

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

29 | 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR
 30 | PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A
 31 | RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY.
 32 | THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR
 33 | OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-
 34 | SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED
 35 | MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE
 36 | ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR
 37 | CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR
 38 | PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE
 39 | SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER
 40 | SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED
 41 | TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS
 42 | CONTRACT THAT BEFORE EACH ~~ANY~~ PAYMENT IS MADE, YOUR CONTRACTOR
 43 | IS REQUIRED TO PROVIDE YOU AND YOUR LENDER WITH A NOTARIZED LIST
 44 | OF PERSONS OR COMPANIES, INCLUDING ADDRESSES AND PHONE NUMBERS,
 45 | THAT ARE OWED MONEY FOR THE PAYMENT BEING MADE, AND TO PROVIDE
 46 | YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY
 47 | THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S
 48 | CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU
 49 | CONSULT AN ATTORNEY.

50 | Signed: ... (Contractor) ... (Date) ...

51 | Signed: ... (Owner) ... (Date) ...

52 | Section 2. Paragraph (a) of subsection (2) of section
 53 | 713.06, Florida Statutes, is amended to read:

54 | 713.06 Liens of persons not in privity; proper payments.-

55 | (2) (a) All lienors under this section, except laborers, as
 56 | a prerequisite to perfecting a lien under this chapter and

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

85 | notice of any of them.

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

88 | 713.13 Notice of commencement.—

89 | (1)

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

97 | (d) A notice of commencement must be in substantially the
98 | following form:

99 | Permit No..... Tax Folio No.....

100 | NOTICE OF COMMENCEMENT

101 | State of....

102 | County of....

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

107 | 1. Description of property: ...(legal description of the
108 | property, and street address if available)....

109 | 2. General description of improvement:.....

110 | 3. Owner information or Lessee information if the Lessee
111 | contracted for the improvement:

112 | a. Name and address:.....

113 | b. Interest in property:.....

114 | c. Name and address of fee simple titleholder (if

115 | different from Owner listed above):.....

116 | 4.a. Contractor: ...(name and address)....

117 | b. Contractor's phone number:.....

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

119 | attached):

120 | a. Name and address:.....

121 | b. Phone number:.....

122 | c. Amount of bond: \$.....

123 | 6.a. Lender: ...(name and address)....

124 | b. Lender's phone number:.....

125 | 7. Persons within the State of Florida designated by Owner

126 | upon whom notices or other documents may be served as provided

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

128 | a. Name and address:.....

129 | b. Phone numbers of designated persons:.....

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

131 | of to receive a copy of the Lienor's

132 | Notice as provided in Section 713.13(1)(b), Florida Statutes.

133 | b. Phone number of person or entity designated by

134 | owner:.....

135 | 9. Expiration date of notice of commencement (the

136 | expiration date will be 1 year from the date of recording unless

137 | a different date is specified).....

138 | WARNING TO OWNER: IT IS YOUR RESPONSIBILITY TO RECORD A NOTICE

139 | OF COMMENCEMENT WITH THE CLERK'S OFFICE, INCLUDING ANY

140 | AMENDMENTS TO EXTEND THE EFFECTIVE PERIOD, CHANGE ERRONEOUS

141 INFORMATION IN THE ORIGINAL NOTICE, OR ADD INFORMATION THAT WAS
 142 OMITTED FROM THE ORIGINAL NOTICE. HOWEVER, IN ORDER TO CHANGE
 143 CONTRACTORS, A NEW NOTICE OF COMMENCEMENT OR NOTICE OF
 144 RECOMMENCEMENT MUST BE EXECUTED AND RECORDED. ANY PAYMENTS MADE
 145 BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT
 146 ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I,
 147 SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING
 148 TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
 149 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
 150 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
 151 WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR
 152 RECORDING YOUR NOTICE OF COMMENCEMENT.

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

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

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

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

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

163 Personally Known OR Produced Identification

164 Type of Identification Produced.....

165 Section 4. Paragraph (a) of subsection (1) and paragraph
 166 (a) of subsection (6) of section 713.135, Florida Statutes, are
 167 amended to read:

168 713.135 Notice of commencement and applicability of lien.—

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

171 (a) Print on the face of each permit card in no less than
 172 14-point, capitalized, boldfaced type: "WARNING TO OWNER: IT IS
 173 YOUR RESPONSIBILITY TO RECORD A NOTICE OF COMMENCEMENT WITH THE
 174 CLERK'S OFFICE, INCLUDING ANY AMENDMENTS TO EXTEND THE EFFECTIVE
 175 PERIOD, CHANGE ERRONEOUS INFORMATION IN THE ORIGINAL NOTICE, OR
 176 ADD INFORMATION THAT WAS OMITTED FROM THE ORIGINAL NOTICE.
 177 HOWEVER, IN ORDER TO CHANGE CONTRACTORS, A NEW NOTICE OF
 178 COMMENCEMENT OR NOTICE OF RECOMMENCEMENT MUST BE EXECUTED AND
 179 RECORDED. YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY
 180 RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A
 181 NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB
 182 SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN
 183 FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE
 184 RECORDING YOUR NOTICE OF COMMENCEMENT."

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

188 Tax Folio No.....

189 BUILDING PERMIT APPLICATION

190 Owner's Name.....

191 Owner's Address.....

192 Fee Simple Titleholder's Name (If other than owner).....

193 Fee Simple Titleholder's Address (If other than owner).....

194 City

195 State..... Zip.....

196 Contractor's Name.....

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197 Contractor's Address.....

198 City

199 State..... Zip.....

200 Job Name.....

201 Job Address.....

202 City..... County.....

203 Legal Description.....

204 Bonding Company.....

205 Bonding Company Address.....

206 City..... State.....

207 Architect/Engineer's Name.....

208 Architect/Engineer's Address.....

209 Mortgage Lender's Name.....

210 Mortgage Lender's Address.....

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

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

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

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

215 laws regulating construction in this jurisdiction. I understand

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

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

218 TANKS, and AIR CONDITIONERS, etc.

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

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

221 all applicable laws regulating construction and zoning.

222 WARNING TO OWNER: IT IS YOUR RESPONSIBILITY TO RECORD A NOTICE

223 OF COMMENCEMENT WITH THE CLERK'S OFFICE, INCLUDING ANY

224 AMENDMENTS TO EXTEND THE EFFECTIVE PERIOD, CHANGE ERRONEOUS

225 INFORMATION IN THE ORIGINAL NOTICE, OR ADD INFORMATION THAT WAS
 226 OMITTED FROM THE ORIGINAL NOTICE. HOWEVER, IN ORDER TO CHANGE
 227 CONTRACTORS, A NEW NOTICE OF COMMENCEMENT OR NOTICE OF
 228 RECOMMENCEMENT MUST BE EXECUTED AND RECORDED. ~~YOUR FAILURE TO~~
 229 ~~RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE~~
 230 ~~FOR IMPROVEMENTS TO YOUR PROPERTY.~~ A NOTICE OF COMMENCEMENT MUST
 231 BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST
 232 INSPECTION.

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

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

237 ... (including contractor) ...

238 STATE OF FLORIDA

239 COUNTY OF

240 Sworn to (or affirmed) and subscribed before me this
 241 day of, ... (year) ..., by ... (name of person making
 242 statement)

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

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

245 Personally Known OR Produced Identification

246 Type of Identification Produced

247 ... (Signature of Contractor) ...

248 STATE OF FLORIDA

249 COUNTY OF

250 Sworn to (or affirmed) and subscribed before me this
 251 day of, ... (year) ..., by ... (name of person making
 252 statement)

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253 | ...(Signature of Notary Public - State of Florida)...
254 | ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
255 | Personally Known OR Produced Identification
256 | Type of Identification Produced.....
257 | (Certificate of Competency Holder)
258 | Contractor's State Certification or Registration No.....
259 | Contractor's Certificate of Competency No.....
260 | APPLICATION APPROVED BY
261 |Permit Officer
262 | Section 5. This act shall take effect July 1, 2013.