



CHAMBER ACTION

The Committee on Business Regulation recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to consumer protection in the construction lien law; creating s. 713.015, F.S.; providing mandatory contract provisions for residential construction contracts; amending s. 713.06, F.S.; providing an additional warning statement on a notice to owner; providing a form for a contractor's final payment affidavit; amending s. 713.08, F.S.; providing a warning statement on a claim of lien; amending s. 713.135, F.S.; requiring the lien law summary to contain an explanation of owners' rights; requiring the issuing authority to mail the lien law summary to the owner; amending s. 713.31, F.S.; requiring a prosecuting entity to provide a copy of the charging document to the Department of Business and Professional Regulation; amending s. 713.345, F.S.; providing permissive inferences that a person knowingly and intentionally failed to properly apply construction payments; requiring a prosecuting entity to provide a copy of the charging document to the Department of Business and



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29 Professional Regulation; amending s. 713.3471, F.S.;
30 requiring lenders to give certain notices regarding direct
31 loan disbursements to borrowers; amending s. 713.35, F.S.;
32 requiring a prosecuting entity to provide a copy of the
33 charging document to the Department of Business and
34 Professional Regulation; providing effective dates.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 713.015, Florida Statutes, is created
39 to read:

40 713.015 Mandatory provisions for direct contracts.--Any
41 direct contract between an owner and a contractor, related to
42 improvements to real property consisting of single or multiple
43 family dwellings up to and including four units, must contain
44 the following provision printed in no less than 18-point,
45 capitalized, boldfaced type:

46
47 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-
48 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR
49 PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO
50 ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS
51 CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A
52 SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS,
53 OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED
54 PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR
55 PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
56 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY



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57 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED
 58 YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR,
 59 MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A
 60 SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION
 61 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A
 62 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

63 Section 2. Paragraph (c) of subsection (2) of section
 64 713.06, Florida Statutes, is amended to read:

65 713.06 Liens of persons not in privity; proper payments.--

66 (2)

67 (c) The notice may be in substantially the following form
 68 and must include the information and the warning contained in
 69 the following form:

70
 71 WARNING! FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID
 72 CONTRACTORS, SUBCONTRACTORS, AND MATERIAL SUPPLIERS TO FILE
 73 LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT
 74 IN FULL.

75
 76 ~~WARNING TO OWNER:~~ UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE
 77 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND
 78 YOUR PAYING TWICE.

79
 80 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
 81 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

82
 83 NOTICE TO OWNER
 84



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85 To ... (Owner's name and address) ...

86

87 The undersigned hereby informs you that he or she has furnished
88 or is furnishing services or materials as follows:

89 ... (General description of services or materials) ... for the
90 improvement of the real property identified as ... (property
91 description) ... under an order given by_____.

92

93 Florida law prescribes the serving of this notice and restricts
94 your right to make payments under your contract in accordance
95 with Section 713.06, Florida Statutes.

96

97 IMPORTANT INFORMATION FOR
98 YOUR PROTECTION

99

100 Under Florida's laws, those who work on your property or
101 provide materials and are not paid have a right to enforce their
102 claim for payment against your property. This claim is known as
103 a construction lien.

104 If your contractor fails to pay subcontractors or material
105 suppliers or neglects to make other legally required payments,
106 the people who are owed money may look to your property for
107 payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

108

109 PROTECT YOURSELF:

110 --RECOGNIZE that this Notice to Owner may result in a lien
111 against your property unless all those supplying a Notice to
112 Owner have been paid.



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141 become due each for labor, services, or materials furnished. The
142 affidavit must be in substantially the following form:

144 CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

145 State of Florida

146 County of _____

147 Before me, the undersigned authority, personally appeared (name
148 of affiant), who, after being first duly sworn, deposes and says
149 of his or her personal knowledge the following:

150 1. He or she is the (title of affiant), of (name of
151 contractor's business), which does business in the State of
152 Florida, hereinafter referred to as the "Contractor."

153 2. Contractor, pursuant to a contract with (name of
154 owner), hereinafter referred to as the "Owner," has furnished or
155 caused to be furnished labor, materials, and services for the
156 construction of certain improvements to real property as more
157 particularly set forth in said contract.

158 3. This affidavit is executed by the Contractor in
159 accordance with section 713.06 of the Florida Statutes for the
160 purposes of obtaining final payment from the Owner in the amount
161 of \$ _____.

162 4. All work to be performed under the contract has been
163 fully completed, and all lienors under the direct contract have
164 been paid in full, except the following listed lienors:

165 NAME OF LIENOR _____ AMOUNT DUE _____

166 Signed, sealed, and delivered this day of,

167 By _____ (name of affiant)

168 _____ (title of affiant)



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197 direct contract at the time the affidavit is given is sufficient
198 to pay them and lienors giving notice, and shall deduct the
199 amounts so paid from the balance due the contractor. Lienors
200 listed in said affidavit not giving notice, whose 45-day notice
201 time has not expired, shall be paid in full or pro rata, as
202 appropriate, from any balance then remaining due the contractor;
203 but no lienor whose notice time has expired shall be paid by the
204 owner or by any other person except the person with whom that
205 lienor has a contract.

206 3. If the balance due is not sufficient to pay in full all
207 lienors listed in the affidavit and entitled to payment from the
208 owner under this part and other lienors giving notice, the owner
209 shall pay no money to anyone until such time as the contractor
210 has furnished him or her with the difference; however, if the
211 contractor fails to furnish the difference within 10 days from
212 delivery of the affidavit or notice from the owner to the
213 contractor to furnish the affidavit, the owner shall determine
214 the amount due each lienor and shall disburse to them the
215 amounts due from him or her on a direct contract in accordance
216 with the procedure established by subsection (4).

217 4. The owner shall have the right to rely on the
218 contractor's affidavit given under this paragraph in making the
219 final payment, unless there are lienors giving notice who are
220 not listed in the affidavit. If there are lienors giving notice
221 who are not so listed, the owner may pay such lienors and any
222 persons listed in the affidavit that are entitled to be paid by
223 the owner under subparagraph (d)2. and shall thereupon be
224 discharged of any further responsibility under the direct



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225 | contract, except for any balance that may be due to the
226 | contractor.

227 | 5. The owner shall retain the final payment due under the
228 | direct contract that shall not be disbursed until the
229 | contractor's affidavit under subparagraph (d)1. has been
230 | furnished to the owner.

231 | 6. When final payment has become due to the contractor and
232 | the owner fails to withhold as required by subparagraph (d)5.,
233 | the property improved shall be subject to the full amount of all
234 | valid liens of which the owner has notice at the time the
235 | contractor furnishes his or her affidavit.

236 | Section 4. Subsection (3) of section 713.08, Florida
237 | Statutes, is amended to read:

238 | 713.08 Claim of lien.--

239 | (3) The claim of lien shall be sufficient if it is in
240 | substantially the following form, and includes the following
241 | warning:

242 | WARNING!

243 | THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS
244 | BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE
245 | OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME
246 | PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE
247 | DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND
248 | VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN
249 | COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

250 | CLAIM OF LIEN

251 | State of _____



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253 County of _____
 254 Before me, the undersigned notary public, personally
 255 appeared _____, who was duly sworn and says that she or he is
 256 (the lienor herein) (the agent of the lienor herein _____),
 257 whose address is _____; and that in accordance with a contract
 258 with _____, lienor furnished labor, services, or materials
 259 consisting of _____ on the following described real property in
 260 _____ County, Florida:

261
 262 (Legal description of real property)

263
 264 owned by _____ of a total value of \$_____, of which there
 265 remains unpaid \$_____, and furnished the first of the items on
 266 _____, ... (year) ..., and the last of the items on _____, ...
 267 (year) ...; and (if the lien is claimed by one not in privity
 268 with the owner) that the lienor served her or his notice to
 269 owner on _____, ... (year) ..., by _____; and (if required)
 270 that the lienor served copies of the notice on the contractor on
 271 _____, ... (year) ..., by _____ and on the subcontractor,
 272 _____, on _____, ... (year) ..., by _____.

273 ... (Signature) ...

274
 275 Sworn to (or affirmed) and subscribed before me this _____
 276 day of _____, ... (year) ..., by ... (name of person making
 277 statement)

278
 279 ... (Signature of Notary Public - State of Florida) ...



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280 ... (Print, Type, or Stamp Commissioned Name of Notary Public)
281 ...

282
283 Personally Known _____ OR Produced Identification _____

284
285 Type of Identification Produced _____

286
287 However, the negligent inclusion or omission of any information
288 in the claim of lien which has not prejudiced the owner does not
289 constitute a default that operates to defeat an otherwise valid
290 lien.

291 Section 5. Effective January 1, 2004, paragraphs (b) and
292 (c) of subsection (1) of section 713.135, Florida Statutes, are
293 amended to read:

294 713.135 Notice of commencement and applicability of
295 lien.--

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

298 (b) Provide the applicant and the owner of the real
299 property upon which improvements are to be constructed with a
300 printed statement stating that the right, title, and interest of
301 the person who has contracted for the improvement may be subject
302 to attachment under the Construction Lien Law. The Department of
303 Business and Professional Regulation shall furnish, for
304 distribution, the statement described in this paragraph, and the
305 statement must be a summary of the Construction Lien Law and
306 must include an explanation of the provisions of the
307 Construction Lien Law relating to the recording, and the posting



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308 of copies, of notices of commencement and a statement
309 encouraging the owner to record a notice of commencement and
310 post a copy of the notice of commencement in accordance with s.
311 713.13. The statement must also contain an explanation of the
312 owner's rights if a lienor fails to furnish the owner with a
313 notice as provided in s. 713.06(2) and an explanation of the
314 owner's rights as provided in s. 713.22. The authority that
315 issues the building permit must obtain from the Department of
316 Business and Professional Regulation the statement required by
317 this paragraph and must mail that statement to any owner making
318 improvements to real property consisting of a single or multiple
319 family dwelling up to and including 4 units. However, the
320 failure by the authorities to provide the summary does not
321 subject the issuing authority to liability.

322 (c) In addition to providing the owner with the statement
323 as required by paragraph (b), inform each applicant who is not
324 the person whose right, title, and interest is subject to
325 attachment that, as a condition to the issuance of a building
326 permit, the applicant must promise in good faith that the
327 statement will be delivered to the person whose property is
328 subject to attachment.

329 Section 6. Effective January 1, 2004, subsection (3) of
330 section 713.31, Florida Statutes, is amended to read:

331 713.31 Remedies in case of fraud or collusion.--

332 (3) Any person who willfully files a fraudulent lien, as
333 defined in this section, commits a felony of the third degree,
334 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
335 A state attorney or the statewide prosecutor, upon the filing of



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336 an indictment or information against a contractor,
337 subcontractor, or sub-subcontractor which charges such person
338 with a violation of this subsection, shall forward a copy of the
339 indictment or information to the Department of Business and
340 Professional Regulation. The Department of Business and
341 Professional Regulation shall promptly open an investigation
342 into the matter, and if probable cause is found, shall furnish a
343 copy of any investigative report to the state attorney or
344 statewide prosecutor who furnished a copy of the indictment or
345 information and to the owner of the property which is the
346 subject of the investigation.

347 Section 7. Section 713.345, Florida Statutes, is amended
348 to read:

349 713.345 Moneys received for real property improvements;
350 penalty for misapplication.--

351 (1)(a) A person, firm, or corporation, or an agent,
352 officer, or employee thereof, who receives any payment on
353 account of improving real property must apply such portion of
354 any payment to the payment of all amounts then due and owing for
355 services and labor which were performed on, or materials which
356 were furnished for, such improvement prior to receipt of the
357 payment. This paragraph does not prevent any person from
358 withholding any payment, or any part of a payment, in accordance
359 with the terms of a contract for services, labor, or materials,
360 or pursuant to a bona fide dispute regarding the amount due, if
361 any, for such services, labor, or materials.



362 (b) Any person who knowingly and intentionally fails to
 363 comply with paragraph (a) is guilty of misapplication of
 364 construction funds, punishable as follows:

365 1. If the amount of payments misapplied have an aggregate
 366 value of \$100,000 or more, the violator is guilty of a felony of
 367 the first degree, punishable as provided in s. 775.082, s.
 368 775.083, or s. 775.084.

369 2. If the amount of payments misapplied have an aggregate
 370 value of \$20,000 or more but less than \$100,000, the violator is
 371 guilty of a felony of the second degree, punishable as provided
 372 in s. 775.082, s. 775.083, or s. 775.084.

373 3. If the amount of payments misapplied have an aggregate
 374 value of less than \$20,000, the violator is guilty of a felony
 375 of the third degree, punishable as provided in s. 775.082, s.
 376 775.083, or s. 775.084.

377 (c) A permissive inference that a person knowingly and
 378 intentionally misapplied construction funds in violation of
 379 subsection (1) is created when a valid lien has been recorded
 380 against the property of an owner for labor, services, or
 381 materials; the person who ordered the labor, services, or
 382 materials has received sufficient funds to pay for such labor,
 383 services, or materials; and the person has failed, for a period
 384 of at least 45 days from receipt of the funds, to remit
 385 sufficient funds to pay for such labor, services, or materials,
 386 except for funds withheld pursuant to paragraph (1)(a).

387 (d) A state attorney or the statewide prosecutor, upon the
 388 filing of an indictment or information against a contractor,
 389 subcontractor, or sub-subcontractor which charges such person



390 with a violation of paragraph (b), shall forward a copy of the
 391 indictment or information to the Department of Business and
 392 Professional Regulation. The Department of Business and
 393 Professional Regulation shall promptly open an investigation
 394 into the matter and, if probable cause is found, shall furnish a
 395 copy of any investigative report to the state attorney or
 396 statewide prosecutor who furnished a copy of the indictment or
 397 information and to the owner of the property which is the
 398 subject of the investigation.

399 (2) ~~The provisions of~~ This section does ~~de~~ not apply to
 400 mortgage bankers or their agents, servants, or employees for
 401 their acts in the usual course of the business of lending or
 402 disbursing mortgage funds.

403 Section 8. Present subsections (1) and (2) of section
 404 713.3471, Florida Statutes, are renumbered as subsections (2)
 405 and (3), respectively, and a new subsection (1) is added to said
 406 section, to read:

407 713.3471 Lender responsibilities with construction
 408 loans.--

409 (1) Prior to a lender making any loan disbursement
 410 directly to the owner, or jointly to the owner and any other
 411 party, the lender shall give the following written notice to the
 412 borrowers in bold type larger than any other type on the page:

414 WARNING!

415 YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU
 416 AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY. TO
 417 PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME



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418 LABOR, SERVICES, OR MATERIALS USED IN MAKING THE
419 IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE
420 YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM EACH LIENOR
421 WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME YOU MAKE A
422 PAYMENT TO YOUR CONTRACTOR.

423 Section 9. Effective January 1, 2004, section 713.35,
424 Florida Statutes, is amended to read:

425 713.35 Making or furnishing false statement.--Any person,
426 firm, or corporation who knowingly and intentionally makes or
427 furnishes to another person, firm, or corporation, a written
428 statement in the form of an affidavit, whether or not under
429 oath, containing false information about the payment status of
430 subcontractors, sub-subcontractors, or suppliers in connection
431 with the improvement of real property in this state, knowing
432 that the one to whom it was furnished might rely on it, and the
433 one to whom it was furnished will part with draw payments or
434 final payment relying on the truth of such statement as an
435 inducement to do so is guilty of a felony of the third degree,
436 punishable as provided in s. 775.082 or s. 775.083. A state
437 attorney or the statewide prosecutor, upon the filing of an
438 indictment or information against a contractor, subcontractor,
439 or sub-subcontractor which charges such person with a violation
440 of this section, shall forward a copy of the indictment or
441 information to the Department of Business and Professional
442 Regulation. The Department of Business and Professional
443 Regulation shall promptly open an investigation into the matter
444 and, if probable cause is found, shall furnish a copy of any
445 investigative report to the state attorney or statewide



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446 prosecutor who furnished a copy of the indictment or information
447 and to the owner of the property which is the subject of the
448 investigation.

449 Section 10. Except as otherwise provided herein, this act
450 shall take effect October 1, 2003.