

By the Committee on Regulated Industries; and Senator Aronberg

580-2467-07

1 A bill to be entitled

2 An act relating to construction liens; amending

3 s. 255.05, F.S.; requiring a performance bond

4 for certain contracts with private entities for

5 specified public works projects; revising

6 requirements concerning the claimants that must

7 provide certain notices; requiring that certain

8 notices by claimants be in writing; amending s.

9 713.01, F.S.; defining the term "final

10 furnishing" and redefining the term "furnish

11 materials"; creating s. 713.012, F.S.;

12 requiring that certain notices, demands, or

13 requests be in writing; amending s. 713.015,

14 F.S.; requiring that certain notices pertaining

15 to direct contracts greater than \$2,500 for

16 improvements to certain property be in writing;

17 amending s. 713.02, F.S.; providing for an

18 owner and contractor to agree to the furnishing

19 of a payment bond; exempting an owner who

20 agrees from certain statutory provisions;

21 amending s. 713.07, F.S.; providing for the

22 recommencement of construction following the

23 termination of certain contracts; amending s.

24 713.08, F.S.; requiring that certain claims of

25 lien be prepared and sworn to or affirmed by

26 the lienor or various agents of the lienor;

27 revising and conforming certain exceptions to a

28 time limitation on recording of a claim of

29 lien; amending s. 713.13, F.S.; revising the

30 form for notices of commencement to include an

31 additional warning and notarized statements and

1 signatures; providing that the failure of a
2 person to make a specified statement under oath
3 deprives the person of a lien; requiring that
4 notices of commencement include the tax folio
5 number; providing for the recording of amended
6 notices of commencement; amending s. 713.135,
7 F.S.; requiring that building permits contain
8 certain written statements; amending s. 713.16,
9 F.S.; revising provisions relating to a
10 lienor's right to demand a statement of
11 account; requiring that the claim of lien be
12 recorded; deleting provisions relating to the
13 failure to furnish the statement; amending s.
14 713.18, F.S.; providing procedures for service
15 of notices and other instruments upon a limited
16 liability company; amending s. 713.22, F.S.;
17 extending the duration of certain liens for
18 which amended claims of lien are filed;
19 amending s. 713.31, F.S.; providing for the
20 award of attorney's fees and costs to
21 prevailing parties in certain actions relating
22 to fraudulent liens; amending s. 713.36, F.S.;
23 deleting certain obsolete provisions; providing
24 an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Paragraph (a) of subsection (1) and
29 paragraph (a) of subsection (2) of section 255.05, Florida
30 Statutes, are amended to read:

31

1 255.05 Bond of contractor constructing public
2 buildings; form; action by materialmen.--

3 (1)(a) Any person entering into a formal contract with
4 the state or any county, city, or political subdivision
5 thereof, or other public authority or private entity, for the
6 construction of a public building, for the prosecution and
7 completion of a public work, or for repairs upon a public
8 building or public work shall be required, before commencing
9 the work or before recommencing the work after a default or
10 abandonment, to execute, deliver to the public owner, and
11 record in the public records of the county where the
12 improvement is located, a payment and performance bond with a
13 surety insurer authorized to do business in this state as
14 surety. A public entity may not require a contractor to secure
15 a surety bond under this section from a specific agent or
16 bonding company. The bond must state on its front page: the
17 name, principal business address, and phone number of the
18 contractor, the surety, the owner of the property being
19 improved, and, if different from the owner, the contracting
20 public entity; the contract number assigned by the contracting
21 public entity; and a description of the project sufficient to
22 identify it, such as a legal description or the street address
23 of the property being improved, and a general description of
24 the improvement. Such bond shall be conditioned upon the
25 contractor's performance of the construction work in the time
26 and manner prescribed in the contract and promptly making
27 payments to all persons defined in s. 713.01 who furnish
28 labor, services, or materials for the prosecution of the work
29 provided for in the contract. Any claimant may apply to the
30 governmental entity having charge of the work for copies of
31 the contract and bond and shall thereupon be furnished with a

1 certified copy of the contract and bond. The claimant shall
2 have a right of action against the contractor and surety for
3 the amount due him or her, including unpaid finance charges
4 due under the claimant's contract. Such action shall not
5 involve the public authority in any expense. When such work is
6 done for the state and the contract is for \$100,000 or less,
7 no payment and performance bond shall be required. At the
8 discretion of the official or board awarding such contract
9 when such work is done for any county, city, political
10 subdivision, or public authority, any person entering into
11 such a contract which is for \$200,000 or less may be exempted
12 from executing the payment and performance bond. When such
13 work is done for the state, the Secretary of ~~the Department of~~
14 Management Services may delegate to state agencies the
15 authority to exempt any person entering into such a contract
16 amounting to more than \$100,000 but less than \$200,000 from
17 executing the payment and performance bond. In the event such
18 exemption is granted, the officer or officials shall not be
19 personally liable to persons suffering loss because of
20 granting such exemption. The Department of Management Services
21 shall maintain information on the number of requests by state
22 agencies for delegation of authority to waive the bond
23 requirements by agency and project number and whether any
24 request for delegation was denied and the justification for
25 the denial. Any provision in a payment bond furnished for
26 public work contracts as provided by this subsection which
27 restricts the classes of persons as defined in s. 713.01
28 protected by the bond or the venue of any proceeding relating
29 to such bond is unenforceable.

30 (2)(a)1. If a claimant is no longer furnishing labor,
31 services, or materials on a project, a contractor or the

1 contractor's agent or attorney may elect to shorten the
2 prescribed time in this paragraph within which an action to
3 enforce any claim against a payment bond provided pursuant to
4 this section may be commenced by recording in the clerk's
5 office a notice in substantially the following form:

6
7 NOTICE OF CONTEST OF CLAIM
8 AGAINST PAYMENT BOND
9

10 To: ...(Name and address of claimant)...

11
12 You are notified that the undersigned contests your
13 notice of nonpayment, dated,, and served
14 on the undersigned on,, and that the
15 time within which you may file suit to enforce your claim is
16 limited to 60 days after the date of service of this notice.

17
18 DATED on,

19
20 Signed:...(Contractor or Attorney)...

21
22 The claim of any claimant upon whom such notice is served and
23 who fails to institute a suit to enforce his or her claim
24 against the payment bond within 60 days after service of such
25 notice shall be extinguished automatically. The clerk shall
26 mail a copy of the notice of contest to the claimant at the
27 address shown in the notice of nonpayment or most recent
28 amendment thereto and shall certify to such service on the
29 face of such notice and record the notice. Service is complete
30 upon mailing.
31

1 2. A claimant, except a laborer, who is not in privity
2 with the contractor shall, before commencing or not later than
3 45 days after commencing to furnish labor, services, or
4 materials, ~~or supplies~~ for the prosecution of the work,
5 furnish the contractor with a written notice that he or she
6 intends to look to the bond for protection. A claimant who is
7 not in privity with the contractor and who has not received
8 payment for his or her labor, services, or materials, ~~or~~
9 ~~supplies~~ shall deliver to the contractor and to the surety
10 written notice of the performance of the labor or delivery of
11 the materials or supplies and of the nonpayment. The notice of
12 nonpayment may be served at any time during the progress of
13 the work or thereafter but not before 45 days after the first
14 furnishing of labor, services, or materials, and not later
15 than 90 days after the final furnishing of the labor,
16 services, or materials by the claimant or, with respect to
17 rental equipment, not later than 90 days after the date that
18 the rental equipment was last on the job site available for
19 use. Any notice of nonpayment served by a claimant who is not
20 in privity with the contractor which includes sums for
21 retainage must specify the portion of the amount claimed for
22 retainage. No action for the labor, materials, or supplies may
23 be instituted against the contractor or the surety unless both
24 notices have been given. Notices required or permitted under
25 this section may be served in accordance with s. 713.18. A
26 claimant may not waive in advance his or her right to bring an
27 action under the bond against the surety. In any action
28 brought to enforce a claim against a payment bond under this
29 section, the prevailing party is entitled to recover a
30 reasonable fee for the services of his or her attorney for
31 trial and appeal or for arbitration, in an amount to be

1 determined by the court, which fee must be taxed as part of
2 the prevailing party's costs, as allowed in equitable actions.
3 The time periods for service of a notice of nonpayment or for
4 bringing an action against a contractor or a surety shall be
5 measured from the last day of furnishing labor, services, or
6 materials by the claimant and shall not be measured by other
7 standards, such as the issuance of a certificate of occupancy
8 or the issuance of a certificate of substantial completion.

9 Section 2. Present subsections (12)-(28) of section
10 713.01, Florida Statutes, are redesignated as subsections
11 (13)-(29), respectively, a new subsection (12) is added to
12 that section, and present subsection (12) of that section is
13 amended, to read:

14 713.01 Definitions.--As used in this part, the term:

15 (12) "Final furnishing" means the last date that the
16 lienor furnishes labor, services, or materials. Such date may
17 not be measured by other standards, such as the issuance of a
18 certificate of occupancy or the issuance of a certificate of
19 final completion, and does not include correction of
20 deficiencies in the lienor's previously performed work or
21 materials supplied. With respect to rental equipment, the term
22 means the date that the rental equipment was last on the job
23 site and available for use.

24 ~~(13)(12)~~ "Furnish materials" means supply materials
25 which are incorporated in the improvement including normal
26 wastage in construction operations; or specially fabricated
27 materials for incorporation in the improvement, not including
28 any design work, submittals, or the like preliminary to actual
29 fabrication of the materials; or supply materials used for the
30 construction and not remaining in the improvement, subject to
31 diminution by the salvage value of such materials; and

1 includes supplying rental equipment ~~tools, appliances, or~~
2 ~~machinery~~ used on the particular improvement ~~to the extent of~~
3 ~~the reasonable rental value for the period of actual use (not~~
4 ~~determinable by the contract for rental unless the owner is a~~
5 ~~party thereto)~~, but does not include supplying handtools. The
6 delivery of materials to the site of the improvement is prima
7 facie evidence of incorporation of such materials in the
8 improvement. The delivery of rental equipment to the site of
9 the improvement is prima facie evidence of the period of the
10 actual use of the rental equipment from the delivery through
11 the time the equipment is last available for use at the site,
12 or 2 business days after the lessor of the rental equipment
13 receives a written notice from the owner or the lessee of the
14 rental equipment to pick up the equipment, whichever occurs
15 first.

16 Section 3. Section 713.012, Florida Statutes, is
17 created to read:

18 713.012 Written notices, demands, or
19 requests.--Notices, demands, or requests permitted or required
20 under this part, except any required by s. 713.14, must be in
21 writing.

22 Section 4. Section 713.015, Florida Statutes, is
23 amended to read:

24 713.015 Mandatory provisions for direct contracts.--
25 (1) Any direct contract greater than \$2,500 between an
26 owner and a contractor, related to improvements to real
27 property consisting of single or multiple family dwellings up
28 to and including four units, must contain the following
29 provision printed in no less than 12-point ~~14 point~~,
30 capitalized, boldfaced type on the front page of the contract
31 or on a separate page, signed by the owner, and dated:

1
2 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
3 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR
4 PROPERTY OR PROVIDE MATERIALS OR SERVICES AND ARE NOT PAID IN
5 FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST
6 YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF
7 YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY
8 SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS,
9 THOSE THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY
10 FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN
11 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY
12 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS
13 FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR
14 LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A
15 SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU
16 SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS
17 MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A
18 WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS
19 PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION
20 LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN
21 ATTORNEY.

22 (2)(a) If the contract is written, the notice must be
23 in the contract document. If the contract is oral or implied,
24 the notice must be provided in a document referencing the
25 contract.

26 (b) The failure to provide such written notice does
27 not bar the enforcement of a lien against a person who has not
28 been adversely affected.

29 (c) ~~Nothing in~~ This section may not ~~shall~~ be construed

30 to adversely affect the lien and bond rights of lienors who

31 are not in privity with the owner. This section does not apply

1 | when the owner is a contractor licensed under chapter 489 or
2 | is a person who created parcels or offers parcels for sale or
3 | lease in the ordinary course of business.

4 | Section 5. Subsection (6) of section 713.02, Florida
5 | Statutes, is amended to read:

6 | 713.02 Types of lienors and exemptions.--

7 | (6) ~~In any direct contract~~ The owner and contractor
8 | may agree that ~~require~~ the contractor shall ~~to~~ furnish a
9 | payment bond as provided in s. 713.23, and upon receipt of the
10 | bond the owner is ~~shall be~~ exempt from the other provisions of
11 | this part as to that direct contract, but this does not exempt
12 | the owner from the lien of the contractor who furnishes the
13 | bond. If the bond is provided, it shall secure all liens
14 | subsequently accruing under this part as provided in s.
15 | 713.23.

16 | Section 6. Subsection (4) of section 713.07, Florida
17 | Statutes, is amended to read:

18 | 713.07 Priority of liens.--

19 | (4) If construction ceases or the direct contract is
20 | terminated before completion and the owner desires to
21 | recommence construction, he or she may pay all lienors in full
22 | or pro rata in accordance with s. 713.06(4) prior to
23 | recommencement in which event all liens for the recommenced
24 | construction shall take priority from such recommencement; or
25 | the owner may record an affidavit in the clerk's office
26 | stating his or her intention to recommence construction and
27 | that all lienors giving notice have been paid in full except
28 | those listed therein as not having been so paid in which event
29 | 30 days after such recording, the rights of any person
30 | acquiring any interest, lien, or encumbrance on said property
31 | or of any lienor on the recommenced construction shall be

1 paramount to any lien on the prior construction unless such
2 prior lienor records a claim of lien within said 30-day
3 period. A copy of said affidavit shall be served on each
4 lienor named therein. Before recommencing, the owner shall
5 record and post a notice of commencement for the recommenced
6 construction, as provided in s. 713.13.

7 Section 7. Subsections (2) and (5) of section 713.08,
8 Florida Statutes, are amended to read:

9 713.08 Claim of lien.--

10 (2) The claim of lien may be prepared by the lienor or
11 the lienor's employee or attorney and shall be signed and
12 sworn to or affirmed ~~verified~~ by the lienor or the lienor's
13 ~~her or his~~ agent acquainted with the facts stated therein.

14 (5) The claim of lien may be recorded at any time
15 during the progress of the work or thereafter but not later
16 than 90 days after the final furnishing of the labor or
17 services or materials by the lienor. ~~However, ; or, with~~
18 ~~respect to rental equipment, within 90 days after the date~~
19 ~~that the rental equipment was last on the job site available~~
20 ~~for use; provided if the original contractor defaults or the~~
21 contract is terminated under s. 713.07(4), a ~~no~~ claim for a
22 lien attaching prior to such termination may not default ~~shall~~
23 be recorded after 90 days following from the date of such
24 termination default or 90 days after the final ~~performance of~~
25 ~~labor or services or furnishing of materials, whichever occurs~~
26 ~~first. The time period for recording a claim of lien shall be~~
27 ~~measured from the last day of furnishing of~~ labor, services,
28 or materials by the lienor, whichever occurs first and shall
29 ~~not be measured by other standards, such as the issuance of a~~
30 ~~certificate of occupancy or the issuance of a certificate of~~
31 ~~substantial completion.~~ The claim of lien shall be recorded in

1 | the clerk's office. If such real property is situated in two
2 | or more counties, the claim of lien shall be recorded in the
3 | clerk's office in each of such counties. The recording of the
4 | claim of lien shall be constructive notice to all persons of
5 | the contents and effect of such claim. The validity of the
6 | lien and the right to record a claim therefor shall not be
7 | affected by the insolvency, bankruptcy, or death of the owner
8 | before the claim of lien is recorded.

9 | Section 8. Paragraphs (a) and (d) of subsection (1) of
10 | section 713.13, Florida Statutes, are amended, present
11 | subsections (5) and (6) of that section are redesignated as
12 | subsections (6) and (7), respectively, and a new subsection
13 | (5) is added to that section, to read:

14 | 713.13 Notice of commencement.--

15 | (1)(a) Except for an improvement that is exempt
16 | pursuant to s. 713.02(5), an owner or the owner's authorized
17 | agent before actually commencing to improve any real property,
18 | or recommencing completion of any improvement after default or
19 | abandonment, whether or not a project has a payment bond
20 | complying with s. 713.23, shall record a notice of
21 | commencement in the clerk's office and forthwith post either a
22 | certified copy thereof or a notarized statement that the
23 | notice of commencement has been filed for recording along with
24 | a copy thereof. The notice of commencement shall contain the
25 | following information:

26 | 1. A description sufficient for identification of the
27 | real property to be improved. The description should include
28 | the legal description of the property and also should include
29 | the street address and tax folio number of the property if
30 | available or, if there is no street address available, such

31 |

1 additional information as will describe the physical location
2 of the real property to be improved.

3 2. A general description of the improvement.

4 3. The name and address of the owner, the owner's
5 interest in the site of the improvement, and the name and
6 address of the fee simple titleholder, if other than such
7 owner.

8 4. The name and address of the contractor.

9 5. The name and address of the surety on the payment
10 bond under s. 713.23, if any, and the amount of such bond.

11 6. The name and address of any person making a loan
12 for the construction of the improvements.

13 7. The name and address within the state of a person
14 other than himself or herself who may be designated by the
15 owner as the person upon whom notices or other documents may
16 be served under this part; and service upon the person so
17 designated constitutes service upon the owner.

18 (d) A notice of commencement must be in substantially
19 the following form:

20 Permit No..... Tax Folio No.....

21 NOTICE OF COMMENCEMENT

22 State of....

23 County of....

24

25 The undersigned hereby gives notice that improvement will be
26 made to certain real property, and in accordance with Chapter
27 713, Florida Statutes, the following information is provided
28 in this Notice of Commencement.

29 1. Description of property: ...(legal description of
30 the property, and street address if available)....

31 2. General description of improvement:.....

1 3. Owner information:.....
2 a. Name and address:.....
3 b. Interest in property:.....
4 c. Name and address of fee simple titleholder (if
5 other than Owner):.....
6 4.a. Contractor: ...(name and address)....
7 b. Contractor's phone number:.....
8 5. Surety
9 a. Name and address:.....
10 b. Phone number:.....
11 c. Amount of bond: \$.....
12 6.a. Lender: ...(name and address)....
13 b. Lender's phone number:.....
14 7.a. Persons within the State of Florida designated by
15 Owner upon whom notices or other documents may be served as
16 provided by Section 713.13(1)(a)7., Florida Statutes:
17 ...(name and address)....
18 b. Phone numbers of designated persons:.....
19 8.a. In addition to himself or herself, Owner
20 designates of to receive a copy of
21 the Lienor's Notice as provided in Section 713.13(1)(b),
22 Florida Statutes.
23 b. Phone number of person or entity designated by
24 owner:.....
25 9. Expiration date of notice of commencement (the
26 expiration date is 1 year from the date of recording unless a
27 different date is specified).....
28
29 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
30 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED
31 IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13,

1 FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR
2 IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST
3 BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST
4 INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH
5 YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING
6 YOUR NOTICE OF COMMENCEMENT.

7
8 ...(Signature of Owner or Owner's Authorized
9 Officer/Director/Partner/Manager)...

10
11 ...(Signatory's Title/Office)...

12
13 ~~Sworn to (or affirmed) and subscribed before me this~~
14 ~~.... day of, ...(year)...., by ...(name of person making~~
15 ~~statement)....~~

16
17 The foregoing instrument was acknowledged before me this
18 day of _____, (year), by (name of person) as (type
19 of authority, . . . e.g. officer, trustee, attorney in fact)
20 for (name of party on behalf of whom instrument was executed).

21
22 ...(Signature of Notary Public - State of Florida)...

23
24 ...(Print, Type, or Stamp Commissioned Name of Notary
25 Public)...

26
27 Personally Known OR Produced Identification

28
29 Type of Identification Produced.....

30
31 Verification pursuant to s. 92.525, Florida Statutes.

1
2 Under penalties of perjury, I declare that I have read the
3 foregoing and that the facts stated in it are true to the best
4 of my knowledge and belief.

5
6 (Signature of Natural Person Signing Above)

7 (5)(a) A notice of commencement that is recorded
8 within the effective period may be amended to extend the
9 effective period, to change erroneous information in the
10 original notice, or to add information that was omitted from
11 the original notice. However, in order to change contractors,
12 a new notice of commencement or notice of recommencement must
13 be executed and recorded.

14 (b) The amended notice must identify the official
15 records book and page where the original notice of
16 commencement is recorded, and a copy of the amended notice
17 must be served by the owner upon the contractor and each
18 lienor who serves notice before or within 30 days after the
19 date the amended notice is recorded.

20 Section 9. Paragraph (a) of subsection (1) and
21 paragraph (a) of subsection (6) of section 713.135, Florida
22 Statutes, are amended to read:

23 713.135 Notice of commencement and applicability of
24 lien.--

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

27 (a) Print on the face of each permit card in no less
28 than 14-point ~~18-point~~, capitalized, boldfaced type: "WARNING
29 TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY
30 RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.
31 A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE

1 JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN
2 FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE
3 RECORDING YOUR NOTICE OF COMMENCEMENT."

4 (6)(a) In addition to any other information required
5 by the authority issuing the permit, the building permit
6 application must be in substantially the following form:

7
8 Tax Folio No.....
9 BUILDING PERMIT APPLICATION
10
11 Owner's Name.....
12 Owner's Address.....
13 Fee Simple Titleholder's Name (If other than owner).....
14 Fee Simple Titleholder's Address (If other than owner).....
15 City.....
16 State..... Zip.....
17 Contractor's Name.....
18 Contractor's Address.....
19 City.....
20 State..... Zip.....
21 Job Name.....
22 Job Address.....
23 City..... County.....
24 Legal Description.....
25 Bonding Company.....
26 Bonding Company Address.....
27 City..... State.....
28 Architect/Engineer's Name.....
29 Architect/Engineer's Address.....
30 Mortgage Lender's Name.....
31 Mortgage Lender's Address.....

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Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.
A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION.

IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Agent)...

...(including contractor)...

STATE OF FLORIDA
COUNTY OF

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

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....
...(Signature of Contractor)...

STATE OF FLORIDA
COUNTY OF

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

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

1 (Certificate of Competency Holder)
2
3 Contractor's State Certification or Registration No.....
4
5 Contractor's Certificate of Competency No.....
6
7 APPLICATION APPROVED BY
8Permit Officer
9 Section 10. Subsections (2), (5), and (6) of section
10 713.16, Florida Statutes, are amended to read:
11 713.16 Demand for copy of contract and statements of
12 account; form.--
13 (2) The owner may serve in writing a demand of any
14 lienor for a written statement under oath of his or her
15 account showing the nature of the labor or services performed
16 and to be performed, if any, the materials furnished, the
17 materials to be furnished, if known, the amount paid on
18 account to date, the amount due, and the amount to become due,
19 if known, as of the date of the statement by the lienor. Any
20 such demand to a lienor must be served on the lienor at the
21 address and to the attention of any person who is designated
22 to receive the demand in the notice to owner served by such
23 lienor. The failure or refusal to furnish the statement does
24 not deprive the lienor of his or her lien if the demand is not
25 served at the address of the lienor or directed to the
26 attention of the person designated to receive the demand in
27 the notice to owner. The failure or refusal to furnish the
28 statement under oath within 30 days after the demand, or the
29 furnishing of a false or fraudulent statement, deprives the
30 person so failing or refusing to furnish such statement of his
31 or her lien. If the owner serves more than one demand for

1 | statement of account on a lienor and none of the information
2 | regarding the account has changed since the lienor's last
3 | response to a demand, the failure or refusal to furnish such
4 | statement does not deprive the lienor of his or her lien. The
5 | negligent inclusion or omission of any information deprives
6 | the person of his or her lien to the extent the owner can
7 | demonstrate prejudice from such act or omission by the lienor.
8 | The failure to furnish a response to a demand for statement of
9 | account does not affect the validity of any claim of lien
10 | being enforced through a foreclosure case filed prior to the
11 | date the demand for statement is received by the lienor.

12 | (5)(a) Any lienor who has recorded ~~filed~~ a claim of
13 | lien may make written demand on the owner for a written
14 | statement under oath showing:

15 | 1. The amount of the all direct contract under which
16 | the lien was recorded; ~~contracts; the amount paid by or on~~
17 | ~~behalf of the owner for all labor, services, and materials~~
18 | ~~furnished pursuant to the direct contracts;~~

19 | 2. The dates and amounts paid or to be paid by or on
20 | behalf of the owner for all improvements described in the any
21 | direct contract ~~contracts; and~~

22 | 3. The reasonable estimated costs of completing the,
23 | ~~according to the terms and specifications of same, any direct~~
24 | contract under which the lien was claimed pursuant to the
25 | scope of the direct contract; and construction has ceased.

26 | 4. If known, the actual cost of completion ~~must be~~
27 | provided.

28 | (b) Any owner who does not provide the statement
29 | within 30 days after demand, or who provides a false or
30 | fraudulent statement, is not a prevailing party for purposes
31 | of an award of attorney's fees under s. 713.29. The written

1 demand must include the following warning in conspicuous type
2 in substantially the following form:

3
4 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED
5 STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
6 STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER
7 ATTORNEY FEES IN ANY ACTION TO ENFORCE THE CLAIM OF LIEN OF
8 THE PERSON REQUESTING THIS STATEMENT.

9 (6) For purposes of this section, the term
10 "information" means the nature and quantity of the labor,
11 services, and materials furnished or to be furnished by a
12 lienor and the amount paid, the amount due, and the amount to
13 become due on the lienor's account. ~~The failure to furnish the~~
14 ~~statement under oath does not constitute an omission of~~
15 ~~information and shall deprive the lienor of his or her lien.~~

16 Section 11. Section 713.18, Florida Statutes, is
17 amended to read:

18 713.18 Manner of serving notices and other
19 instruments.--

20 (1) Service of notices, claims of lien, affidavits,
21 assignments, and other instruments permitted or required under
22 this part, or copies thereof when so permitted or required,
23 unless otherwise specifically provided in this part, must be
24 made by one of the following methods:

25 (a) By actual delivery to the person to be served; ~~or,~~
26 if a partnership, to one of the partners; ~~or,~~ if a
27 corporation, to an officer, director, managing agent, or
28 business agent; or, if a limited liability company, to a
29 member or manager thereof.

30 (b) By sending the same by registered or certified
31 mail, with postage prepaid, or by overnight or second-day

1 delivery with evidence of delivery, which may be in an
2 electronic format.

3 (c) If neither method can be accomplished, by posting
4 on the premises.

5 ~~(2)1-~~ Notwithstanding subsection (1), if a notice to
6 owner, a notice to contractor under s. 713.23, or a
7 preliminary notice under s. 255.05 is mailed by registered or
8 certified mail with postage prepaid to the person to be served
9 at any of the addresses set forth in subsection (3)
10 ~~subparagraph 2-~~ within 40 days after the date the lienor first
11 furnishes labor, services, or materials, service of that
12 notice is effective as of the date of mailing if the person
13 who served the notice maintains a registered or certified mail
14 log that shows the registered or certified mail number issued
15 by the United States Postal Service, the name and address of
16 the person served, and the date stamp of the United States
17 Postal Service confirming the date of mailing or if the person
18 who served the notice maintains electronic tracking records
19 generated through use of the United States Postal Service
20 Confirm service or a similar service containing the postal
21 tracking number, the name and address of the person served,
22 and verification of the date of receipt by the United States
23 Postal Service.

24 ~~(3)2-~~ If an instrument served pursuant to this section
25 to the last address shown in the notice of commencement or any
26 amendment thereto or, in the absence of a notice of
27 commencement, to the last address shown in the building permit
28 application, or to the last known address of the person to be
29 served, is not received, but is returned as being "refused,"
30 "moved, not forwardable," or "unclaimed," or is otherwise not
31 delivered or deliverable through no fault of the person

1 serving the item, then service is effective on the date the
2 instrument notice was sent.

3 ~~(c) If none of the foregoing methods can be~~
4 ~~accomplished, by posting on the premises.~~

5 ~~(4)(2)~~ If the real property is owned by more than one
6 person or a partnership, a lienor may serve any notices or
7 other papers under this part on any one of such owners or
8 partners, and such notice is deemed notice to all owners and
9 partners.

10 Section 12. Subsection (1) of section 713.22, Florida
11 Statutes, is amended to read:

12 713.22 Duration of lien.--

13 (1) No lien provided by this part shall continue for a
14 longer period than 1 year after the claim of lien has been
15 recorded or 1 year after the recording of an amended claim of
16 lien that shows a later date of final furnishing of labor,
17 services, or materials, unless within that time an action to
18 enforce the lien is commenced in a court of competent
19 jurisdiction. The continuation of the lien effected by the
20 commencement of the action shall not be good against creditors
21 or subsequent purchasers for a valuable consideration and
22 without notice, unless a notice of lis pendens is recorded.

23 Section 13. Paragraph (c) of subsection (2) of section
24 713.31, is amended to read:

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

26 (2)

27 (c) An owner against whose interest in real property a
28 fraudulent lien is filed, or any contractor, subcontractor, or
29 sub-subcontractor who suffers damages as a result of the
30 filing of the fraudulent lien, shall have a right of action
31 for damages occasioned thereby. The action may be instituted

1 independently of any other action, or in connection with a
2 summons to show cause under s. 713.21, or as a counterclaim or
3 cross-claim to any action to enforce or to determine the
4 validity of the lien. The prevailing party in an action under
5 this paragraph may recover reasonable attorney's fees and
6 costs. If the lienor who files a fraudulent lien is not the
7 prevailing party, the lienor shall be liable to the owner or
8 the defrauded party who prevails in an action under this
9 subsection in damages, which shall include court costs,
10 clerk's fees, a reasonable attorney's fee and costs for
11 services in securing the discharge of the lien, the amount of
12 any premium for a bond given to obtain the discharge of the
13 lien, interest on any money deposited for the purpose of
14 discharging the lien, and punitive damages in an amount not
15 exceeding the difference between the amount claimed by the
16 lienor to be due or to become due and the amount actually due
17 or to become due.

18 Section 14. Section 713.36, Florida Statutes, is
19 amended to read:

20 ~~713.36 Effective date. Chapter 63 135 shall take~~
21 ~~effect at 12:01 a.m., October 1, 1963. The rights of all~~
22 ~~persons with respect to an improvement that has a time of~~
23 ~~visible commencement prior to October 1, 1963, shall be~~
24 ~~determined and enforced as provided in former ss. 84.01 84.35,~~
25 ~~as they existed prior to October 1, 1963. As to all other~~
26 ~~rights, former ss. 84.01 84.35 are repealed concurrently with~~
27 ~~the effective time of this part.~~

28 Section 15. This act shall take effect July 1, 2007.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2768

The committee substitute (CS) adds conforming language to s. 255.05, F.S., that is used throughout ch. 713, Part I.

It clarifies the period of actual use of rental equipment for determining lien amounts in the definition of "furnish materials."

It corrects a statutory cross reference in s. 713.012, F.S.

It provides that mandatory provisions for direct contracts must be for those contracts greater than \$2500 between an owner and a contractor.

It provides that a claim of lien may be prepared by the lienor's employee or attorney and affirmed by the lienor's agent.

It updates the notary provisions in the Notice of Commencement form.

It provides that a notice of commencement must be recorded and posted on the job site before the first inspection.