

By the Committee on Regulated Industries; and Senator Bogdanoff

580-03316-11

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1 A bill to be entitled

2 An act relating to construction liens; amending s.
3 713.10, F.S.; specifying that a lessor's interest in
4 property is not subject to a construction lien for
5 improvements made by a lessee if certain documents
6 containing specific information and meeting certain
7 criteria are recorded in the official records of the
8 county before the recording of a notice of
9 commencement; authorizing certain contractors and
10 lienors to demand that a lessor serve verified copies
11 of a lease prohibiting liability for improvements made
12 by a lessee; subjecting the interest of a lessor to a
13 specified lien for failing to serve such verified
14 copies or serving a false or fraudulent copy;
15 requiring that the demand include a specified warning;
16 amending s. 713.13, F.S.; revising the form for notice
17 of commencement to include information relating to the
18 obligations of a lessee who contracts for improvements
19 to property; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 713.10, Florida Statutes, is amended to
24 read:

25 713.10 Extent of liens.—

26 (1) Except as provided in s. 713.12, a lien under this part
27 shall extend to, and only to, the right, title, and interest of
28 the person who contracts for the improvement as such right,
29 title, and interest exists at the commencement of the

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30 improvement or is thereafter acquired in the real property. When
31 an improvement is made by a lessee in accordance with an
32 agreement between such lessee and her or his lessor, the lien
33 shall extend also to the interest of such lessor.

34 (2) (a) When the lease expressly provides that the interest
35 of the lessor shall not be subject to liens for improvements
36 made by the lessee, the lessee shall notify the contractor
37 making any such improvements of such provision or provisions in
38 the lease, and the knowing or willful failure of the lessee to
39 provide such notice to the contractor shall render the contract
40 between the lessee and the contractor voidable at the option of
41 the contractor.

42 (b) The interest of the lessor shall not be subject to
43 liens for improvements made by the lessee when:

44 1. The lease, or a short form or a memorandum of the lease
45 that contains the specific language in the lease prohibiting
46 such liability, is recorded in the official records of the
47 county where the premises are located before the recording of a
48 notice of commencement for improvements to the premises

49 ~~(1) The lease or a short form thereof is recorded in the~~
50 ~~clerk's office and the terms of the lease expressly prohibit~~
51 ~~such liability; or~~

52 2. (2) The terms ~~All~~ of the lease expressly prohibit such
53 liability and a notice advising that leases ~~entered into by a~~
54 lessor for the rental of premises on a parcel of land prohibit
55 such liability ~~has been and a notice which sets forth the~~
56 ~~following~~ is recorded by the lessor in the official ~~public~~
57 records of the county in which the parcel of land is located
58 before the recording of a notice of commencement for

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59 improvements to the premises and the notice includes the
60 following:

61 a.~~(a)~~ The name of the lessor.

62 b.~~(b)~~ The legal description of the parcel of land to which
63 the notice applies.

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

66 d.~~(d)~~ A statement that all or a majority of the leases
67 entered into for premises on the parcel of land expressly
68 prohibit such liability ~~contain the language identified in~~
69 ~~paragraph (c).~~

70 (3) Any contractor or lienor under contract to furnish
71 labor, services, or materials for improvements being made by a
72 lessee may serve written demand on the lessor for a copy of the
73 provision in the lease prohibiting liability for improvements
74 made by the lessee, which copy shall be verified under s.
75 92.525. The demand must identify the lessee and the premises
76 being improved and must be in a document that is separate from
77 the notice to the owner as provided in s. 713.06(2). The
78 interest of any lessor who does not serve a verified copy of the
79 lease provision within 30 days after demand, or who serves a
80 false or fraudulent copy, is subject to a lien under this part
81 by the contractor or lienor who made the demand if the
82 contractor or lienor is otherwise entitled to a lien under this
83 part and did not have actual notice that the interest of the
84 lessor was not subject to a lien for improvements made by the
85 lessee. The written demand must include a warning in conspicuous
86 type in substantially the following form:

87 WARNING

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88 YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY
89 WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY
90 RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF
91 LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

92 ~~(3) The lessee is a mobile home owner who is leasing a~~
93 ~~mobile home lot in a mobile home park from the lessor.~~

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

96 713.13 Notice of commencement.—

97 (1) (a) Except for an improvement that is exempt pursuant to
98 s. 713.02(5), an owner or the owner's authorized agent before
99 actually commencing to improve any real property, or
100 recommencing completion of any improvement after default or
101 abandonment, whether or not a project has a payment bond
102 complying with s. 713.23, shall record a notice of commencement
103 in the clerk's office and forthwith post either a certified copy
104 thereof or a notarized statement that the notice of commencement
105 has been filed for recording along with a copy thereof. The
106 notice of commencement shall contain the following information:

107 1. A description sufficient for identification of the real
108 property to be improved. The description should include the
109 legal description of the property and also should include the
110 street address and tax folio number of the property if available
111 or, if there is no street address available, such additional
112 information as will describe the physical location of the real
113 property to be improved.

114 2. A general description of the improvement.

115 3. The name and address of the owner, the owner's interest
116 in the site of the improvement, and the name and address of the

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117 fee simple titleholder, if other than such owner. A lessee who
 118 contracts for the improvements is an owner as defined under s.
 119 713.01(23) and must be listed as the owner.

120 4. The name and address of the contractor.

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

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

125 7. The name and address within the state of a person other
 126 than himself or herself who may be designated by the owner as
 127 the person upon whom notices or other documents may be served
 128 under this part; and service upon the person so designated
 129 constitutes service upon the owner.

130 (d) A notice of commencement must be in substantially the
 131 following form:

132
 133 Permit No.....

Tax Folio No.....

134 NOTICE OF COMMENCEMENT

135 State of....

136 County of....

137
 138 The undersigned hereby gives notice that improvement will be
 139 made to certain real property, and in accordance with Chapter
 140 713, Florida Statutes, the following information is provided in
 141 this Notice of Commencement.

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

144 2. General description of improvement:.....

145 3. Owner information: ...(A contracting party who is a

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146 lessee is an owner as defined under section 713.01(23), Florida
 147 Statutes, and must be listed here as the owner).....

148 a. Name and address:.....

149 b. Interest in property:.....

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

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

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

154 5. Surety

155 a. Name and address:.....

156 b. Phone number:.....

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

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

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

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

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

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

168 b. Phone number of person or entity designated by
 169 owner:.....

170 9. Expiration date of notice of commencement (the
 171 expiration date is 1 year from the date of recording unless a
 172 different date is specified).....

173

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

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175 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 176 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 177 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 178 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 179 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 180 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 181 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 182 COMMENCEMENT.

183
 184 ... (Signature of Owner or Owner's Authorized
 185 Officer/Director/Partner/Manager)/Lessee - a contracting party
 186 who is a lessee meets the definition of owner under section
 187 713.01(23), Florida Statutes, and should sign here as the
 188 owner)...

189
 190 ... (Signatory's Title/Office)...

191
 192 The foregoing instrument was acknowledged before me this
 193 day of, ... (year) ..., by ... (name of person) ... as ... (type
 194 of authority, . . . e.g. officer, trustee, attorney in fact) ...
 195 for ... (name of party on behalf of whom instrument was
 196 executed)

197
 198 ... (Signature of Notary Public - State of Florida) ...

199
 200 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

201
 202 Personally Known OR Produced Identification

203

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204 Type of Identification Produced.....

205

206 Verification pursuant to Section 92.525, Florida Statutes.

207

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

211

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

213 Section 3. This act shall take effect October 1, 2011.