

By Senator Aronberg

27-03504-08

20082664__

1 A bill to be entitled

2 An act relating to the Construction Lien Law; amending s.
3 713.13, F.S.; deleting a requirement that the notice of
4 commencement state the period that the notice is effective
5 if it exceeds 1 year; deleting a limitation on making
6 payments after the expiration of the notice of
7 commencement; deleting a requirement that the improvement
8 be commenced within 90 days after recording the notice of
9 commencement; amending s. 713.24, F.S., relating to the
10 transfer of liens; conforming a cross-reference; providing
11 an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 713.13, Florida Statutes, is amended to
16 read:

17 713.13 Notice of commencement.--

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

28 1. A description sufficient for identification of the real
29 property to be improved. The description should include the legal

27-03504-08

20082664__

30 description of the property and also should include the street
31 address and tax folio number of the property if available or, if
32 there is no street address available, such additional information
33 as will describe the physical location of the real property to be
34 improved.

35 2. A general description of the improvement.

36 3. The name and address of the owner, the owner's interest
37 in the site of the improvement, and the name and address of the
38 fee simple titleholder, if other than such owner.

39 4. The name and address of the contractor.

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

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

44 7. The name and address within the state of a person other
45 than himself or herself who may be designated by the owner as the
46 person upon whom notices or other documents may be served under
47 this part; and service upon the person so designated constitutes
48 service upon the owner.

49 (b) The owner, at his or her option, may designate a person
50 in addition to himself or herself to receive a copy of the
51 lienor's notice as provided in s. 713.06(2)(b), and if he or she
52 does so, the name and address of such person must be included in
53 the notice of commencement.

54 ~~(c) If the contract between the owner and a contractor~~
55 ~~named in the notice of commencement expresses a period of time~~
56 ~~for completion for the construction of the improvement greater~~
57 ~~than 1 year, the notice of commencement must state that it is~~
58 ~~effective for a period of 1 year plus any additional period of~~

27-03504-08

20082664__

59 ~~time. Any payments made by the owner after the expiration of the~~
 60 ~~notice of commencement are considered improper payments.~~

61 (c) ~~(d)~~ A notice of commencement must be in substantially
 62 the following form:

63
 64 Permit No. _____ Tax Folio No. _____

65 NOTICE OF COMMENCEMENT

66 State of _____

67 County of _____

68
 69 The undersigned hereby gives notice that improvement will be made
 70 to certain real property, and in accordance with Chapter 713,
 71 Florida Statutes, the following information is provided in this
 72 Notice of Commencement.

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

75 2. General description of improvement: _____.

76 3. Owner information: _____.

77 a. Name and address: _____.

78 b. Interest in property: _____.

79 c. Name and address of fee simple titleholder (if other
 80 than Owner): _____.

81 4.a. Contractor: (name and address) .

82 b. Contractor's phone number: _____.

83 5. Surety

84 a. Name and address: _____.

85 b. Phone number: _____.

86 c. Amount of bond: \$ _____.

87 6.a. Lender: (name and address) .

27-03504-08

20082664__

88 b. Lender's phone number:_____.

89 7.a. Persons within the State of Florida designated by
90 Owner upon whom notices or other documents may be served as
91 provided by Section 713.13(1)(a)7., Florida Statutes: (name and
92 address) .

93 b. Phone numbers of designated persons:_____.

94 8.a. In addition to himself or herself, Owner designates
95 _____ of _____ to receive a copy of the
96 Lienor's Notice as provided in Section 713.13(1)(b), Florida
97 Statutes.

98 b. Phone number of person or entity designated by
99 owner:_____.

100 9. Expiration date of notice of commencement (the
101 expiration date is 1 year from the date of recording unless a
102 different date is specified)_____.

103
104 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
105 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
106 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
107 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO
108 YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
109 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND
110 TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY
111 BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

112
113 (Signature of Owner or Owner's Authorized
114 Officer/Director/Partner/Manager)

115
116 (Signatory's Title/Office)

27-03504-08

20082664__

117
 118 The foregoing instrument was acknowledged before me this _____
 119 day of _____, (year) , by (name of person) as (type of
 120 authority, . . . e.g. officer, trustee, attorney in fact) for
 121 (name of party on behalf of whom instrument was executed) .
 122

123 (Signature of Notary Public - State of Florida)

124
 125 (Print, Type, or Stamp Commissioned Name of Notary Public)
 126

127 Personally Known _____ OR Produced Identification _____
 128

129 Type of Identification Produced _____
 130

131 Verification pursuant to Section 92.525, Florida Statutes.
 132

133 Under penalties of perjury, I declare that I have read the
 134 foregoing and that the facts stated in it are true to the best of
 135 my knowledge and belief.
 136

137 (Signature of Natural Person Signing Above)

138 (d)~~(e)~~ A copy of any payment bond must be attached at the
 139 time of recordation of the notice of commencement. The failure to
 140 attach a copy of the bond to the notice of commencement when the
 141 notice is recorded negates the exemption provided in s.
 142 713.02(6). However, if a payment bond under s. 713.23 exists but
 143 was not attached at the time of recordation of the notice of
 144 commencement, the bond may be used to transfer any recorded lien
 145 of a lienor except that of the contractor by the recordation and

27-03504-08

20082664__

146 service of a notice of bond pursuant to s. 713.23(2). The notice
147 requirements of s. 713.23 apply to any claim against the bond;
148 however, the time limits for serving any required notices shall
149 begin running from the later of the time specified in s. 713.23
150 or the date the notice of bond is served on the lienor.

151 (e)~~(f)~~ The giving of a notice of commencement is effective
152 upon the filing of the notice in the clerk's office.

153 (f)~~(g)~~ The owner must sign the notice of commencement and
154 no one else may be permitted to sign in his or her stead.

155 ~~(2) If the improvement described in the notice of~~
156 ~~commencement is not actually commenced within 90 days after the~~
157 ~~recording thereof, such notice is void and of no further effect.~~

158 (2)~~(3)~~ The recording of a notice of commencement does not
159 constitute a lien, cloud, or encumbrance on real property, but
160 gives constructive notice that claims of lien under this part may
161 be recorded and may take priority as provided in s. 713.07. The
162 posting of a copy does not constitute a lien, cloud, or
163 encumbrance on real property, nor actual or constructive notice
164 of any of them.

165 (3)~~(4)~~ This section does not apply to an owner who is
166 constructing improvements described in s. 713.04.

167 (4)~~(5)~~(a) A notice of commencement that is recorded within
168 the effective period may be amended to extend the effective
169 period, change erroneous information in the original notice, or
170 add information that was omitted from the original notice.
171 However, in order to change contractors, a new notice of
172 commencement or notice of recommencement must be executed and
173 recorded.

27-03504-08

20082664__

174 (b) The amended notice must identify the official records
175 book and page where the original notice of commencement is
176 recorded, and a copy of the amended notice must be served by the
177 owner upon the contractor and each lienor who serves notice
178 before or within 30 days after the date the amended notice is
179 recorded.

180 (5)~~(6)~~ Unless otherwise provided in the notice of
181 commencement or a new or amended notice of commencement, a notice
182 of commencement is not effectual in law or equity against a
183 conveyance, transfer, or mortgage of or lien on the real property
184 described in the notice, or against creditors or subsequent
185 purchasers for a valuable consideration, after 1 year after the
186 date of recording the notice of commencement.

187 (6)~~(7)~~ A lender must, prior to the disbursement of any
188 construction funds to the contractor, record the notice of
189 commencement in the clerk's office as required by this section;
190 however, the lender is not required to post a certified copy of
191 the notice at the construction site. The posting of the notice at
192 the construction site remains the owner's obligation. The failure
193 of a lender to record the notice of commencement as required by
194 this subsection renders the lender liable to the owner for all
195 damages sustained by the owner as a result of the failure.
196 Whenever a lender is required to record a notice of commencement,
197 the lender shall designate the lender, in addition to others, to
198 receive copies of notices to owner. This subsection does not give
199 any person other than the owner a claim or right of action
200 against a lender for failure to record a notice of commencement.

201 Section 2. Subsection (4) of section 713.24, Florida
202 Statutes, is amended to read:

27-03504-08

20082664__

203 713.24 Transfer of liens to security.--

204 (4) If a proceeding to enforce a transferred lien is not
205 commenced within the time specified in s. 713.22 or if it appears
206 that the transferred lien has been satisfied of record, the clerk
207 shall return said security upon request of the person depositing
208 or filing the same, or the insurer. If a proceeding to enforce a
209 lien is commenced in a court of competent jurisdiction within the
210 time specified in s. 713.22 and, during such proceeding, the lien
211 is transferred pursuant to this section or s. 713.13(1)(d) ~~s.~~
212 ~~713.13(1)(e)~~, an action commenced within 1 year after the
213 transfer, unless otherwise shortened by operation of law, in the
214 same county or circuit court to recover against the security
215 shall be deemed to have been brought as of the date of filing the
216 action to enforce the lien, and the court shall have jurisdiction
217 over the action.

218 Section 3. This act shall take effect July 1, 2008.