

Bill No. CS for SB 1600

Amendment No. \_\_\_\_ Barcode 090100

CHAMBER ACTION

Senate

House

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Senator Argenziano moved the following **amendment to amendment**  
(554528):

**Senate Amendment (with title amendment)**

On page 5, between lines 29 and 30,

insert:

Section 2. Section 713.015, Florida Statutes, is  
amended 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 capital letters no less than the same size  
~~18-point, capitalized, boldfaced~~ type used in the body of the  
contract:

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

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

15 Section 3. Subsection (7) of section 713.02, Florida  
16 Statutes, is amended to read:

17 713.02 Types of lienors and exemptions.--

18 (7) Notwithstanding any other provision of this part,  
19 no lien shall exist in favor of any contractor, subcontractor,  
20 or sub-subcontractor who is unlicensed as provided in s.  
21 489.128 or s. 489.532. Notwithstanding any other provision of  
22 this part, if a contract is rendered unenforceable by an  
23 unlicensed contractor, subcontractor, or sub-subcontractor  
24 pursuant to s. 489.128 or s. 489.532, such unenforceability  
25 shall not affect the rights of any other persons to enforce  
26 contract, lien, or bond remedies and shall not affect the  
27 obligations of a surety that has provided a bond on behalf of  
28 the unlicensed contractor, subcontractor, or  
29 sub-subcontractor. It shall not be a defense to any claim on a  
30 bond or indemnity agreement that the principal or indemnitor  
31 is unlicensed as provided in s. 489.128 or s. 489.532.

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1           Section 4. Subsection (3) of section 713.04, Florida  
2 Statutes, is amended, and subsection (4) is added to that  
3 section, to read:

4           713.04 Subdivision improvements.--

5           (3) The owner shall not pay any money on account of a  
6 direct contract before actual furnishing of labor and services  
7 or materials for subdivision improvements. Any such ~~The~~  
8 payment not complying with such requirement shall not qualify  
9 as a proper payment under this ~~chapter~~ section.

10           (4) The owner shall make final payment on account of a  
11 direct contract only after the contractor complies with s.  
12 713.06(3)(d). Any such payment not complying with such  
13 requirement shall not qualify as a proper payment under this  
14 chapter.

15           Section 5. Paragraph (c) of subsection (4) of section  
16 713.08, Florida Statutes, is amended to read:

17           713.08 Claim of lien.--

18           (4)

19           (c) The claim of lien shall be served on the owner.  
20 Failure to serve any claim of lien in the manner provided in  
21 s. 713.18 before recording or within 15 days after recording  
22 shall render the claim of lien voidable to the extent that the  
23 failure or delay is shown to have been prejudicial to any  
24 person entitled to rely on the service.

25           Section 6. Paragraph (e) of subsection (1) of section  
26 713.13, Florida Statutes, is amended to read:

27           713.13 Notice of commencement.--

28           (1)

29           (e) A copy of any bond must be attached at the time of  
30 recordation of the notice of commencement. The failure to  
31 attach a copy of the bond to the notice of commencement when

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1 the notice is recorded negates the exemption provided in s.  
2 713.02(6). However, if such a bond exists but is not recorded,  
3 the bond may be used as a transfer bond pursuant to s. 713.24.  
4 The bond shall be deemed a transfer bond under s. 713.24 for  
5 all purposes at the time of recordation of the notice of bond  
6 and the clerk's mailing as provided in s. 713.23(2). The  
7 notice requirements of s. 713.23 apply to any claim against  
8 the bond; however, the time limits for serving the notice  
9 shall run from the latter of the time specified in s. 713.23  
10 or the date the notice of bond is served on the lienor.

11 Section 7. Paragraph (b) of subsection (1) and  
12 subsection (4) of section 713.135, Florida Statutes, are  
13 amended, and paragraph (e) is added to subsection (1) of that  
14 section, to read:

15 713.135 Notice of commencement and applicability of  
16 lien.--

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

19 (b) Provide the applicant and the owner of the real  
20 property upon which improvements are to be constructed with a  
21 printed statement stating that the right, title, and interest  
22 of the person who has contracted for the improvement may be  
23 subject to attachment under the Construction Lien Law. The  
24 Department of Business and Professional Regulation shall  
25 furnish, for distribution, the statement described in this  
26 paragraph, and the statement must be a summary of the  
27 Construction Lien Law and must include an explanation of the  
28 provisions of the Construction Lien Law relating to the  
29 recording, and the posting of copies, of notices of  
30 commencement and a statement encouraging the owner to record a  
31 notice of commencement and post a copy of the notice of

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1 commencement in accordance with s. 713.13. The statement must  
2 also contain an explanation of the owner's rights if a lienor  
3 fails to furnish the owner with a notice as provided in s.  
4 713.06(2) and an explanation of the owner's rights as provided  
5 in s. 713.22. The authority that issues the building permit  
6 must obtain from the Department of Business and Professional  
7 Regulation the statement required by this paragraph and must  
8 mail, deliver by electronic mail or other electronic format or  
9 facsimile, or personally deliver that statement to the owner  
10 or, in the case in which the owner is required to personally  
11 appear to obtain the permit, provide that statement to any  
12 owner making improvements to real property consisting of a  
13 single or multiple family dwelling up to and including four  
14 units. However, the failure by the authorities to provide the  
15 summary does not subject the issuing authority to liability.

16 (e) Nothing in this subsection shall be construed to  
17 require a notice of commencement to be recorded as a condition  
18 to the issuance of a building permit.

19 (4) The several boards of county commissioners,  
20 municipal councils, or other similar bodies may by ordinance  
21 or resolution establish reasonable fees for furnishing copies  
22 of the forms and the printed statement provided in paragraphs  
23 (1)(b) and paragraph (1)(d) in an amount not to exceed \$5 to  
24 be paid by the applicant for each permit in addition to all  
25 other costs of the permit; however, no forms or statement need  
26 be furnished, mailed, or otherwise provided to, nor may such  
27 additional fee be obtained from, applicants for permits in  
28 those cases in which the owner of a legal or equitable  
29 interest (including that of ownership of stock of a corporate  
30 landowner) of the real property to be improved is engaged in  
31 the business of construction of buildings for sale to others

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1 and intends to make the improvements authorized by the permit  
2 on the property and upon completion will offer the improved  
3 real property for sale.

4 Section 8. Subsection (4) of section 713.24, Florida  
5 Statutes, is amended to read:

6 713.24 Transfer of liens to security.--

7 (4) If a proceeding to enforce a transferred lien is  
8 not commenced within the time specified in s. 713.22 or if it  
9 appears that the transferred lien has been satisfied of  
10 record, the clerk shall return said security upon request of  
11 the person depositing or filing the same, or the insurer. If a  
12 proceeding to enforce a lien is commenced in a court of  
13 competent jurisdiction within the time specified in s. 713.22  
14 and, subsequent to the expiration of the proceeding, the lien  
15 is transferred pursuant to s. 713.24, an action commenced to  
16 recover against the security shall be deemed to have been  
17 brought as of the date of filing the action to enforce the  
18 lien.

19 Section 9. Paragraph (b) of subsection (1) of section  
20 713.345, Florida Statutes, is amended to read:

21 713.345 Moneys received for real property  
22 improvements; penalty for misapplication.--

23 (1)

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

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

31 2. If the amount of payments misapplied has an

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

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

9 Section 10. Subsection (1) of section 713.3471,  
10 Florida Statutes, is amended to read:

11 713.3471 Lender responsibilities with construction  
12 loans.--

13 (1) Prior to a lender making the first any loan  
14 disbursement on any construction loan secured by residential  
15 property directly to the owner, which for purposes of this  
16 section means an individual owner only, or jointly to the  
17 owner and any other party, the lender shall give the following  
18 written notice to the owner ~~borrowers~~ in bold type larger than  
19 any other type on the page:

20  
21 WARNING!

22  
23 YOUR LENDER IS MAKING A LOAN DISBURSEMENT  
24 DIRECTLY TO YOU AS THE OWNER ~~BORROWER~~, OR  
25 JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT  
26 YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME  
27 LABOR, SERVICES, OR MATERIALS USED IN MAKING  
28 THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT  
29 YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN  
30 RELEASES FROM EACH LIENOR WHO HAS SENT YOU A  
31 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO

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1 YOUR CONTRACTOR.

2

3 (Redesignate subsequent sections.)

4

5

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

7 And the title is amended as follows:

8 On page 8, line 3, after the semicolon

9

10 insert:

11 amending s. 713.015, F.S.; revising a direct  
 12 contract provision requirement; amending s.  
 13 713.02, F.S.; protecting the rights of certain  
 14 persons to enforce certain contract, lien, or  
 15 bond remedies or contractual obligations under  
 16 certain circumstances; precluding certain  
 17 defenses; amending s. 713.04, F.S.; revising  
 18 certain final payment requirements; amending s.  
 19 713.08, F.S.; requiring a claim of lien to be  
 20 served on an owner; amending s. 713.13, F.S.;  
 21 clarifying use of a payment bond as a transfer  
 22 bond; amending s. 713.135, F.S., revising  
 23 certain notice of commencement and  
 24 applicability of lien requirements for certain  
 25 authorities issuing building permits; amending  
 26 s. 713.24, F.S.; preserving certain lien rights  
 27 when filing a transfer bond after commencing  
 28 certain lien enforcement proceedings; amending  
 29 s. 713.345, F.S.; increasing certain criminal  
 30 penalties for misapplication of construction  
 31 funds; amending s. 713.3471, F.S.; revising a



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1 notice requirement concerning the disbursement  
2 of payments on construction loans; requiring  
3 that the notice be provided to the owner;  
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