

By Senator Bogdanoff

25-00715-11

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1 A bill to be entitled
2 An act relating to construction liens on leased
3 premises; amending s. 713.10, F.S.; specifying
4 circumstances under which the interest of a lessor in
5 leased premises is subject to a construction lien for
6 an improvement made by a lessee; providing that the
7 interest of the lessor is not subject to a lien if
8 certain documents relating to a lessor's liability for
9 a construction lien are recorded in the official
10 records before the recording of a notice of
11 commencement; providing that a creditor secured by an
12 interest in a parcel or a purchaser for valuable
13 consideration of a parcel may rely on as accurate and
14 correct a recorded lease, memorandum of lease, or
15 notice that prohibits the imposition of a lien on the
16 lessor's interest in leased premises; providing that a
17 lienor that is materially prejudiced by a willful
18 misstatement of fact in certain recorded documents may
19 have a cause of action for damages against the lessor;
20 providing that a creditor or purchaser of a leased
21 premises may rely on certain recorded documents
22 relating to a lessor's liability for a lien;
23 authorizing a contractor or lienor to demand a
24 verified copy of a provision of a lease prohibiting
25 the imposition of a construction lien; amending s.
26 713.13, F.S.; providing that the owner of property for
27 purposes of a notice of commencement is a lessee that
28 contracts for an improvement on leased premises;
29 providing an effective date.

25-00715-11

20111196__

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

Section 1. Section 713.10, Florida Statutes, is amended to read:

713.10 Extent of liens.—

(1) Except as provided in s. 713.12, a lien under this part extends ~~shall extend to, and only to,~~ the right, title, and interest of the person who contracts for an ~~the~~ improvement on leased premises as such right, title, and interest exists at the commencement of the improvement or is later ~~thereafter~~ acquired in the real property.

(2) If ~~When~~ an improvement is made by a lessee in accordance with an agreement between the ~~such~~ lessee and the ~~her or his~~ lessor, the lien ~~shall extend~~ also extends to the interest of the ~~such~~ lessor. If ~~When~~ the lease expressly provides that the interest of the lessor is ~~shall~~ not be subject to liens for improvements made by the lessee, the lessee must ~~shall~~ notify the contractor making any ~~such~~ improvements of the prohibition on liens ~~such provision or provisions~~ in the lease. and ~~The~~ knowing or willful failure of the lessee to notify ~~provide such notice to~~ the contractor of the prohibition on liens renders ~~shall render~~ the contract between the lessee and the contractor voidable at the option of the contractor.

(3) The interest of the lessor is ~~shall~~ not be subject to a lien ~~liens~~ for an improvement ~~improvements~~ made by the lessee if:

(a) The lease expressly prohibits the imposition of a lien and, before a notice of commencement is recorded ~~when~~:

25-00715-11

20111196

59 1.~~(1)~~ The lease ~~or a short form thereof~~ is recorded in the
60 official records of the county where the leased premises are
61 located ~~clerk's office and the terms of the lease expressly~~
62 ~~prohibit such liability; or~~

63 2. A memorandum of the lease containing the specific
64 language of the lease prohibiting the imposition of a lien is
65 recorded in the official records of the county where the leased
66 premises are located; or

67 (b) The lessor leases more than one premises on a parcel
68 and all of the leases expressly prohibit the imposition of a
69 lien and a notice is recorded in the official records of the
70 county where the leased premises are located which includes:

71 ~~(2) All of the leases entered into by a lessor for the~~
72 ~~rental of premises on a parcel of land prohibit such liability~~
73 ~~and a notice which sets forth the following is recorded by the~~
74 ~~lessor in the public records of the county in which the parcel~~
75 ~~of land is located:~~

76 1.~~(a)~~ The name of the lessor.

77 2. The name of the lessee.

78 3.~~(b)~~ The legal description of the parcel of land to which
79 the notice applies.

80 4. A statement that all of the lessor's leases of premises
81 on the parcel expressly prohibit the imposition of a lien.

82 ~~(c) The specific language contained in the various leases~~
83 ~~prohibiting such liability.~~

84 ~~(d) A statement that all leases entered into for premises~~
85 ~~on the parcel of land contain the language identified in~~
86 ~~paragraph (c).~~

87 (c)1. The lessor leases more than one premises on a parcel

25-00715-11

20111196

88 and only some of the leases expressly prohibit the imposition of
89 a lien and a notice is recorded in the official records of the
90 county where the leased premises are located which:

91 a. Includes the name of the lessor.

92 b. Includes the name of the lessee.

93 c. Includes the legal description of the parcel of land to
94 which the notice applies.

95 d. Identifies each specific premises that may be subject to
96 a lien for improvements made by the lessee.

97 2. The lessor may amend the notice to revise the list of
98 leased premises that may be subject to a lien. An amendment is
99 effective upon recording and does not limit a lessor's liability
100 for improvements performed under a notice of commencement that
101 is recorded before the amendment.

102 (4) (a) A creditor that is secured by an interest in a
103 parcel, or a purchaser for valuable consideration of a parcel,
104 may rely on as accurate and correct a recorded lease, memorandum
105 of lease, or notice that prohibits the imposition of a lien. A
106 person does not have a duty to inquire into the terms of any
107 lease affecting the parcel as a condition of relying on a
108 memorandum of lease or notice recorded pursuant to this section.

109 (b) A lienor who is materially prejudiced by a willful
110 misstatement of fact by a lessor in a memorandum of lease or
111 notice has a cause of action against the lessor for damages
112 sustained thereby in the amount that the lienor would have been
113 otherwise able to establish as a construction lien against the
114 lessor's interest under this part.

115 (5) The identification of a premises in a memorandum of
116 lease or recorded notice under subsection (3) which may be

25-00715-11

20111196

117 subject to a lien does not constitute actual or constructive
118 notice of the lease or the interests of the named lessee in the
119 premises. This subsection does not affect the rights of lienors
120 against the interests of the lessor or lessee identified in a
121 memorandum of lease or notice.

122 (6)~~(3)~~ The lessor of lessee is a mobile home owner who is
123 leasing a mobile home lot in a mobile home park is not subject
124 to a lien for an improvement made by the lessee from the lessor.

125 (7) (a) A contractor or lienor under contract to improve a
126 premises leased by a lessee may serve written demand on the
127 lessor for a verified copy of the provision in the lease between
128 such lessee and the lessor which prohibits the imposition of a
129 lien for an improvement made by the lessee. The demand must
130 identify the lessee and the premises being improved and must be
131 in a document that is separate from the notice to the owner
132 provided in s. 713.06. The written demand must include the
133 following warning in conspicuous type and in substantially the
134 following form:

135
136 WARNING: YOUR PROPERTY MAY BE SUBJECT TO A
137 CONSTRUCTION LIEN IF YOU FAIL TO SERVE A VERIFIED COPY
138 OF THE LEASE PROVISION WITHIN 30 DAYS AFTER YOU
139 RECEIVE THIS DEMAND OR IF YOU SERVE A FALSE OR
140 FRAUDULENT COPY OF THE LEASE PROVISION.

141
142 (b) The lessor must serve a copy of the provision of the
143 lease, which must be verified pursuant to s. 92.525, on the
144 contractor or lienor within 30 days after receipt of the demand.
145 The interest of a lessor that does not serve a verified copy of

25-00715-11

20111196

146 the lease provision within 30 days after demand, or that serves
147 a false or fraudulent copy, is subject to a lien under this part
148 by the party demanding the verified copy if such party:

149 1. Is entitled to a lien under this part; and

150 2. Did not have actual notice that the interest of the
151 lessor is not subject to liens for improvements made by the
152 lessee.

153 Section 2. Paragraphs (a) and (d) of subsection (1) of
154 section 713.13, Florida Statutes, are amended to read:

155 713.13 Notice of commencement.—

156 (1) (a) Except for an improvement that is exempt pursuant to
157 s. 713.02(5), an owner or the owner's authorized agent before
158 actually commencing to improve any real property, or
159 recommencing completion of any improvement after default or
160 abandonment, whether or not a project has a payment bond
161 complying with s. 713.23, shall record a notice of commencement
162 in the clerk's office and forthwith post either a certified copy
163 thereof or a notarized statement that the notice of commencement
164 has been filed for recording along with a copy thereof. The
165 notice of commencement shall contain the following information:

166 1. A description sufficient for identification of the real
167 property to be improved. The description should include the
168 legal description of the property and also should include the
169 street address and tax folio number of the property if available
170 or, if there is no street address available, such additional
171 information as will describe the physical location of the real
172 property to be improved.

173 2. A general description of the improvement.

174 3. The name and address of the owner, the owner's interest

25-00715-11

20111196

175 in the site of the improvement, and the name and address of the
 176 fee simple titleholder, if other than such owner. However, a
 177 lessee that contracts for an improvement shall be listed as the
 178 owner of the property.

179 4. The name and address of the contractor.

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

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

184 7. The name and address within the state of a person other
 185 than himself or herself who may be designated by the owner as
 186 the person upon whom notices or other documents may be served
 187 under this part; and service upon the person so designated
 188 constitutes service upon the owner.

189 (d) A notice of commencement must be in substantially the
 190 following form:

191
 192 Permit No..... Tax Folio No.....

193 NOTICE OF COMMENCEMENT

194 State of....

195 County of....

196
 197 The undersigned hereby gives notice that improvement will be
 198 made to certain real property, and in accordance with Chapter
 199 713, Florida Statutes, the following information is provided in
 200 this Notice of Commencement.

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

203 2. General description of improvement:.....

25-00715-11

20111196__

204 3. Owner information or lessee information if the lessee
205 contracted for the improvement:.....

206 a. Name and address:.....

207 b. Interest in property:.....

208 c. Name and address of fee simple titleholder (if other
209 than Owner):.....

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

211 b. Contractor's phone number:.....

212 5. Surety

213 a. Name and address:.....

214 b. Phone number:.....

215 c. Amount of bond: \$.....

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

217 b. Lender's phone number:.....

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

222 b. Phone numbers of designated persons:.....

223 8.a. In addition to himself or herself, Owner designates
224 of to receive a copy of the Lienor's
225 Notice as provided in Section 713.13(1)(b), Florida Statutes.

226 b. Phone number of person or entity designated by
227 owner:.....

228 9. Expiration date of notice of commencement (the
229 expiration date is 1 year from the date of recording unless a
230 different date is specified).....

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232 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE

25-00715-11

20111196__

233 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 234 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 235 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 236 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 237 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 238 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 239 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 240 COMMENCEMENT.

241
 242 ... (Signature of Owner or Owner's or Lessee's Authorized
 243 Officer/Director/Partner/Manager) ...

244
 245 ... (Signatory's Title/Office) ...

246
 247 The foregoing instrument was acknowledged before me this
 248 day of, ... (year) ..., by ... (name of person) ... as ... (type
 249 of authority, . . . e.g. officer, trustee, attorney in fact) ...
 250 for ... (name of party on behalf of whom instrument was
 251 executed)

252
 253 ... (Signature of Notary Public - State of Florida) ...

254
 255 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

256
 257 Personally Known OR Produced Identification

258
 259 Type of Identification Produced.....

260
 261 Verification pursuant to Section 92.525, Florida Statutes.

25-00715-11

20111196__

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263 Under penalties of perjury, I declare that I have read the
264 foregoing and that the facts stated in it are true to the best
265 of my knowledge and belief.

266

267 ... (Signature of Natural Person Signing Above) ...

268 Section 3. This act shall take effect July 1, 2011.