

A bill to be entitled

An act relating to construction liens; amending s. 713.10, F.S.; expanding the methods for lessors to provide notice that the interest of the lessor shall not be subject to liens for improvements made by lessees and providing for a contractor or lienor's right to a verified copy of the provision of the lease prohibiting liability for improvements made by the lessee; amending s. 713.13, F.S. clarifying that a contracting lessee is to sign a Notice of Commencement; providing an effective date.

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

Section 1. Section 713.10, Florida Statutes, is amended to read:

713.10 Extent of liens.—

(1) Except as provided in s. 713.12, a lien under this part shall extend to, and only to, the right, title, and interest of the person who contracts for the improvement as such right, title, and interest exists at the commencement of the improvement or is thereafter acquired in the real property.

(2) When an improvement is made by a lessee in accordance with an agreement between such lessee and her or his lessor, the lien shall extend also to the interest of such lessor. When the lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee, the lessee shall notify the contractor making any such improvements of such provision or provisions in the lease, and the knowing or willful failure of the lessee to provide such notice to the contractor shall render the contract between the lessee and the contractor voidable at the option of the contractor. The interest of the lessor shall not be subject to liens for improvements made by the lessee when:

(a) ~~(1)~~ The lease, or a short form or a memorandum of the lease that contains the specific language set forth in the lease prohibiting such liability, is recorded in the official records of the county in which the premises are located prior to the recording of a notice of commencement for improvements to the premises that are the subject of the lease ~~The lease or a short form thereof is recorded in the clerk's office~~ and the terms of the lease expressly prohibit such liability; or

(b) ~~(2)~~ The terms All of the lease expressly prohibit such liability and a notice advising that leases entered into by a lessor for the rental of premises on a parcel of land prohibit such liability and a notice which sets forth the following is has been recorded by the lessor in the official public records of the county in which the parcel of land is located prior to the recording of a notice of commencement for improvements to the premises that are the subject of the lease and the notice sets forth the following:

1. ~~(a)~~ The name of the lessor.

2. ~~(b)~~ The legal description of the parcel of land to which the notice applies.

~~(c)~~ The specific language contained in the various leases prohibiting such liability.

3. ~~(d)~~ A statement that all leases entered into for premises on the parcel of land expressly prohibit such liability or, if some leases do not prohibit such liability, an identification of the specific leases that do not prohibit such liability and the premises to which those leases apply. The notice shall still be effective and the lessor's interest in a premises on the parcel of land shall not be subject to liens for improvements made by the lessee of such premises even if all of the leases for all of the premises on the parcel of land do not contain the language prohibiting such liability or the language prohibiting such liability varies in the various leases so long as:

46 a. the lease for the specific premises as to which a lien could otherwise be claimed
47 against the lessor's interest expresses that the interest of the lessor shall not be subject to liens for
48 improvements made by the lessee; and

49 b. the leases that do not prohibit such liability are identified in the notice. ~~paragraph (c).~~

50 (c) The lessor may amend the notice from time to time to revise the list of leases that do
51 not prohibit such liability. Any such amendment will be effective as of the date it is recorded
52 and shall not be effective as to any improvements performed under a notice of commencement
53 that is recorded before the amendment.

54 1. Creditors secured by or subsequent purchasers of an interest in the affected parcel, for
55 a valuable consideration and without notice, may rely on the accuracy and correctness of the
56 recorded notice under Subsection 2(b) as of the time they acquired the affected interest. No
57 person shall have a duty to inquire into the terms of any lease affecting the parcel as a condition
58 to relying on the recorded notice. If a lessor willfully misstates the facts in any notice, any lienor
59 who is materially prejudiced by the misstatement in perfecting lien rights against the lessor has a
60 cause of action against the lessor for his or her damages sustained thereby in the amount that the
61 lienor would have been otherwise able to establish as a construction lien against the lessor's
62 interest provided such lienor is otherwise entitled to a lien under this Part I.

63 2. A reference in the recorded notice under Subsection 2(b) to specific leases that do not
64 prohibit such liability shall not be construed to constitute actual or constructive notice of such
65 leases or the interests of the named lessees in the parcel, nor place any party on a duty of further
66 inquiry as to the status of such leases or the interests of such lessees. This paragraph shall not be
67 construed to affect the rights of lienors against the interests of the lessors or lessees referred to in
68 the recorded notice.

69 (d ~~3~~) The lessee is a mobile home owner who is leasing a mobile home lot in a mobile
70 home park from the lessor.

71 (3) Any contractor or lienor under contract to furnish improvements being made by a
72 lessee may serve written demand on the lessor for a copy of the provision in the lease between
73 such lessee and the lessor prohibiting liability for improvements made by the lessee, which copy
74 shall be verified under s. 95.525. The demand must identify the lessee and the premises being
75 improved and must be in a document that is separate from the notice to the owner as provided in
76 Section 713.06(2). The interest of any lessor who does not serve a verified copy of the lease
77 provision within 30 days after demand, or who serves a false or fraudulent copy, shall be subject
78 to a lien under this Part I by the party demanding the verified copy provided such party is (i)
79 otherwise entitled to a lien under this Part I; and (ii) did not otherwise have actual notice that the
80 interest of the lessor is not subject to liens for improvements made by the lessee. The written
81 demand must include the following warning in conspicuous type in substantially the following
82 form:

83 WARNING: YOUR FAILURE TO SERVE THE REQUESTED VERIFIED
84 COPY WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY
85 RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF LIEN
86 OF THE PERSON REQUESTING THE VERIFIED COPY.

87
88 Section 2. Paragraph (a) of subsection (1) of Section 713.13, Florida Statutes, is
89 amended to read:

90 713.13 Notice of commencement.--

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. Pursuant to Section 713.01(23), Florida Statutes, when a lessee contracts for the improvements, the lessee shall be listed as the owner.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

Section 3. Paragraph (d) of subsection (1) of Section 713.13, Florida Statutes, is amended to read:

713.13 Notice of commencement.—

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

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 the property, and street address if available).

2. General description of improvement:

3. Owner (pursuant to Section 713.01(23), Florida Statutes, if the contracting party is a lessee, the lessee shall be listed as the owner) information: .

a. Name and address: .

b. Interest in property: .

- c. Name and address of fee simple titleholder (if other than Owner):
- 4.a. Contractor: (name and address) .
- b. Contractor's phone number:
5. Surety
- a. Name and address:
- b. Phone number:
- c. Amount of bond: \$ _____.
- 6.a. Lender: (name and address) .
- b. Lender's phone number: .
- 7.a. 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: (name and address) .
- b. Phone numbers of designated persons: .
- 8.a. In addition to himself or herself, Owner designates of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.
- b. Phone number of person or entity designated by owner.
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. Pursuant to Section 713.01(23), Florida Statutes, if the contracting party is a lessee, the lessee should sign as the Owner)

(Signatory's Title/Office)

The foregoing instrument was acknowledged before me this day of , (year) , by (name of person) as e.g. officer, trustee, attorney . . . (type of authority, 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)

Personally Known OR Produced Identification
Type of Identification Produced

183 Verification pursuant to Section 92.525, Florida Statutes.

184
185 Under penalties of perjury, I declare that I have read the foregoing and that the
186 facts stated in it are true to the best of my knowledge and belief.

187
188 (Signature of Natural Person Signing Above)

189
190 Section 4. This act shall take effect October 1, 2011.