

By the Committee on Regulated Industries; and Senator
Argenziano

315-2320-03

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 residential construction contracts;
6 amending s. 713.06, F.S.; providing an
7 additional warning statement on a Notice to
8 Owner; providing a form for a contractor's
9 final payment affidavit; amending s. 713,08,
10 F.S.; providing a warning statement on a claim
11 of lien; amending s. 713.135, F.S.; requiring
12 the lien law summary to contain an explanation
13 of owners' rights; requiring the issuing
14 authority to mail the lien law summary to the
15 owner; amending s. 713.31, F.S.; requiring a
16 prosecuting entity to provide a copy of the
17 charging document to the Department of Business
18 and Professional Regulation; amending s.
19 713.345, F.S.; providing permissive inferences
20 that a person knowingly and intentionally
21 failed to properly apply construction payments;
22 requiring a prosecuting entity to provide a
23 copy of the charging document to the Department
24 of Business and Professional Regulation;
25 amending s. 713.3471, F.S.; requiring lenders
26 to give certain notices regarding direct loan
27 disbursements to borrowers; amending s. 713.35,
28 F.S.; requiring a prosecuting entity to provide
29 a copy of the charging document to the
30 Department of Business and Professional
31 Regulation; providing an effective date.

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 713.015, Florida Statutes, is
4 created to read:

5 713.015 Mandatory provisions for direct
6 contracts.--Any direct contract between an owner and a
7 contractor, related to improvements to real property
8 consisting of single or multiple family dwellings up to and
9 including four units, must contain the following provision
10 printed in no less than 18-point, capitalized, boldfaced type:

11

12 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
13 713.001-713.37, FLORIDA STATUTES,) THOSE WHO WORK ON YOUR
14 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID-IN-FULL HAVE A
15 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR
16 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR
17 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,
18 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE
19 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY
20 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID
21 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,
22 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS
23 MEANS IF A LIEN IS FILED AGAINST YOUR PROPERTY, IT COULD BE
24 SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER
25 SERVICES THAT YOUR CONTRACTOR MAY HAVE FAILED TO PAY.
26 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS
27 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU
28 CONSULT AN ATTORNEY.

29 Section 2. Paragraph (c) of subsection (2) and
30 paragraph (d) of subsection (3) of section 713.06, Florida
31 Statutes, are amended to read:

1 (2)

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

5

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

10

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

14

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

17

18 NOTICE TO OWNER

19

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

21

22 The undersigned hereby informs you that he or she has
23 furnished or is furnishing services or materials as follows:
24 ...(General description of services or materials)... for the
25 improvement of the real property identified as ...(property
26 description)... under an order given by.....

27

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

31

1 the direct contract while in default for not giving the owner
2 the affidavit; however, the negligent inclusion or omission of
3 any information in the affidavit which has not prejudiced the
4 owner does not constitute a default that operates to defeat an
5 otherwise valid lien. The contractor shall execute the
6 affidavit and deliver it to the owner at least 5 days before
7 instituting an action as a prerequisite to the institution of
8 any action to enforce his or her lien under this chapter, even
9 if the final payment has not become due because the contract
10 is terminated for a reason other than completion and
11 regardless of whether the contractor has any lienors working
12 under him or her or not.

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

27 3. If the balance due is not sufficient to pay in full
28 all lienors listed in the affidavit and entitled to payment
29 from the owner under this part and other lienors giving
30 notice, the owner shall pay no money to anyone until such time
31 as the contractor has furnished him or her with the

1 difference; however, if the contractor fails to furnish the
2 difference within 10 days from delivery of the affidavit or
3 notice from the owner to the contractor to furnish the
4 affidavit, the owner shall determine the amount due each
5 lienor and shall disburse to them the amounts due from him or
6 her on a direct contract in accordance with the procedure
7 established by subsection (4).

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

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

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

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

29 713.08 Claim of lien.--
30
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1 notice to owner on, ...(year)..., by; and (if
2 required) that the lienor served copies of the notice on the
3 contractor on, ...(year)..., by and on the
4 subcontractor,, on, ...(year)..., by

5(Signature)...

6
7 Sworn to (or affirmed) and subscribed before me this
8 day of, ...(year)..., by ...(name of person making
9 statement)....

10
11(Signature of Notary Public - State of Florida)...

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

14
15 Personally Known OR Produced Identification

16
17 Type of Identification Produced.....

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

20 713.135 Notice of commencement and applicability of
21 lien.--

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

24 (b) Provide the applicant and the owner of the real
25 property upon which improvements are to be constructed with a
26 printed statement stating that the right, title, and interest
27 of the person who has contracted for the improvement may be
28 subject to attachment under the Construction Lien Law. The
29 Department of Business and Professional Regulation shall
30 furnish, for distribution, the statement described in this
31 paragraph, and the statement must be a summary of the

1 Construction Lien Law and must include an explanation of the
2 provisions of the Construction Lien Law relating to the
3 recording, and the posting of copies, of notices of
4 commencement and a statement encouraging the owner to record a
5 notice of commencement and post a copy of the notice of
6 commencement in accordance with s. 713.13. The statement must
7 also contain an explanation of the owner's rights if a lienor
8 fails to furnish the owner with a notice as provided in s.
9 713.06(2) and an explanation of the owner's rights as provided
10 in s. 713.22. The authority that issues the building permit
11 must obtain from the Department of Business and Professional
12 Regulation the statement required by this paragraph and must
13 mail that statement to the owner. However, the failure by the
14 authorities to provide the summary does not subject the
15 issuing authority to liability.

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

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

25 713.31 Remedies in case of fraud or collusion.--

26 (3) Any person who willfully files a fraudulent lien,
27 as defined in this section, commits a felony of the third
28 degree, punishable as provided in s. 775.082, s. 775.083, or
29 s. 775.084. A state attorney or the statewide prosecutor, upon
30 the filing of an indictment or information against a
31 contractor, subcontractor, sub-subcontractor, or professional

1 lienor which charges such person with a violation of this
2 subsection, shall forward a copy of the indictment or
3 information to the Department of Business and Professional
4 Regulation. The Department of Business and Professional
5 Regulation shall promptly open an investigation into the
6 matter and, if probable cause is found, shall furnish a copy
7 of any investigation report to the prosecutor furnishing a
8 copy of the indictment or information and to the owner of the
9 property that is the subject of the investigation.

10 Section 6. Section 713.345, Florida Statutes, is
11 amended to read:

12 713.345 Moneys received for real property
13 improvements; penalty for misapplication.--

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

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

28 1. If the amount of payments misapplied have an
29 aggregate value of \$100,000 or more, the violator is guilty of
30 a felony of the first degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084.

1 2. If the amount of payments misapplied have an
2 aggregate value of \$20,000 or more but less than \$100,000, the
3 violator is guilty of a felony of the second degree,
4 punishable as provided in s. 775.082, s. 775.083, or s.
5 775.084.

6 3. If the amount of payments misapplied have an
7 aggregate value of less than \$20,000, the violator is guilty
8 of a felony of the third degree, punishable as provided in s.
9 775.082, s. 775.083, or s. 775.084.

10 (c) A permissive inference that a person knowingly and
11 intentionally misapplied construction funds in violation of
12 this subsection is created when a valid lien has been recorded
13 against the property of an owner for labor, services, or
14 materials; the person who ordered the labor, services, or
15 materials has received sufficient funds to pay for such labor,
16 services, or materials; and the person has failed, for a
17 period of at least 45 days, to remit sufficient funds to pay
18 for such labor, services, or materials, except as for funds
19 withheld pursuant to paragraph (a).

20 (d) 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 paragraph (b), shall forward a
24 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
29 prosecutor furnishing a copy of the indictment or information
30 and to the owner of the property that is the subject of the
31 investigation.

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

5 Section 7. Present subsections (1) and (2) of section
6 713.3471, Florida Statutes, are redesignated as subsections
7 (2) and (3), respectively, and a new subsection (1) is added
8 to that section, to read:

9 713.3471 Lender responsibilities with construction
10 loans.--

11 (1) Prior to a lender making any loan disbursement
12 directly to the owner, or jointly to the owner and any other
13 party, the lender shall give the following written notice to
14 the borrower in boldface type larger than any other type on
15 the page:

16
17 WARNING!!! YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY
18 TO YOU AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY.
19 TO PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME
20 LABOR, SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS
21 TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO
22 GIVE YOU LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A
23 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR
24 CONTRACTOR.

25 Section 8. Section 713.35, Florida Statutes, is
26 amended to read:

27 713.35 Making or furnishing false statement.--Any
28 person, firm, or corporation who knowingly and intentionally
29 makes or furnishes to another person, firm, or corporation, a
30 written statement in the form of an affidavit, whether or not
31 under oath, containing false information about the payment

1 status of subcontractors, sub-subcontractors, or suppliers in
2 connection with the improvement of real property in this
3 state, knowing that the one to whom it was furnished might
4 rely on it, and the one to whom it was furnished will part
5 with draw payments or final payment relying on the truth of
6 such statement as an inducement to do so is guilty of a felony
7 of the third degree, punishable as provided in s. 775.082 or
8 s. 775.083. A state attorney or the statewide prosecutor, upon
9 the filing of an indictment or information against a
10 contractor, subcontractor, or sub-subcontractor which charges
11 such person with a violation of this section, shall forward a
12 copy of the indictment or information to the Department of
13 Business and Professional Regulation. The Department of
14 Business and Professional Regulation shall promptly open an
15 investigation into the matter and, if probable cause is found,
16 shall furnish a copy of any investigative report to the
17 prosecutor furnishing a copy of the indictment or information
18 and to the owner of the property that is the subject of the
19 investigation.

20 Section 9. This act shall take effect July 1, 2003,
21 except that sections 1, 2, 4, 7, and 8 of this act shall take
22 effect October 1, 2003.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2458
4 Adds language regarding the type of real property that is the
5 subject of any direct contract between an owner and a
6 contractor, describing it as real property consisting of
7 single or multiple family dwellings up to and including 4
8 units.
9 Provides new warning language giving the owner notice that
10 unpaid contractors, subcontractors, and material suppliers may
11 file liens against the owner's property even if the owner has
12 made payment in full. It also provides the language that must
13 be in the Contractor's Affidavit.
14 Provides new warning language for the claim of lien form.
15 Creates a permissive inference that a person knowingly and
16 intentionally misapplied construction funds when a valid lien
17 has been recorded against the property of the owner and the
18 person who recorded the lien has received sufficient funds for
19 the construction and has failed, for a period of at least 45
20 days, to remit sufficient funds to pay for the labor, services
21 or materials.
22 Requires that once a state attorney or statewide prosecutor
23 forwards a copy of a indictment or information that charges a
24 contractor with the willful filing of a fraudulent lien or
25 making or furnishing a false statement under s. 713.35, F.S.,
26 to the department, the department must then promptly open an
27 investigation, and if probable cause is found, furnish a copy
28 of any investigative report to the prosecutor and to the owner
29 of the property.
30 Requires a lender, prior to making any loan disbursement
31 directly to the owner or jointly to the owner and any other
 party, to provide a written warning statement regarding lien
 releases.