

By the Committees on Governmental Oversight and Productivity;
Regulated Industries; and Senator Argenziano

585-2012-05

1 A bill to be entitled
2 An act relating to construction contracting;
3 amending s. 255.05, F.S.; making certain
4 restrictions in bonds issued for public works
5 projects unenforceable; amending ss. 489.129
6 and 489.533, F.S.; increasing an administrative
7 fine under certain disciplinary proceeding
8 provisions; amending s. 713.015, F.S.; revising
9 a direct contract provision requirement;
10 providing that failure to include such
11 provision in such contracts limits certain lien
12 rights under the contract; providing
13 construction relating to validity and
14 enforceability; preserving lien rights of
15 certain persons; amending s. 713.02, F.S.;
16 protecting the rights of certain persons to
17 enforce certain contract, lien, or bond
18 remedies or contractual obligations under
19 certain circumstances; precluding certain
20 defenses; amending s. 713.04, F.S.; revising
21 certain final payment requirements; amending s.
22 713.08, F.S.; requiring a claim of lien to be
23 served on an owner; amending s. 713.13, F.S.;
24 revising provisions authorizing use of certain
25 payment bonds to transfer certain recorded
26 liens; specifying application of certain notice
27 requirements to certain claims; revising time
28 limits for serving certain required notices;
29 amending s. 713.135, F.S.; revising certain
30 notice of commencement and applicability of
31 lien requirements for certain authorities

1 | issuing building permits; providing
2 | construction; amending s. 713.23, F.S.;
3 | providing that a contractor may commence an
4 | action to enforce a claim any time after a
5 | notice of nonpayment has been served; amending
6 | s. 713.24, F.S.; preserving jurisdiction in the
7 | county court over certain transfer bond claims
8 | for nonpayment; preserving certain lien rights
9 | when filing a transfer bond after commencing
10 | certain lien enforcement proceedings; amending
11 | s. 713.345, F.S.; increasing certain criminal
12 | penalties for misapplication of construction
13 | funds; amending s. 713.3471, F.S.; revising a
14 | provision requiring a lender to provide notice
15 | to a borrower when making a disbursement on a
16 | construction loan secured by residential
17 | property; providing an effective date.

18 |
19 | Be It Enacted by the Legislature of the State of Florida:

20 |
21 | Section 1. Paragraph (a) of subsection (1) of section
22 | 255.05, Florida Statutes, is amended to read:

23 | 255.05 Bond of contractor constructing public
24 | buildings; form; action by materialmen.--

25 | (1)(a) Any person entering into a formal contract with
26 | the state or any county, city, or political subdivision
27 | thereof, or other public authority, for the construction of a
28 | public building, for the prosecution and completion of a
29 | public work, or for repairs upon a public building or public
30 | work shall be required, before commencing the work or before
31 | recommencing the work after a default or abandonment, to

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

1 person entering into such a contract which is for \$200,000 or
2 less may be exempted from executing the payment and
3 performance bond. When such work is done for the state, the
4 Secretary of the Department of Management Services may
5 delegate to state agencies the authority to exempt any person
6 entering into such a contract amounting to more than \$100,000
7 but less than \$200,000 from executing the payment and
8 performance bond. In the event such exemption is granted, the
9 officer or officials shall not be personally liable to persons
10 suffering loss because of granting such exemption. The
11 Department of Management Services shall maintain information
12 on the number of requests by state agencies for delegation of
13 authority to waive the bond requirements by agency and project
14 number and whether any request for delegation was denied and
15 the justification for the denial. Any provision in a payment
16 bond furnished for public work contracts as provided by this
17 subsection which restricts the classes of persons as defined
18 in s. 713.01, protected by the bond or the venue of any
19 proceeding relating to such bond is unenforceable.

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

22 489.129 Disciplinary proceedings.--

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

1 prosecution, if the contractor, financially responsible
2 officer, or business organization for which the contractor is
3 a primary qualifying agent, a financially responsible officer,
4 or a secondary qualifying agent responsible under s. 489.1195
5 is found guilty of any of the following acts:

6 (a) Obtaining a certificate, registration, or
7 certificate of authority by fraud or misrepresentation.

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

13 (c) Violating any provision of chapter 455.

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

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

30 (f) Acting in the capacity of a contractor under any
31 certificate or registration issued hereunder except in the

1 name of the certificateholder or registrant as set forth on
2 the issued certificate or registration, or in accordance with
3 the personnel of the certificateholder or registrant as set
4 forth in the application for the certificate or registration,
5 or as later changed as provided in this part.

6 (g) Committing mismanagement or misconduct in the
7 practice of contracting that causes financial harm to a
8 customer. Financial mismanagement or misconduct occurs when:

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

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

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

31

1 (h) Being disciplined by any municipality or county
2 for an act or violation of this part.

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

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

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

20 (l) Committing fraud or deceit in the practice of
21 contracting.

22 (m) Committing incompetency or misconduct in the
23 practice of contracting.

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

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

29 (p) Intimidating, threatening, coercing, or otherwise
30 discouraging the service of a notice to owner under part I of
31

1 chapter 713 or a notice to contractor under chapter 255 or
2 part I of chapter 713.

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

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

19 Section 3. Paragraph (c) of subsection (2) of section
20 489.533, Florida Statutes, is amended to read:

21 489.533 Disciplinary proceedings.--

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

28 (c) Imposition of an administrative fine not to exceed
29 ~~\$10,000~~\$5,000 for each count or separate offense.

30 Section 4. Section 713.015, Florida Statutes, is
31 amended to read:

1 713.015 Mandatory provisions for direct
2 contracts.--Any direct contract between an owner and a
3 contractor, related to improvements to real property
4 consisting of single or multiple family dwellings up to and
5 including four units, must contain the following provision
6 printed in no less than 14-point ~~18-point~~, capitalized,
7 boldfaced type on the front page of the contract:
8
9 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
10 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR
11 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A
12 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR
13 PROPERTY. ~~THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN.~~ IF YOUR
14 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,
15 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS ~~OR NEGLECTS TO MAKE~~
16 ~~OTHER LEGALLY REQUIRED PAYMENTS~~, THE PEOPLE WHO ARE OWED MONEY
17 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE
18 ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR
19 CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR
20 PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE
21 SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER
22 SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE
23 FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN
24 THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR
25 IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM
26 ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO
27 OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS
28 RECOMMENDED THAT ~~WHenever a specific problem arises,~~ YOU
29 CONSULT AN ATTORNEY.
30
31

1 Nothing in this section shall be construed to adversely affect
2 the lien and bond rights of lienors who are not in privity
3 with the owner. This section does not apply when the owner is
4 a licensed contractor under chapter 489 or is a person who
5 creates parcels or offers parcels for sale or lease in the
6 ordinary course of business.

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

9 713.02 Types of lienors and exemptions.--

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

24 Section 6. Subsection (3) of section 713.04, Florida
25 Statutes, is amended, and subsection (4) is added to that
26 section, to read:

27 713.04 Subdivision improvements.--

28 (3) The owner shall not pay any money on account of a
29 direct contract before actual furnishing of labor and services
30 or materials for subdivision improvements. Any ~~The~~ payment not
31

1 complying with this requirement shall not qualify as a proper
2 payment under this chapter ~~section~~.

3 (4) The owner shall make final payment on account of a
4 direct contract only after the contractor complies with s.
5 713.06(3)(d). Any payment not complying with this requirement
6 shall not qualify as a proper payment under this chapter.

7 Section 7. Paragraph (c) of subsection (4) of section
8 713.08, Florida Statutes, is amended to read:

9 713.08 Claim of lien.--

10 (4)

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

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

17 Section 8. Paragraph (e) of subsection (1) of section
18 713.13, Florida Statutes, is amended to read:

19 713.13 Notice of commencement.--

20 (1)

21 (e) A copy of any payment bond must be attached at the
22 time of recordation of the notice of commencement. The failure
23 to attach a copy of the bond to the notice of commencement
24 when the notice is recorded negates the exemption provided in
25 s. 713.02(6). However, if ~~such~~ a payment bond under s. 713.23
26 exists but was is not attached at the time of recordation of
27 the notice of commencement, the bond may be used to transfer
28 any recorded lien of a lienor except that of the contractor by
29 the recordation and service of a notice of bond pursuant to s.
30 713.23(2). The notice requirements of s. 713.23 apply to any
31 claim against the bond; however, the time limits for serving

1 any required notices shall begin running from the later of the
2 time specified in s. 713.23 or the date the notice of bond is
3 served on the lienor ~~recorded, the bond may be used as a~~
4 ~~transfer bond pursuant to s. 713.24.~~

5 Section 9. Paragraphs (b) and (d) of subsection (1)
6 and subsection (4) of section 713.135, Florida Statutes, are
7 amended, and paragraph (e) is added to subsection (1) of that
8 section, to read:

9 713.135 Notice of commencement and applicability of
10 lien.--

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

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

1 Regulation the statement required by this paragraph and must
2 mail, deliver by electronic mail or other electronic format or
3 facsimile, or personally deliver that statement to the owner
4 or, in a case in which the owner is required to personally
5 appear to obtain the permit, provide that statement to any
6 owner making improvements to real property consisting of a
7 single or multiple family dwelling up to and including four
8 units. However, the failure by the authorities to provide the
9 summary does not subject the issuing authority to liability.

10 (d) Furnish to the applicant two or more copies of a
11 form of notice of commencement conforming with s. 713.13. If
12 the direct contract is greater than \$2,500, the applicant
13 shall file with the issuing authority prior to the first
14 inspection either a certified copy of the recorded notice of
15 commencement or a notarized statement that the notice of
16 commencement has been filed for recording, along with a copy
17 thereof. In the absence of the filing of a certified copy of
18 the recorded notice of commencement, the issuing authority or
19 a private provider performing inspection services may ~~shall~~
20 not perform or approve subsequent inspections until the
21 applicant files by mail, facsimile, hand delivery, or any
22 other means such certified copy with the issuing authority.
23 The certified copy of the notice of commencement must contain
24 the name and address of the owner, the name and address of the
25 contractor, and the location or address of the property being
26 improved. The issuing authority shall verify that the name and
27 address of the owner, the name of the contractor, and the
28 location or address of the property being improved which is
29 contained in the certified copy of the notice of commencement
30 is consistent with the information in the building permit
31 application. The issuing authority shall provide the recording

1 information on the certified copy of the recorded notice of
2 commencement to any person upon request. This subsection does
3 not require the recording of a notice of commencement prior to
4 the issuance of a building permit. If a local government
5 requires a separate permit or inspection for installation of
6 temporary electrical service or other temporary utility
7 service, land clearing, or other preliminary site work, such
8 permits may be issued and such inspections may be conducted
9 without providing the issuing authority with a certified copy
10 of a recorded notice of commencement or a notarized statement
11 regarding a recorded notice of commencement. This subsection
12 does not apply to a direct contract to repair or replace an
13 existing heating or air-conditioning system in an amount less
14 than ~~\$7,500~~\$5,000.

15 (e) An issuing authority or building official may not
16 require that a notice of commencement be recorded as a
17 condition of the application, processing, or issuance of a
18 building permit. However, this paragraph does not modify or
19 waive the inspection requirements set forth in this
20 subsection.

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

1 landowner) of the real property to be improved is engaged in
2 the business of construction of buildings for sale to others
3 and intends to make the improvements authorized by the permit
4 on the property and upon completion will offer the improved
5 real property for sale.

6 Section 10. Paragraph (e) of subsection (1) of section
7 713.23, Florida Statutes, is amended to read:

8 713.23 Payment bond.--

9 (1)

10 (e) No action for the labor or materials or supplies
11 may be instituted or prosecuted against the contractor or
12 surety unless both notices have been given. No action shall
13 be instituted or prosecuted against the contractor or against
14 the surety on the bond under this section after 1 year from
15 the performance of the labor or completion of delivery of the
16 materials and supplies. The time period for bringing an action
17 against the contractor or surety on the bond shall be measured
18 from the last day of furnishing labor, services, or materials
19 by the lienor and shall not be measured by other standards,
20 such as the issuance of a certificate of occupancy or the
21 issuance of a certificate of substantial completion. A
22 contractor or the contractor's agent or attorney may elect to
23 shorten the prescribed time within which an action to enforce
24 any claim against a payment bond provided under ~~pursuant to~~
25 this section or s. 713.245 may be commenced at any time after
26 a notice of nonpayment has been served for the claim by
27 recording in the clerk's office a notice in substantially the
28 following form:

29
30 NOTICE OF CONTEST OF CLAIM
31 AGAINST PAYMENT BOND

1
2 To: ...(Name and address of lienor)...

3 You are notified that the undersigned contests your
4 notice of nonpayment, dated,, and served on the
5 undersigned on,, and that the time within which you
6 may file suit to enforce your claim is limited to 60 days from
7 the date of service of this notice.

8
9 DATED on,

10
11 Signed: ...(Contractor or Attorney)...

12
13
14 The claim of any lienor upon whom the ~~such~~ notice is served
15 and who fails to institute a suit to enforce his or her claim
16 against the payment bond within 60 days after service of the
17 ~~such~~ notice shall be extinguished automatically. The clerk
18 shall mail a copy of the notice of contest to the lienor at
19 the address shown in the notice of nonpayment or most recent
20 amendment thereto and shall certify to the ~~such~~ service on the
21 face of the ~~such~~ notice and record the notice. Service is
22 complete upon mailing.

23 Section 11. Subsections (3) and (4) of section 713.24,
24 Florida Statutes, are amended to read:

25 713.24 Transfer of liens to security.--

26 (3) Any party having an interest in such security or
27 the property from which the lien was transferred may at any
28 time, and any number of times, file a complaint in chancery in
29 the circuit court of the county where such security is
30 deposited, or file a motion in a pending action to enforce a
31 lien, for an order to require additional security, reduction

1 of security, change or substitution of sureties, payment of
2 discharge thereof, or any other matter affecting said
3 security. If the court finds that the amount of the deposit or
4 bond in excess of the amount claimed in the claim of lien is
5 insufficient to pay the lienor's attorney's fees and court
6 costs incurred in the action to enforce the lien, the court
7 must increase the amount of the cash deposit or lien transfer
8 bond. Nothing in this section shall be construed to vest
9 exclusive jurisdiction in the circuit courts over transfer
10 bond claims for nonpayment of an amount within the monetary
11 jurisdiction of the county courts.

12 (4) If a proceeding to enforce a transferred lien is
13 not commenced within the time specified in s. 713.22 or if it
14 appears that the transferred lien has been satisfied of
15 record, the clerk shall return said security upon request of
16 the person depositing or filing the same, or the insurer. If a
17 proceeding to enforce a lien is commenced in a court of
18 competent jurisdiction within the time specified in s. 713.22
19 and, during such proceeding, the lien is transferred pursuant
20 to this section or s. 713.13(1)(e), an action commenced within
21 1 year of the transfer, unless otherwise shortened by
22 operation of law, in the same county or circuit court to
23 recover against the security shall be deemed to have been
24 brought as of the date of filing the action to enforce the
25 lien, and the court shall have jurisdiction over the action.

26 Section 12. Paragraph (b) of subsection (1) of section
27 713.345, Florida Statutes, is amended to read:

28 713.345 Moneys received for real property
29 improvements; penalty for misapplication.--

30 (1)
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 has 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 has an
9 aggregate value of ~~\$1,000~~~~\$20,000~~ or more but less than
10 \$100,000, the violator is guilty of a felony of the second
11 degree, punishable as provided in s. 775.082, s. 775.083, or
12 s. 775.084.

13 3. If the amount of payments misapplied has an
14 aggregate value of less than ~~\$1,000~~~~\$20,000~~, the violator is
15 guilty of a felony of the third degree, punishable as provided
16 in s. 775.082, s. 775.083, or s. 775.084.

17 Section 13. Subsection (1) of section 713.3471,
18 Florida Statutes, is amended to read:

19 713.3471 Lender responsibilities with construction
20 loans.--

21 (1) Prior to a lender making any loan disbursement on
22 any construction loan secured by residential real property
23 directly to the owner, which, for purposes of this subsection,
24 means only a natural person, into the owner's account or
25 accounts, or jointly to the owner and any other party, the
26 lender must mail, deliver by electronic mail or other
27 electronic format or facsimile, or personally deliver ~~shall~~
28 ~~give~~ the following written notice to the borrowers in bold
29 type larger than any other type on the page:

30
31 WARNING!

1
2 YOUR LENDER IS MAKING A LOAN DISBURSEMENT
3 DIRECTLY TO YOU AS THE BORROWER, OR JOINTLY TO
4 YOU AND ANOTHER PARTY. TO PROTECT YOURSELF FROM
5 HAVING TO PAY TWICE FOR THE SAME LABOR,
6 SERVICES, OR MATERIALS USED IN MAKING THE
7 IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU
8 REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN
9 RELEASES FROM EACH LIENOR WHO HAS SENT YOU A
10 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO
11 YOUR CONTRACTOR.

12
13 This subsection does not apply when the owner is a licensed
14 contractor under chapter 489 or is a person who creates
15 parcels or offers parcels for sale or lease in the ordinary
16 course of business.

17 Section 14. This act shall take effect October 1,
18 2005.

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 CS for Senate Bill 1016

23 Modifies the mandatory provisions for direct contracts between
24 owners and contractors by deleting a provision identifying
25 certain claims as construction liens, and adding a suggestion
concerning written releases of liens.

26 Provides clarification of the time period in which to commence
an action to enforce a claim against a payment bond.

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