone until such time
3 as the contractor has furnished him or her with the
4 difference; however, if the contractor fails to furnish the
5 difference within 10 days from delivery of the affidavit or
6 notice from the owner to the contractor to furnish the
7 affidavit, the owner shall determine the amount due each
8 lienor and shall disburse to them the amounts due from him or
9 her on a direct contract in accordance with the procedure
10 established by subsection (4).

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

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

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

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

1 713.08 Claim of lien.--

2 (5) The claim of lien may be recorded at any time
3 during the progress of the work or thereafter but not later
4 than 45 ~~90~~ days after the final furnishing of the labor or
5 services or materials by the lienor; or, with respect to
6 rental equipment, within 45 ~~90~~ days after the date that the
7 rental equipment was last on the job site available for use;
8 however, provided if the original contractor defaults or the
9 contract is terminated under s. 713.07(4), a ~~no~~ claim for a
10 lien attaching prior to such default may not ~~shall~~ be recorded
11 more than 45 ~~90~~ days after ~~from~~ the date of such default or 90
12 days after the final performance of labor or services or
13 furnishing of materials, whichever occurs first. The time
14 period for recording a claim of lien shall be measured from
15 the last day of furnishing labor, services, or materials by
16 the lienor and shall not be measured by other standards, such
17 as the issuance of a certificate of occupancy or the issuance
18 of a certificate of substantial completion. The claim of lien
19 shall be recorded in the clerk's office. If such real property
20 is situated in two or more counties, the claim of lien shall
21 be recorded in the clerk's office in each of such counties.
22 The recording of the claim of lien shall be constructive
23 notice to all persons of the contents and effect of such
24 claim. The validity of the lien and the right to record a
25 claim therefor shall not be affected by the insolvency,
26 bankruptcy, or death of the owner before the claim of lien is
27 recorded.

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

30 713.135 Notice of commencement and applicability of
31 lien.--

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

3 (b) Provide the applicant and the owner of the real
4 property upon which improvements are to be constructed with a
5 printed statement stating that the right, title, and interest
6 of the person who has contracted for the improvement may be
7 subject to attachment under the Construction Lien Law. The
8 Department of Business and Professional Regulation shall
9 furnish, for distribution, the statement described in this
10 paragraph, and the statement must be a summary of the
11 Construction Lien Law and must include an explanation of the
12 provisions of the Construction Lien Law relating to the
13 recording, and the posting of copies, of notices of
14 commencement and a statement encouraging the owner to record a
15 notice of commencement and post a copy of the notice of
16 commencement in accordance with s. 713.13. The statement must
17 also contain an explanation of the owner's rights if a lienor
18 fails to furnish the owner with a notice as provided in s.
19 713.06(2) and an explanation of the owner's rights as provided
20 in s. 713.22. The authority that issues the building permit
21 must obtain from the Department of Business and Professional
22 Regulation the statement required by this paragraph and must
23 mail that statement to the owner. However, the failure by the
24 authorities to provide the summary does not subject the
25 issuing authority to liability.

26 (c) In addition to providing the owner with the
27 statement as required by paragraph (b), inform each applicant
28 who is not the person whose right, title, and interest is
29 subject to attachment that, as a condition to the issuance of
30 a building permit, the applicant must promise in good faith
31

1 that the statement will be delivered to the person whose
2 property is subject to attachment.

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

5 713.31 Remedies in case of fraud or collusion.--

6 (3) Any person who willfully files a fraudulent lien,
7 as defined in this section, commits a felony of the third
8 degree, punishable as provided in s. 775.082, s. 775.083, or
9 s. 775.084. A state attorney or the statewide prosecutor, upon
10 the filing of an indictment or information against a
11 contractor, subcontractor, or sub-subcontractor which charges
12 such person with a violation of this subsection, shall forward
13 a copy of the indictment or information to the Department of
14 Business and Professional Regulation.

15 Section 6. Section 713.345, Florida Statutes, is
16 amended to read:

17 713.345 Moneys received for real property
18 improvements; penalty for misapplication.--

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

30
31

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

4 1. If the amount of payments misapplied have an
5 aggregate value of \$100,000 or more, the violator is guilty of
6 a felony of the first degree, punishable as provided in s.
7 775.082, s. 775.083, or s. 775.084.

8 2. If the amount of payments misapplied have an
9 aggregate value of \$20,000 or more but less than \$100,000, the
10 violator is guilty of a felony of the second degree,
11 punishable as provided in s. 775.082, s. 775.083, or s.
12 775.084.

13 3. If the amount of payments misapplied have an
14 aggregate value of less than \$20,000, the violator is guilty
15 of a felony of the third degree, punishable as provided in s.
16 775.082, s. 775.083, or s. 775.084.

17 (c) An affidavit executed under s. 713.06 which does
18 not comply with paragraph (a) creates a permissive inference
19 that the person executing the affidavit knowingly and
20 intentionally misapplied construction funds in violation of
21 paragraph (b).

22 (d) A permissive inference that a person knowingly and
23 intentionally misapplied construction funds in violation of
24 paragraph (b) is created when a valid lien has been recorded
25 against the property of a contractor's customer for supplies
26 or services ordered by the contractor for the contractor's
27 job; the contractor has remitted funds to pay for the supplies
28 or services; and the contractor has not had the lien removed
29 from the property by 30 days after the date any valid lien has
30 been recorded.

31

1 (e) 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 paragraph (b), shall forward a
5 copy of the indictment or information to the Department of
6 Business and Professional Regulation.

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

11 Section 7. Present subsections (1) and (2) of section
12 713.3471, Florida Statutes, are redesignated as subsections
13 (3) and (4), respectively, and new subsections (1) and (2) are
14 added to that section, to read:

15 713.3471 Lender responsibilities with construction
16 loans.--

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

21 (2) Five business days before requesting a
22 disbursement pursuant to a construction loan, the contractor
23 must provide the lender and the owner with a list of all
24 subcontractors, sub-subcontractors, and suppliers who have a
25 contract with the contractor and who have not been paid, in
26 part or in full, as of the date the list is provided to the
27 lender and the owner.

28 Section 8. Section 713.35, Florida Statutes, is
29 amended to read:

30 713.35 Making or furnishing false statement.--Any
31 person, firm, or corporation who knowingly and intentionally

1 makes or furnishes to another person, firm, or corporation, a
2 written statement in the form of an affidavit, whether or not
3 under oath, containing false information about the payment
4 status of subcontractors, sub-subcontractors, or suppliers in
5 connection with the improvement of real property in this
6 state, knowing that the one to whom it was furnished might
7 rely on it, and the one to whom it was furnished will part
8 with draw payments or final payment relying on the truth of
9 such statement as an inducement to do so is guilty of a felony
10 of the third degree, punishable as provided in s. 775.082 or
11 s. 775.083. 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 this section, shall forward a
15 copy of the indictment or information to the Department of
16 Business and Professional Regulation.

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

18 *****

19 SENATE SUMMARY

20 Provides for consumer protection in the construction lien
21 law. Provides for mandatory provisions in construction
22 contracts. Limits the lien amounts of persons who are not
23 in privity. Provides a contractor's affidavit form.
24 Provides a time limit for recording a claim of lien.
25 Requires the lien law summary to contain an explanation
26 of owners' rights. Requires the issuing authority to mail
27 the lien law summary. Requires a prosecuting entity to
28 provide a copy of the charging document to the Department
29 of Business and Professional Regulation in various
30 specified circumstances. Provides permissive inferences
31 that a person knowingly and intentionally failed to
properly apply construction payments. Requires contracts
between lenders and owners to contain clauses providing
owners with the option to be endorsers of checks on
construction loans. Requires contractors to provide a
list of unpaid entities to the lender and owner before
seeking disbursements under construction loans.