

2007 Construction Lien and Bond Changes

HB 1285 by Altman

Effective Date: July 1, 2007

By Deborah Lawson & David Ramba

For the NACM Improved Construction Practices Committee of Florida

HB 1285 began the 2007 Legislative Session as the Florida Bar Construction Law Committee's legislation to clean up miscellaneous provisions of the lien and bond laws. It was a consensus product that had been worked on for several years prior to being introduced as a bill. It was amended during session to include additional provisions advocated by the industry and consumer advocates.

It is important to note that the bill becomes effective on July 1, 2007, if acted upon favorably by the Governor. The consumer advocate provisions in the bill made modifications to several statutory forms, marked below with an asterisk and attached. It will be critical to get these changes out to the industry quickly so that they can remain compliant with the law.

Specific changes include the following:

1. Clarifies that the bond provisions of Chapter 255.05 apply to all public construction projects, even when the contract is with a private entity.
2. Clarifies that a notice to contractor is a "written" notice.
3. Creates a new definition for "final furnishing" and clarifies that such date is not measured by the issuance of a certificate of occupancy or certificate of final completion, and does not include the furnishing of corrective work or materials.
4. Amends the definition of "furnish materials" with respect to rental equipment, providing that delivery of rental equipment to the site of improvement is prima facie evidence of the period of actual use from the date of delivery through the time equipment is last available for use or two business days after the lessor receives written notice to pick up the equipment.
5. Requires that notices, demands and requests required under the lien law must be in writing (except for a demand or designation for the application of money to a materials account under s. 713.14).
- *6. Amends the mandatory contract provisions requirements of s. 713.015. The changes exempt direct contracts of \$2,500 or less from the requirements, reduce the type size requirement from 14 point to 12 point, and allow the contract warning to be on the front page of the contract or, if the contract is oral or implied, the notice shall be on a separate page which references the contract and is signed by the owner and dated. The language of the mandatory contract provision has also been modified. **The new form is attached.**
7. Provides that the failure to give the mandatory contract warning does not bar the enforcement of a lien against a person who has not been adversely affected.
8. Clarifies that an owner and a contractor must agree to a contract that requires the contractor to furnish a payment bond.
9. Clarifies that the payment and recommencement procedures contained in s. 713.07(4) apply when construction ceases or when a direct contract is terminated.
10. Provides that a claim of lien may be prepared by the lienor or the lienor's employee or attorney and shall be signed and sworn to or affirmed by the lienor or the lienor's agent acquainted with the facts stated therein. Also makes other minor technical changes to s. 713.08.

- *11. Amends the notice of commencement form (**see attached**) to add a warning to the owner and to specify that the owner must sign the notice of commencement. Replaces the former notary jurat with an acknowledgment.
- 12. Provides that a notice of commencement can be amended during the effective period to extend the effective date, change erroneous information or add information.
- 13. Provides that a new notice of commencement or a notice of recommencement must be executed and recorded in order to change contractors.
- 14. Provides that an amended notice of commencement must identify the official record book and page of the original notice of commencement, and must be served by the owner upon the contractor and each lienor who has given notice before or within 30 days after the date the amended notice is recorded.
- *15. Reduces the type from 18 to 14 point for the owner warning on the building permit card and amends the warning language. **See attached.**
- *16. Amends the owner warnings on the statutory building permit application form. **See attached.**
- *17. Makes technical and clarifying changes to the demand for sworn statement of account provisions in s. 713.16. If you serve demands for sworn statements of account or responses to them, you should review the new provisions and update your forms accordingly.
- 18. Makes technical formatting changes to the service provisions of s. 713.18 and provides for actual delivery upon a limited liability company to be made by delivery to a member or manager.
- 19. Clarifies that a lien expires one year after recording, or one year after the recording of an amended claim of lien that shows a later date of final furnishing.
- 20. Clarifies provisions for prevailing party attorneys fees in cases of fraud or collusion.
- 21. Repeals Section 713.36 which contains obsolete effective date provisions for 1963 lien law changes.

REVISED MANDATORY PROVISION FOR RESIDENTIAL CONSTRUCTION CONTRACTS EFFECTIVE 7/1/2007

713.015 Mandatory provisions for direct contracts.--Any direct contract greater than \$2,500 between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including four units, must contain the following provision printed in no less than 12-point, capitalized, boldfaced type on the front page of the contract:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES,) THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

NOTE: This provision is not required if the owner of the property is a contractor licensed pursuant to Chapter 489 or is a developer, or if the direct contract is for \$2,500 or less. If the contract is oral or implied, this warning must be provided in a separate document that is signed by the owner and dated.

This Instrument Prepared By:
Name _____
Address _____

Permit No. _____

Tax Folio No. _____

NOTICE OF COMMENCEMENT

STATE OF _____,
COUNTY OF _____.

THE UNDERSIGNED hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

- 1. Description of property: (legal description of property, and street address if available)
- 2. General description of improvement:
- 3. Owner information
 - a. Name and address:
 - b. Interest in property:
 - c. Name and address of fee simple titleholder (if other than owner):
- 4. Contractor:
 - a. Name and address:
 - b. Phone number:
- 5. Surety
 - a. Name and address:
 - b. Amount of bond \$ _____.
 - c. Phone number:
- 6. Lender
 - a. Name and address:
 - b. Phone number:
- 7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:
 - a. Name and address:
 - b. Phone number:
- 8. In addition to himself, Owner designates the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:
 - a. Name and address:
 - b. Phone number:
- 9. Expiration date of notice of commencement (the expiration date is 1 year from the date of recording unless a different date is specified) _____.

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

Signature of Owner or Owner's Authorized Officer/Director
Partner/Manager

Signatory's Title/Office

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

Signature of Notary Public – State of Florida
Print, Type, or Stamp Commissioned Name of Notary Public
Commission Number

Personally Known ___ or Produced Identification _____

Verification Pursuant to Section 92.525, Florida Statutes

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

Signature of Natural Person Signing Above

NEW WARNING FOR BUILDING PERMIT CARD
(Shall be in no less than 14-point, boldfaced type)

“WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.”

**NEW WARNING FOR STATUTORY BUILDING PERMIT
APPLICATION FORM**

(No font size is specified in statute)

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION.

IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.