

HB 941

2011

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

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Section 713.10, Florida Statutes, is amended to  
 23           read:

24           713.10 Extent of liens.—

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

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

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

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

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

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

51 2.(2) The terms All of the lease expressly prohibit such  
 52 liability and a notice advising that leases entered into by a  
 53 ~~lessor~~ for the rental of premises on a parcel of land prohibit  
 54 such liability and a notice which sets forth the following is  
 55 has been recorded ~~by the lessor~~ in the official ~~public~~ records  
 56 of the county in which the parcel of land is located before the

57 recording of a notice of commencement for improvements to the  
 58 premises and the notice includes the following:

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

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

62 c.~~(e)~~ The specific language contained in the various  
 63 leases prohibiting such liability.

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

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

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

85 include a warning in conspicuous type in substantially the  
 86 following form:

87 WARNING

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

94 713.13 Notice of commencement.—

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

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

112 2. A general description of the improvement.

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113 3. The name and address of the owner, the owner's interest  
 114 in the site of the improvement, and the name and address of the  
 115 fee simple titleholder, if other than such owner. A lessee who  
 116 contracts for the improvements is an owner as defined under s.  
 117 713.01(23) and must be listed as the owner.

118 4. The name and address of the contractor.

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

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

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

128 (d) A notice of commencement must be in substantially the  
 129 following form:

130  
 131 Permit No..... Tax Folio No.....

132 NOTICE OF COMMENCEMENT

133 State of....

134 County of....

135

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

140 1. Description of property: ...(legal description of the

141 property, and street address if available)....

142 2. General description of improvement:.....

143 3. Owner information (A contracting party who is a lessee

144 is an owner as defined under section 713.01(23), Florida

145 Statutes, and must be listed here as the owner):.....

146 a. Name and address:.....

147 b. Interest in property:.....

148 c. Name and address of fee simple titleholder (if other

149 than Owner):.....

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

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

152 5. Surety

153 a. Name and address:.....

154 b. Phone number:.....

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

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

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

158 7.a. Persons within the State of Florida designated by

159 Owner upon whom notices or other documents may be served as

160 provided by Section 713.13(1)(a)7., Florida Statutes: ...(name

161 and address)....

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

163 8.a. In addition to himself or herself, Owner designates

164 ..... of ..... to receive a copy of the Lienor's

165 Notice as provided in Section 713.13(1)(b), Florida Statutes.

166 b. Phone number of person or entity designated by

167 owner:.....

168 9. Expiration date of notice of commencement (the

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169 | expiration date is 1 year from the date of recording unless a  
 170 | different date is specified).....

171 |  
 172 | WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
 173 | EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
 174 | PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
 175 | STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
 176 | TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
 177 | POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
 178 | INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
 179 | ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
 180 | COMMENCEMENT.

181 |  
 182 | ... (Signature of Owner or Owner's Authorized  
 183 | Officer/Director/Partner/Manager/Lessee—a contracting party who  
 184 | is a lessee meets the definition of owner under section  
 185 | 713.01(23), Florida Statutes, and should sign here as the  
 186 | owner)...

187 | ... (Signatory's Title/Office)...

188 |  
 189 | The foregoing instrument was acknowledged before me this ....  
 190 | day of ....., ...(year)...., by ...(name of person)... as ...(type  
 191 | of authority, . . . e.g. officer, trustee, attorney in fact)...  
 192 | for ...(name of party on behalf of whom instrument was  
 193 | executed).....

194 |  
 195 | ... (Signature of Notary Public - State of Florida)...

196 | ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

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197 | Personally Known .... OR Produced Identification ....  
198 | Type of Identification Produced.....  
199 |  
200 | Verification pursuant to Section 92.525, Florida Statutes.  
201 |  
202 | Under penalties of perjury, I declare that I have read the  
203 | foregoing and that the facts stated in it are true to the best  
204 | of my knowledge and belief.  
205 |  
206 | ...(Signature of Natural Person Signing Above)...  
207 | Section 3. This act shall take effect October 1, 2011.