



1 | issuing building permits; providing  
2 | construction; amending s. 713.24, F.S.;  
3 | preserving certain lien rights when filing a  
4 | transfer bond after commencing certain lien  
5 | enforcement proceedings; amending s. 713.345,  
6 | F.S.; increasing certain criminal penalties for  
7 | misapplication of construction funds; amending  
8 | s. 713.3471, F.S.; revising a provision  
9 | requiring a lender to provide notice to a  
10 | property owner when making a first loan  
11 | disbursement on a construction loan secured by  
12 | residential real property; revising a notice  
13 | form; providing an effective date.

14 |  
15 | Be It Enacted by the Legislature of the State of Florida:

16 |  
17 | Section 1. Paragraph (a) of subsection (1) of section  
18 | 255.05, Florida Statutes, is amended to read:

19 | 255.05 Bond of contractor constructing public  
20 | buildings; form; action by materialmen.--

21 | (1)(a) Any person entering into a formal contract with  
22 | the state or any county, city, or political subdivision  
23 | thereof, or other public authority, for the construction of a  
24 | public building, for the prosecution and completion of a  
25 | public work, or for repairs upon a public building or public  
26 | work shall be required, before commencing the work or before  
27 | recommencing the work after a default or abandonment, to  
28 | execute, deliver to the public owner, and record in the public  
29 | records of the county where the improvement is located, a  
30 | payment and performance bond with a surety insurer authorized  
31 | to do business in this state as surety. A public entity may

1 | not require a contractor to secure a surety bond under this  
2 | section from a specific agent or bonding company. The bond  
3 | must state on its front page: the name, principal business  
4 | address, and phone number of the contractor, the surety, the  
5 | owner of the property being improved, and, if different from  
6 | the owner, the contracting public entity; the contract number  
7 | assigned by the contracting public entity; and a description  
8 | of the project sufficient to identify it, such as a legal  
9 | description or the street address of the property being  
10 | improved, and a general description of the improvement. Such  
11 | bond shall be conditioned upon the contractor's performance of  
12 | the construction work in the time and manner prescribed in the  
13 | contract and promptly making payments to all persons defined  
14 | in s. 713.01 who furnish labor, services, or materials for the  
15 | prosecution of the work provided for in the contract. Any  
16 | claimant may apply to the governmental entity having charge of  
17 | the work for copies of the contract and bond and shall  
18 | thereupon be furnished with a certified copy of the contract  
19 | and bond. The claimant shall have a right of action against  
20 | the contractor and surety for the amount due him or her,  
21 | including unpaid finance charges due under the claimant's  
22 | contract. Such action shall not involve the public authority  
23 | in any expense. When such work is done for the state and the  
24 | contract is for \$100,000 or less, no payment and performance  
25 | bond shall be required. At the discretion of the official or  
26 | board awarding such contract when such work is done for any  
27 | county, city, political subdivision, or public authority, any  
28 | person entering into such a contract which is for \$200,000 or  
29 | less may be exempted from executing the payment and  
30 | performance bond. When such work is done for the state, the  
31 | Secretary of the Department of Management Services may

1 delegate to state agencies the authority to exempt any person  
2 entering into such a contract amounting to more than \$100,000  
3 but less than \$200,000 from executing the payment and  
4 performance bond. In the event such exemption is granted, the  
5 officer or officials shall not be personally liable to persons  
6 suffering loss because of granting such exemption. The  
7 Department of Management Services shall maintain information  
8 on the number of requests by state agencies for delegation of  
9 authority to waive the bond requirements by agency and project  
10 number and whether any request for delegation was denied and  
11 the justification for the denial. Any provision in a bond  
12 furnished for public work contracts as provided by this  
13 subsection restricting the classes or persons protected by  
14 such bond or the venue of any proceeding relating to such bond  
15 is unenforceable.

16 Section 2. Subsection (1) of section 489.129, Florida  
17 Statutes, is amended to read:

18 489.129 Disciplinary proceedings.--

19 (1) The board may take any of the following actions  
20 against any certificateholder or registrant: place on  
21 probation or reprimand the licensee, revoke, suspend, or deny  
22 the issuance or renewal of the certificate, registration, or  
23 certificate of authority, require financial restitution to a  
24 consumer for financial harm directly related to a violation of  
25 a provision of this part, impose an administrative fine not to  
26 exceed ~~\$10,000~~~~\$5,000~~ per violation, require continuing  
27 education, or assess costs associated with investigation and  
28 prosecution, if the contractor, financially responsible  
29 officer, or business organization for which the contractor is  
30 a primary qualifying agent, a financially responsible officer,  
31

1 or a secondary qualifying agent responsible under s. 489.1195  
2 is found guilty of any of the following acts:

3 (a) Obtaining a certificate, registration, or  
4 certificate of authority by fraud or misrepresentation.

5 (b) Being convicted or found guilty of, or entering a  
6 plea of nolo contendere to, regardless of adjudication, a  
7 crime in any jurisdiction which directly relates to the  
8 practice of contracting or the ability to practice  
9 contracting.

10 (c) Violating any provision of chapter 455.

11 (d) Performing any act which assists a person or  
12 entity in engaging in the prohibited uncertified and  
13 unregistered practice of contracting, if the certificateholder  
14 or registrant knows or has reasonable grounds to know that the  
15 person or entity was uncertified and unregistered.

16 (e) Knowingly combining or conspiring with an  
17 uncertified or unregistered person by allowing his or her  
18 certificate, registration, or certificate of authority to be  
19 used by the uncertified or unregistered person with intent to  
20 evade the provisions of this part. When a certificateholder or  
21 registrant allows his or her certificate or registration to be  
22 used by one or more business organizations without having any  
23 active participation in the operations, management, or control  
24 of such business organizations, such act constitutes prima  
25 facie evidence of an intent to evade the provisions of this  
26 part.

27 (f) Acting in the capacity of a contractor under any  
28 certificate or registration issued hereunder except in the  
29 name of the certificateholder or registrant as set forth on  
30 the issued certificate or registration, or in accordance with  
31 the personnel of the certificateholder or registrant as set

1 | forth in the application for the certificate or registration,  
2 | or as later changed as provided in this part.

3 |         (g) Committing mismanagement or misconduct in the  
4 | practice of contracting that causes financial harm to a  
5 | customer. Financial mismanagement or misconduct occurs when:

6 |             1. Valid liens have been recorded against the property  
7 | of a contractor's customer for supplies or services ordered by  
8 | the contractor for the customer's job; the contractor has  
9 | received funds from the customer to pay for the supplies or  
10 | services; and the contractor has not had the liens removed  
11 | from the property, by payment or by bond, within 75 days after  
12 | the date of such liens;

13 |             2. The contractor has abandoned a customer's job and  
14 | the percentage of completion is less than the percentage of  
15 | the total contract price paid to the contractor as of the time  
16 | of abandonment, unless the contractor is entitled to retain  
17 | such funds under the terms of the contract or refunds the  
18 | excess funds within 30 days after the date the job is  
19 | abandoned; or

20 |             3. The contractor's job has been completed, and it is  
21 | shown that the customer has had to pay more for the contracted  
22 | job than the original contract price, as adjusted for  
23 | subsequent change orders, unless such increase in cost was the  
24 | result of circumstances beyond the control of the contractor,  
25 | was the result of circumstances caused by the customer, or was  
26 | otherwise permitted by the terms of the contract between the  
27 | contractor and the customer.

28 |         (h) Being disciplined by any municipality or county  
29 | for an act or violation of this part.

30 |  
31 |

1 (i) Failing in any material respect to comply with the  
2 provisions of this part or violating a rule or lawful order of  
3 the board.

4 (j) Abandoning a construction project in which the  
5 contractor is engaged or under contract as a contractor. A  
6 project may be presumed abandoned after 90 days if the  
7 contractor terminates the project without just cause or  
8 without proper notification to the owner, including the reason  
9 for termination, or fails to perform work without just cause  
10 for 90 consecutive days.

11 (k) Signing a statement with respect to a project or  
12 contract falsely indicating that the work is bonded; falsely  
13 indicating that payment has been made for all subcontracted  
14 work, labor, and materials which results in a financial loss  
15 to the owner, purchaser, or contractor; or falsely indicating  
16 that workers' compensation and public liability insurance are  
17 provided.

18 (l) Committing fraud or deceit in the practice of  
19 contracting.

20 (m) Committing incompetency or misconduct in the  
21 practice of contracting.

22 (n) Committing gross negligence, repeated negligence,  
23 or negligence resulting in a significant danger to life or  
24 property.

25 (o) Proceeding on any job without obtaining applicable  
26 local building department permits and inspections.

27 (p) Intimidating, threatening, coercing, or otherwise  
28 discouraging the service of a notice to owner under part I of  
29 chapter 713 or a notice to contractor under chapter 255 or  
30 part I of chapter 713.

31

1 (q) Failing to satisfy within a reasonable time, the  
2 terms of a civil judgment obtained against the licensee, or  
3 the business organization qualified by the licensee, relating  
4 to the practice of the licensee's profession.

5  
6 For the purposes of this subsection, construction is  
7 considered to be commenced when the contract is executed and  
8 the contractor has accepted funds from the customer or lender.  
9 A contractor does not commit a violation of this subsection  
10 when the contractor relies on a building code interpretation  
11 rendered by a building official or person authorized by s.  
12 553.80 to enforce the building code, absent a finding of fraud  
13 or deceit in the practice of contracting, or gross negligence,  
14 repeated negligence, or negligence resulting in a significant  
15 danger to life or property on the part of the building  
16 official, in a proceeding under chapter 120.

17 Section 3. Paragraph (c) of subsection (2) of section  
18 489.533, Florida Statutes, is amended to read:

19 489.533 Disciplinary proceedings.--

20 (2) When the board finds any applicant, contractor, or  
21 business organization for which the contractor is a primary  
22 qualifying agent or secondary qualifying agent responsible  
23 under s. 489.522 guilty of any of the grounds set forth in  
24 subsection (1), it may enter an order imposing one or more of  
25 the following penalties:

26 (c) Imposition of an administrative fine not to exceed  
27 ~~\$10,000~~\$5,000 for each count or separate offense.

28 Section 4. Section 713.015, Florida Statutes, is  
29 amended to read:

30 713.015 Mandatory provisions for direct  
31 contracts.--Any direct contract between an owner and a



1 contractor, related to improvements to real property  
2 consisting of single or multiple family dwellings up to and  
3 including four units, must contain the following provision  
4 printed in capital letters no less than the same size as the  
5 ~~18 point, capitalized, boldfaced~~ type used in the body of the  
6 contract:

7  
8 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS  
9 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR  
10 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A  
11 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR  
12 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR  
13 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,  
14 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE  
15 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY  
16 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID  
17 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,  
18 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS  
19 MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST  
20 YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT  
21 YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY.  
22 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS  
23 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU  
24 CONSULT AN ATTORNEY.

25  
26 Nothing in this section shall be construed to adversely affect  
27 the lien and bond rights of lienors who are not in privity  
28 with the owner. This section does not apply when the owner is  
29 also a licensed contractor or a construction professional who  
30 is in the business of developing property.

31

1           Section 5. Subsection (7) of section 713.02, Florida  
2 Statutes, is amended to read:

3           713.02 Types of lienors and exemptions.--

4           (7) Notwithstanding any other provision of this part,  
5 no lien shall exist in favor of any contractor, subcontractor,  
6 or sub-subcontractor who is unlicensed as provided in s.  
7 489.128 or s. 489.532. Notwithstanding any other provision of  
8 this part, if a contract is rendered unenforceable by an  
9 unlicensed contractor, subcontractor, or sub-subcontractor  
10 pursuant to s. 489.128 or s. 489.532, such unenforceability  
11 shall not affect the rights of any other persons to enforce  
12 contract, lien, or bond remedies and shall not affect the  
13 obligations of a surety that has provided a bond on behalf of  
14 the unlicensed contractor, subcontractor, or  
15 sub-subcontractor. It shall not be a defense to any claim on a  
16 bond or indemnity agreement that the principal or indemnitor  
17 is unlicensed as provided in s. 489.128 or s. 489.532.

18           Section 6. Subsection (3) of section 713.04, Florida  
19 Statutes, is amended, and subsection (4) is added to that  
20 section, to read:

21           713.04 Subdivision improvements.--

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

27           (4) The owner shall make final payment on account of a  
28 direct contract only after the contractor complies with s.  
29 713.06(3)(d). Any such payment not complying with such  
30 requirement shall not qualify as a proper payment under this  
31 chapter.

1 Section 7. Paragraph (c) of subsection (4) of section  
2 713.08, Florida Statutes, is amended to read:

3 713.08 Claim of lien.--

4 (4)

5 (c) The claim of lien shall be served on the owner.

6 Failure to serve any claim of lien in the manner provided in  
7 s. 713.18 before recording or within 15 days after recording  
8 shall render the claim of lien voidable to the extent that the  
9 failure or delay is shown to have been prejudicial to any  
10 person entitled to rely on the service.

11 Section 8. Paragraph (e) of subsection (1) of section  
12 713.13, Florida Statutes, is amended to read:

13 713.13 Notice of commencement.--

14 (1)

15 (e) A copy of any payment bond must be attached at the  
16 time of recordation of the notice of commencement. The failure  
17 to attach a copy of the bond to the notice of commencement  
18 when the notice is recorded negates the exemption provided in  
19 s. 713.02(6). However, if ~~such~~ a proper payment bond under s.  
20 713.23 exists but was is not attached at the time of  
21 recordation of the notice of commencement, the bond may be  
22 used to transfer any recorded lien of a lienor except that of  
23 the contractor by the recordation of a notice of bond pursuant  
24 to s. 713.23(2). The notice requirements of s. 713.23 apply to  
25 any claim against the bond; however, the time limits for  
26 serving any required notices shall run from the later of the  
27 time specified in s. 713.23 or the date the notice of bond is  
28 served on the lienor recorded, the bond may be used as a  
29 ~~transfer bond pursuant to s. 713.24.~~

30 Section 9. Paragraph (b) of subsection (1) and  
31 subsection (4) of section 713.135, Florida Statutes, are

1 amended, and paragraph (e) is added to subsection (1) of that  
2 section, to read:

3           713.135 Notice of commencement and applicability of  
4 lien.--

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

7           (b) Provide the applicant and the owner of the real  
8 property upon which improvements are to be constructed with a  
9 printed statement stating that the right, title, and interest  
10 of the person who has contracted for the improvement may be  
11 subject to attachment under the Construction Lien Law. The  
12 Department of Business and Professional Regulation shall  
13 furnish, for distribution, the statement described in this  
14 paragraph, and the statement must be a summary of the  
15 Construction Lien Law and must include an explanation of the  
16 provisions of the Construction Lien Law relating to the  
17 recording, and the posting of copies, of notices of  
18 commencement and a statement encouraging the owner to record a  
19 notice of commencement and post a copy of the notice of  
20 commencement in accordance with s. 713.13. The statement must  
21 also contain an explanation of the owner's rights if a lienor  
22 fails to furnish the owner with a notice as provided in s.  
23 713.06(2) and an explanation of the owner's rights as provided  
24 in s. 713.22. The authority that issues the building permit  
25 must obtain from the Department of Business and Professional  
26 Regulation the statement required by this paragraph and must  
27 mail, deliver by electronic mail or other electronic format or  
28 facsimile, or personally deliver that statement to the owner  
29 or, in a case in which the owner is required to personally  
30 appear to obtain the permit, provide that statement to any  
31 owner making improvements to real property consisting of a

1 single or multiple family dwelling up to and including four  
2 units. However, the failure by the authorities to provide the  
3 summary does not subject the issuing authority to liability.

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

7 (4) The several boards of county commissioners,  
8 municipal councils, or other similar bodies may by ordinance  
9 or resolution establish reasonable fees for furnishing copies  
10 of the forms and the printed statement provided in paragraphs  
11 ~~paragraph~~ (1)(b) and (d) in an amount not to exceed \$5 to be  
12 paid by the applicant for each permit in addition to all other  
13 costs of the permit; however, no forms or statement need be  
14 furnished, mailed, or otherwise provided to, nor may such  
15 additional fee be obtained from, applicants for permits in  
16 those cases in which the owner of a legal or equitable  
17 interest (including that of ownership of stock of a corporate  
18 landowner) of the real property to be improved is engaged in  
19 the business of construction of buildings for sale to others  
20 and intends to make the improvements authorized by the permit  
21 on the property and upon completion will offer the improved  
22 real property for sale.

23 Section 10. Subsection (4) of section 713.24, Florida  
24 Statutes, is amended to read:

25 713.24 Transfer of liens to security.--

26 (4) If a proceeding to enforce a transferred lien is  
27 not commenced within the time specified in s. 713.22 or if it  
28 appears that the transferred lien has been satisfied of  
29 record, the clerk shall return said security upon request of  
30 the person depositing or filing the same, or the insurer. If a  
31 proceeding to enforce a lien is commenced in a court of

1 competent jurisdiction within the time specified in s. 713.22  
2 and, subsequent to such proceeding, the lien is transferred  
3 pursuant to this section or s. 713.13(1)(e), an action  
4 commenced in the same county or circuit court to recover  
5 against the security shall be deemed to have been brought as  
6 of the date of filing the action to enforce the lien, and the  
7 court shall have jurisdiction over the action.

8 Section 11. Paragraph (b) of subsection (1) of section  
9 713.345, Florida Statutes, is amended to read:

10 713.345 Moneys received for real property  
11 improvements; penalty for misapplication.--

12 (1)

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

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

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

25 ~~3. If the amount of payments misapplied has an~~  
26 ~~aggregate value of less than \$20,000, the violator is guilty~~  
27 ~~of a felony of the third degree, punishable as provided in s.~~  
28 ~~775.082, s. 775.083, or s. 775.084.~~

29 Section 12. Subsection (1) of section 713.3471,  
30 Florida Statutes, is amended to read:

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