

By Senator Joyner

19-00928-13

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1                   A bill to be entitled  
2           An act relating to construction liens; amending s.  
3           713.015, F.S.; revising a mandatory notice provision  
4           in contracts between owners and contractors; amending  
5           s. 713.06, F.S.; revising notice requirements relating  
6           to liens of persons not in privity; amending s.  
7           713.13, F.S.; deleting a provision classifying certain  
8           payments as improper payments; revising the notice of  
9           commencement form to conform to changes made by the  
10          act and to provide an additional warning; amending s.  
11          713.135, F.S.; revising the building permit card and  
12          application to conform to changes made by the act and  
13          to provide an additional warning; providing an  
14          effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18           Section 1. Subsection (1) of section 713.015, Florida  
19           Statutes, is amended to read:

20           713.015 Mandatory provisions for direct contracts.—

21           (1) Any direct contract greater than \$2,500 between an  
22           owner and a contractor, related to improvements to real property  
23           consisting of single or multiple family dwellings up to and  
24           including four units, must contain the following notice  
25           provision printed in no less than 12-point, capitalized,  
26           boldfaced type on the front page of the contract or on a  
27           separate page, signed by the owner and dated:

28  
29 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-

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30 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR  
 31 PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A  
 32 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY.  
 33 THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR  
 34 OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-  
 35 SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED  
 36 MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE  
 37 ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR  
 38 CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR  
 39 PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE  
 40 SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER  
 41 SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED  
 42 TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS  
 43 CONTRACT THAT BEFORE EACH ~~ANY~~ PAYMENT IS MADE, YOUR CONTRACTOR  
 44 IS REQUIRED TO PROVIDE YOU AND YOUR LENDER WITH A NOTARIZED LIST  
 45 OF PERSONS OR COMPANIES, INCLUDING ADDRESSES AND PHONE NUMBERS,  
 46 THAT ARE OWED MONEY FOR THE PAYMENT BEING MADE, AND TO PROVIDE  
 47 YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY  
 48 THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S  
 49 CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU  
 50 CONSULT AN ATTORNEY.

51  
 52 Signed: ... (Contractor) ..... (Date) ...

53 Signed: ... (Owner) ..... (Date) ...

54 Section 2. Paragraph (a) of subsection (2) of section  
 55 713.06, Florida Statutes, is amended to read:

56 713.06 Liens of persons not in privity; proper payments.—

57 (2) (a) All lienors under this section, except laborers, as  
 58 a prerequisite to perfecting a lien under this chapter and

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59 recording a claim of lien, must serve a notice on the owner  
60 setting forth the lienor's name and address, a description  
61 sufficient for identification of the real property, and the  
62 nature of the services or materials furnished or to be  
63 furnished. A sub-subcontractor or a materialman to a  
64 subcontractor must serve a copy of the notice on the contractor  
65 as a prerequisite to perfecting a lien under this chapter and  
66 recording a claim of lien. A materialman to a sub-subcontractor  
67 must serve a copy of the notice to owner on the contractor as a  
68 prerequisite to perfecting a lien under this chapter and  
69 recording a claim of lien. A materialman to a sub-subcontractor  
70 shall serve the notice to owner on the subcontractor if the  
71 materialman knows the name and address of the subcontractor. The  
72 notice must be served before commencing, ~~or not later than 45~~  
73 ~~days after commencing,~~ to furnish his or her labor, services, or  
74 materials or before the date on which payment is due to the  
75 materialman for furnishing his or her labor, services, or  
76 materials, but, in any event, before the date of the owner's  
77 ~~disbursement of the final payment after the contractor has~~  
78 ~~furnished the affidavit under subparagraph (3)(d)1.~~ The notice  
79 must be served regardless of the method of payments by the  
80 owner, whether proper or improper, and does not give to the  
81 lienor serving the notice any priority over other lienors in the  
82 same category; and the failure to serve the notice, or to timely  
83 serve it, is a complete defense to enforcement of a lien by any  
84 person. The serving of the notice does not dispense with  
85 recording the claim of lien. The notice is not a lien, cloud, or  
86 encumbrance on the real property nor actual or constructive  
87 notice of any of them.

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88 Section 3. Paragraphs (c) and (d) of subsection (1) of  
 89 section 713.13, Florida Statutes, are amended to read:

90 713.13 Notice of commencement.—

91 (1)

92 (c) If the contract between the owner and a contractor  
 93 named in the notice of commencement expresses a period of time  
 94 for completion for the construction of the improvement greater  
 95 than 1 year, the notice of commencement must state that it is  
 96 effective for a period of 1 year plus any additional period of  
 97 time. ~~Any payments made by the owner after the expiration of the~~  
 98 ~~notice of commencement are considered improper payments.~~

99 (d) A notice of commencement must be in substantially the  
 100 following form:

101 Permit No. .... Tax Folio No. ....

102 NOTICE OF COMMENCEMENT

103 State of ....

104 County of ....

105 The undersigned hereby gives notice that improvement will be  
 106 made to certain real property, and in accordance with Chapter  
 107 713, Florida Statutes, the following information is provided in  
 108 this Notice of Commencement.

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

111 2. General description of improvement: .....

112 3. Owner information or Lessee information if the Lessee  
 113 contracted for the improvement:

114 a. Name and address: .....

115 b. Interest in property: .....

116 c. Name and address of fee simple titleholder (if different

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117 from Owner listed above): .....

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

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

120 5. Surety (if applicable, a copy of the payment bond is

121 attached):

122 a. Name and address: .....

123 b. Phone number: .....

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

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

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

127 7. Persons within the State of Florida designated by Owner

128 upon whom notices or other documents may be served as provided

129 by Section 713.13(1) (a)7., Florida Statutes:

130 a. Name and address: .....

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

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

133 .....of ..... to receive a copy of the Lienor's Notice as

134 provided in Section 713.13(1) (b), Florida Statutes.

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

136 .....

137 9. Expiration date of notice of commencement (the

138 expiration date will be 1 year from the date of recording unless

139 a different date is specified) .....

140 WARNING TO OWNER: IT IS YOUR RESPONSIBILITY TO RECORD A

141 NOTICE OF COMMENCEMENT WITH THE CLERK'S OFFICE, INCLUDING ANY

142 AMENDMENTS TO EXTEND THE EFFECTIVE PERIOD, CHANGE ERRONEOUS

143 INFORMATION IN THE ORIGINAL NOTICE, OR ADD INFORMATION THAT WAS

144 OMITTED FROM THE ORIGINAL NOTICE. HOWEVER, IN ORDER TO CHANGE

145 CONTRACTORS, A NEW NOTICE OF COMMENCEMENT OR NOTICE OF

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146 RECOMMENCEMENT MUST BE EXECUTED AND RECORDED. ~~ANY PAYMENTS MADE~~  
 147 ~~BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT~~  
 148 ~~ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I,~~  
 149 ~~SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING~~  
 150 ~~TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.~~ A NOTICE OF  
 151 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE  
 152 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT  
 153 WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR  
 154 RECORDING YOUR NOTICE OF COMMENCEMENT.

155       ... (Signature of Owner or Lessee, or Owner's or Lessee's  
 156 Authorized Officer/Director/Partner/Manager)...

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

158       The foregoing instrument was acknowledged before me this  
 159 .... day of....., ... (year)...., by ... (name of person)... as  
 160 ... (type of authority, ..e.g. officer, trustee, attorney in  
 161 fact)... for ... (name of party on behalf of whom instrument was  
 162 executed)....

163       ... (Signature of Notary Public - State of Florida)...

164       ... (Print, Type, or Stamp Commissioned Name of Notary  
 165 Public)...

166       Personally Known .... OR Produced Identification ....

167       Type of Identification Produced .....

168       Section 4. Paragraph (a) of subsection (1) and paragraph  
 169 (a) of subsection (6) of section 713.135, Florida Statutes, are  
 170 amended to read:

171       713.135 Notice of commencement and applicability of lien.-

172       (1) When any person applies for a building permit, the  
 173 authority issuing such permit shall:

174       (a) Print on the face of each permit card in no less than

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175 14-point, capitalized, boldfaced type: “WARNING TO OWNER: IT IS  
 176 YOUR RESPONSIBILITY TO RECORD A NOTICE OF COMMENCEMENT WITH THE  
 177 CLERK’S OFFICE, INCLUDING ANY AMENDMENTS TO EXTEND THE EFFECTIVE  
 178 PERIOD, CHANGE ERRONEOUS INFORMATION IN THE ORIGINAL NOTICE, OR  
 179 ADD INFORMATION THAT WAS OMITTED FROM THE ORIGINAL NOTICE.  
 180 HOWEVER, IN ORDER TO CHANGE CONTRACTORS, A NEW NOTICE OF  
 181 COMMENCEMENT OR NOTICE OF RECOMMENCEMENT MUST BE EXECUTED AND  
 182 RECORDED. YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY  
 183 ~~RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.~~ A  
 184 NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB  
 185 SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN  
 186 FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE  
 187 RECORDING YOUR NOTICE OF COMMENCEMENT.”

188 (6) (a) In addition to any other information required by the  
 189 authority issuing the permit, the building permit application  
 190 must be in substantially the following form:

Tax Folio No. ....

BUILDING PERMIT APPLICATION

193 Owner’s Name .....

194 Owner’s Address .....

195 Fee Simple Titleholder’s Name (If other than owner) ....

196 Fee Simple Titleholder’s Address (If other than owner) .....

197 City .....

198 State ..... Zip....

199 Contractor’s Name .....

200 Contractor’s Address .....

201 City .....

202 State ..... Zip....

203 Job Name .....

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204 Job Address .....

205 City ..... County.....

206 Legal Description ....

207 Bonding Company .....

208 Bonding Company Address .....

209 City ..... State.....

210 Architect/Engineer's Name .....

211 Architect/Engineer's Address .....

212 Mortgage Lender's Name .....

213 Mortgage Lender's Address .....

214 Application is hereby made to obtain a permit to do the

215 work and installations as indicated. I certify that no work or

216 installation has commenced prior to the issuance of a permit and

217 that all work will be performed to meet the standards of all

218 laws regulating construction in this jurisdiction. I understand

219 that a separate permit must be secured for ELECTRICAL WORK,

220 PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS,

221 TANKS, and AIR CONDITIONERS, etc.

222 OWNER'S AFFIDAVIT: I certify that all the foregoing information

223 is accurate and that all work will be done in compliance with

224 all applicable laws regulating construction and zoning.

225 WARNING TO OWNER: IT IS YOUR RESPONSIBILITY TO RECORD

226 A NOTICE OF COMMENCEMENT WITH THE CLERK'S OFFICE,

227 INCLUDING ANY AMENDMENTS TO EXTEND THE EFFECTIVE

228 PERIOD, CHANGE ERRONEOUS INFORMATION IN THE ORIGINAL

229 NOTICE, OR ADD INFORMATION THAT WAS OMITTED FROM THE

230 ORIGINAL NOTICE. HOWEVER, IN ORDER TO CHANGE

231 CONTRACTORS, A NEW NOTICE OF COMMENCEMENT OR NOTICE OF

232 RECOMMENCEMENT MUST BE EXECUTED AND RECORDED. YOUR



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233       ~~FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT~~  
 234       ~~IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR~~  
 235       ~~PROPERTY.~~ A NOTICE OF COMMENCEMENT MUST BE RECORDED  
 236       AND POSTED ON THE JOB SITE BEFORE THE FIRST  
 237       INSPECTION.  
 238       IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR  
 239       LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR  
 240       RECORDING YOUR NOTICE OF COMMENCEMENT.

241   ...(Signature of Owner or Agent)...

242   ...(including contractor)...

243 STATE OF FLORIDA

244 COUNTY OF ....

245       Sworn to (or affirmed) and subscribed before me this  
 246       ....day of...., ...(year)..., by ...(name of person making  
 247       statement)....

248   ...(Signature of Notary Public - State of Florida)...

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

250       Personally Known .... OR Produced Identification ....

251       Type of Identification Produced .....

252   ...(Signature of Contractor)...

253 STATE OF FLORIDA

254 COUNTY OF ....

255       Sworn to (or affirmed) and subscribed before me this ....  
 256       day of...., ...(year)..., by ...(name of person making  
 257       statement)....

258   ...(Signature of Notary Public - State of Florida)...

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

260       Personally Known ....OR Produced Identification ....

261       Type of Identification Produced .....

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262 (Certificate of Competency Holder)  
263 Contractor's State Certification or Registration No. ....  
264 Contractor's Certificate of Competency No. ....  
265 APPLICATION APPROVED BY  
266 .....Permit Officer  
267 Section 5. This act shall take effect July 1, 2013.