

Florida's Construction Lien Law

Protect Yourself and Your Investment

According to Florida law, those who work on your property or provide materials, 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 fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, **even if you have paid your contractor in full.**

This means if a lien is filed against your property, it could be sold against your will to pay for labor, materials or other services which your contractor may have failed to pay.

This document explains Florida Statute 713, Part 1, as it pertains to home construction and remodeling, and provides tips on how you can avoid construction liens on your property.

Protecting Yourself

If you hire a contractor and the improvements cost more than \$2,500, you should know the following:

- You may be liable if you pay your contractor and he then fails to pay his suppliers or contractors. There is a way to protect yourself: A Release of Lien is a written statement that removes your property from the threat of lien. Before you make any payment, be sure you receive this waiver from suppliers and subcontractors covering the materials used and work performed.
- Request from the contractor, via certified or registered mail, a list of all subcontractors and suppliers who have a contract with the contractor to provide services or materials to your property.
- If your contract calls for partial payments before the work is completed, get a Partial Release of Lien covering all workers and materials used to that point.
- Before you make the last payment to your contractor, obtain an affidavit that specifies all unpaid parties who performed labor, services or provided materials to your property. Make sure that your contractor obtains releases from these parties before you make the final payment.
- Always file a Notice of Commencement before beginning a home construction or remodeling project. The local authority that issues building permits is required to provide this form. You must record the form with the Clerk of the Circuit Court in the county where the property being improved is located. Also post a certified copy at the job site. (In lieu of a certified copy, you may post an affidavit stating that a Notice of Commencement has been recorded. Attach a copy of the Notice of Commencement to the affidavit.)
- In addition, the building department is prohibited from performing the first inspection if the Notice of Commencement is not also filed with the building department. You can also supply a notarized statement that the Notice has been filed, with a copy attached.

The Notice of Commencement notes the intent to begin improvements, the location of the property, description of the work and the amount of bond (if any). It also identifies the property owner, contractor, surety, lender and other pertinent information. Failure to record a Notice of Commencement or incorrect information on the Notice could contribute to your having to pay twice for the same work or materials.

Notice To Owner

Prior to filing a lien, a lienor must serve the owner a Notice to Owner. The Notice to Owner must state the lienor's name and address, a description of the real property and the nature of the services or materials being furnished. The Notice to Owner must be served before commencing, or within 45 days of commencing, to furnish the services or materials. A lien cannot be enforced unless the lienor has served the Notice to Owner as described above.

Whose Responsibility Is It To Get These Releases?

You can stipulate in the agreement with your contractor that he must provide all releases of lien. If it is not a part of the contract, however, or you act as your own contractor, YOU must get the releases.

If you borrow money to pay for the improvements and the lender pays the contractor(s) directly, instruct the lender to get releases before making any payments. If your lender then fails to follow the legal requirements, the lending institution may be responsible to you for any loss.

What Can Happen If I Don't Get Releases Of Lien?

You will not be able to sell your property unless all outstanding liens are paid. Sometimes a landowner can even be forced to sell his property to satisfy a lien.

Who Can Claim A Lien On My Property?

Contractors, laborers, material suppliers, subcontractors and professionals such as architects, landscape architects, interior designers, engineers or land surveyors all have the right to file a claim of lien for work or materials. Always get a release of lien from anyone who does work on your home.

Contesting A Lien

A lien is valid for one year, unless a lienor files a lawsuit to enforce the lien prior to the expiration of the year. An owner has the right to file a Contest of Lien during the one-year period. Upon the filing of a Contest of Lien, a lienor must file a lawsuit to enforce the lien within 60 days. Failure of the lienor to file the lawsuit renders the lien invalid.

Additional Tips On Home Construction

- Verify that your contractor is properly licensed. Information regarding licensing can be found below.
- If you intend to get financing, consult with your lender or an attorney before recording your Notice of Commencement.
- Insist that the contractor/remodeler secures a building permit and adheres to all building codes and ordinances.

Information All Construction Contracts Should Contain

- The contractor's name, address, telephone number and contractor's license number.
- A precise description of work and materials to be supplied. The contract should specify the grade of construction, flooring and trim materials to be used. Don't accept the phrase "or equivalent"; the contract should specify appliance models and alternates for models not available.
- A beginning date and completion date.
- A complete list of companies or individuals supplying the contractor with labor or materials. Be sure they are insured so you are protected against theft or damage to their supplies or work.
- Financing information and the payment schedule.
- All necessary building permits or licenses.
- Agreement regarding site clean-up and debris disposal.
- All warranty agreements.

Ask for explanations and clarifications of legal terms or confusing language. Be sure you understand completely what you are signing: **Remember**, promises are difficult to enforce unless they are in writing. Even for small jobs, have a written contract spelling out the details. Be wary of anyone who says, "We don't need to bother putting it in writing."

Some contractors require a down payment of 10-30 percent of the total and an additional payment at the halfway point. Pay only when the work is done to your satisfaction and you have releases of lien as described above. If the completion date is critical, like a swimming pool planned for summertime use, link payment to on-time performance. Changes to a contract after construction has begun can cost you. Specify in the contract how changes are to be handled and insist that all change orders be in writing and signed by both you and the contractor.

Cancellation Of Contracts

Some home repair/improvement contracts can be canceled in writing (preferably by certified mail) without penalty or obligation by midnight of the third business day after signing. They include:

- Those signed anywhere other than the seller's normal place of business.
- Those signed as a result of door-to-door solicitation, except emergency home repairs.
- Those paid on an installment basis.

Other contracts are binding as soon as they are signed, so be sure before you sign.

Things You Should Know Before Starting

The most frequently cited complaints concerning home remodeling, home improvements and home repair are cost overruns, missed deadlines and inferior workmanship. Another persistent problem is "fly-by-night" contractors who take deposits or payments before finishing or starting work.

When you need something done to your home, choose a contractor carefully. Be wary of door-to-door salespeople and telephone solicitors promising "this-month-only" bargains. Make sure your contractor is properly licensed and insured.

THE CONSTRUCTION LIEN LAW IS COMPLEX AND CANNOT BE COVERED COMPLETELY IN THIS DOCUMENT. WE RECOMMEND THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

To register a complaint (or learn if complaints have been filed against a prospective contractor), contact the Florida Department of Business and Professional Regulation's Customer Contact Center at: 850.487.1395 or CallCenter@dbpr.state.fl.us.

Or write to:

Florida Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1027

Or visit online at:

www.MyFloridaLicense.com

License verification is available 24/7 by calling our Customer Contact Center at 850.487.1395 or going online to www.MyFloridaLicense.com > Search for a Licensee.

You may also contact your local building department or the Better Business Bureau.