

CS/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

CS/HB 941

2011

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 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 or constructive notice that the
 84 interest of the lessor was not subject to a lien for

85 improvements made by the lessee. The written demand must include
 86 a warning in conspicuous type in substantially the following
 87 form:

88 WARNING

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

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

95 713.13 Notice of commencement.—

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

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

113 2. A general description of the improvement.

114 3. The name and address of the owner, the owner's interest
 115 in the site of the improvement, and the name and address of the
 116 fee simple titleholder, if other than such owner. A lessee who
 117 contracts for the improvements is an owner as defined under s.
 118 713.01(23) and must be listed as the owner.

119 4. The name and address of the contractor.

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

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

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

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

131
 132 Permit No..... Tax Folio No.....

133 NOTICE OF COMMENCEMENT

134 State of....
 135 County of....

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

- 141 1. Description of property: ...(legal description of the
- 142 property, and street address if available)....
- 143 2. General description of improvement:.....
- 144 3. Owner information (A contracting party who is a lessee
- 145 is an owner as defined under section 713.01(23), Florida
- 146 Statutes, and must be listed here as the owner):.....
- 147 a. Name and address:.....
- 148 b. Interest in property:.....
- 149 c. Name and address of fee simple titleholder (if other
- 150 than Owner):.....
- 151 4.a. Contractor: ...(name and address)....
- 152 b. Contractor's phone number:.....
- 153 5. Surety
- 154 a. Name and address:.....
- 155 b. Phone number:.....
- 156 c. Amount of bond: \$.....
- 157 6.a. Lender: ...(name and address)....
- 158 b. Lender's phone number:.....
- 159 7.a. Persons within the State of Florida designated by
- 160 Owner upon whom notices or other documents may be served as
- 161 provided by Section 713.13(1)(a)7., Florida Statutes: ...(name
- 162 and address)....
- 163 b. Phone numbers of designated persons:.....
- 164 8.a. In addition to himself or herself, Owner designates
- 165 of to receive a copy of the Lienor's
- 166 Notice as provided in Section 713.13(1)(b), Florida Statutes.
- 167 b. Phone number of person or entity designated by
- 168 owner:.....

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

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

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

188 ... (Signatory's Title/Office)...

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

195
 196 ... (Signature of Notary Public - State of Florida)...

CS/HB 941

2011

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

198 | Personally Known OR Produced Identification

199 | Type of Identification Produced.....

200 |

201 | Verification pursuant to Section 92.525, Florida Statutes.

202 |

203 | Under penalties of perjury, I declare that I have read the

204 | foregoing and that the facts stated in it are true to the best

205 | of my knowledge and belief.

206 |

207 | ...(Signature of Natural Person Signing Above)...

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