

CS/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

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 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

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.

- 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 or lessee information if the lessee
- 145 contracted for the improvement:.....
- 146 a. Name and address:.....
- 147 b. Interest in property:.....
- 148 c. Name and address of fee simple titleholder (if
- 149 different from owner listed above ~~other than Owner~~):.....
- 150 4.a. Contractor: ...(name and address)....
- 151 b. Contractor's phone number:.....
- 152 5. Surety: ... (if applicable, a copy of the payment bond
- 153 is attached) ...
- 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 should not be before completion of construction
 171 and final payment to the contractor, but will be ~~is~~ 1 year from
 172 the date of recording unless a different date is specified).....

173
 174 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 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 Under penalty of perjury, I declare that I have read the
 185 foregoing notice of commencement and that the facts stated
 186 therein are true to the best of my knowledge and belief.

187
 188 ... (Signature of Owner or Owner's or Lessee's Authorized
 189 Officer/Director/Partner/Manager) ...

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

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

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197 | executed)....

198

199 | ... (Signature of Notary Public - State of Florida)...

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

201 | Personally Known OR Produced Identification

202 | Type of Identification Produced.....

203

204 | ~~Verification pursuant to Section 92.525, Florida Statutes.~~

205

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

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

208 | ~~of my knowledge and belief.~~

209

210 | ~~... (Signature of Natural Person Signing Above)...~~

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