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THE  
**15<sup>TH</sup> JUDICIAL CIRCUIT**  
OF FLORIDA

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## **CONSTRUCTION LIEN PACKET**

### FORMS:

Claim of Lien

Notice to Owner

Notice of Contest of Lien

Notice of Lis Pendens

Complaint

Request for Sworn Statement of Account

Release of Claim of Lien

Contractor's Final Payment Affidavit

Mandatory Provisions for Direct Contract

Conditional Waiver & release of Liens

Unconditional Waiver and Release of Lien

## Construction Liens Packet

This packet was created for individuals seeking information on construction liens. It is for informational purposes only.

For more information on construction liens, the following resources are available in the law library. A law library associate can assist you with locating any of these sources. Much of the information in this packet is from *Florida Real Estate Practice: Law, Procedure and Forms*. Also see the Clerk & Comptroller of Palm Beach County website for forms related to construction liens, available at <https://www.mypalmbeachclerk.com/records/recording/forms>

Title	Call Number	Law Library Locations	Electronic Access
<b>Florida Construction Law and Practice</b>	KFF 155.8 .F56	Main, South	LexisNexis Digital Library
<b>Florida Construction Law Manual</b>	KFF 155 .F56	Main, North, South	Westlaw
<b>Florida Construction Lien Manual</b>	KFF 155.5 .F56	Main South (south copy is outdated)	No
<b>Florida Statutes</b>	KFF 30 .O34	Main, North, South	<a href="http://www.leg.state.fl.us/Statutes/">http://www.leg.state.fl.us/Statutes/</a>
<b>Florida Real Estate Practice: Law, Procedure, and Forms</b>	KFF 126 .F56	Main, North, South	No

**NOTICE:** This packet is intended to help individuals representing themselves in court. It does not serve as legal advice. If you are acting as your own attorney, you are responsible for everything that involves your case.

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*\*This chapter provides analysis through the 2018 Florida Statutes, unless otherwise indicated, and includes appropriate revisions to the relevant FORMS*

### 7.01 Construction Liens Generally

A mechanic's lien is a lien given to construction workers to secure payment of their work. The Construction Lien Statutes were created as an inducement to promote construction and growth. To further that intent, contractors, laborers and materialman are given a lien which takes priority over certain other liens.<sup>1</sup> The statutory construction lien however only takes priority when certain established procedures have been followed. Without the statutory construction lien the contractor's remedy remains a contract remedy which is unsecured. The security and priority given to the construction lien makes the contractor more secure with the prospect of payment.

The construction lien statutes were also created to protect the owner who has contracted for a real property improvement. The statutes are designed to protect the owner from paying twice for labor and materials which the contractor has already been paid for.<sup>2</sup> There are statutory procedures established for the owner to follow which will allow the owner to make safe payments to the general contractor without becoming further subject to a lien for labor and materials which the owner has already paid for. The procedures established for the owner must be strictly followed or the owner will be required to pay twice for labor and material. Therefore the construction lien law must be closely adhered to by both the contractor and the owner.

### 7.02 Persons entitled to lien

Any person who performs work or furnishes materials to an owner or to a contractor who has a contract with the owner for the improvement of real property is entitled to a lien for any money that is owed to him for the labor, services, or material provided.<sup>3</sup> An improvement for lien purposes is defined as:

any building, structure, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.<sup>4</sup>

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<sup>1</sup> FS Chapter 713.

<sup>2</sup> Regarding payment issues, see *Heather Howdeshell, "Didn't my general contractor pay you? Subcontractor Liens in Residential Projects," 61 Florida Law Review (January, 2009).*

<sup>3</sup> Fla. Stat. 713.05.

<sup>4</sup> Fla. Stat. 713.01(15).

To be a lienor under the construction lien statutes a person must be a contractor, subcontractor, sub-subcontractor, laborer, materialman or professional service provider.<sup>5</sup> A contractor is any person other than a materialman or laborer who enters into a contract with the owner for improving real property.<sup>6</sup> A materialman is any person who furnishes materials under contract to the owner, contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement and who performs no labor for the installation thereof.<sup>7</sup> A laborer is any person who under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and who is not an architect, landscaper, engineer or land surveyor.<sup>8</sup> A subcontractor is any person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such contractor's contract.<sup>9</sup>

### 7.03 Property subject to lien

A construction lien extends to the entire property improved.<sup>10</sup> The real property improved is defined as:

the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or government agency, commission, or political subdivision.

The lien attaches to all of the property improved. For example if a lien is filed for the addition of a room to a house, the lien will attach to the entire house and not just the room addition.

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<sup>5</sup> Fla. Stat. 713.01(18).

<sup>6</sup> Fla. Stat. 713.01(8).

<sup>7</sup> Fla. Stat. 713.01(20).

<sup>8</sup> Fla. Stat. 713.01(16).

<sup>9</sup> Fla. Stat. 713.01(28). The term includes a temporary help firm as defined in Fla.Stat. 443.101. See also, 713.01(29): "Sub-subcontractor"

<sup>10</sup> Fla. Stat. 713.05.

### 7.04 Persons with a direct contract with the owner

All materialman, laborers, and contractors who have a direct contract with the owner is entitled to a lien for the amount owed them on their contract.<sup>11</sup> The lien is not created until a claim of lien is recorded.<sup>12</sup> The claim of lien must be recorded in the public records of the county where the real property improved is located. A party in direct privity with the owner (having a contract with the owner) does not need to serve a notice to owner.

### 7.05 Persons not in privity

Privity for mechanics lien purposes means a direct relationship with the owner. A person who contracts directly with the owner to improve the property is in privity with the owner. For Example, a person who contracts with the contractor to perform cabinet work for the improvement is in privity with the contractor but not with the owner.

A materialman, laborer, subcontractor or sub-subcontractor is entitled to a lien but must serve a notice to owner in order to perfect his right to lien.<sup>13</sup> A "notice to owner" is a statutory required document which puts the owner on notice of the lienor's claim. The notice to owner must be served upon the owner within 45 days after the lienor commences his work.<sup>14</sup> The 45 day rule is strictly enforced. Substantial compliance such as serving the notice on the 57th day will make the lienor's claim unenforceable.<sup>15</sup> Service is performed by delivering to the owner and to those persons listed in the notice of commencement a copy of the notice by certified mail, return receipt requested.<sup>16</sup> Serving the notice itself does not create a lien. The lienor must still file and record his lien in order to have an enforceable claim.<sup>17</sup>

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<sup>11</sup> Fla. Stat. 713.05.

<sup>12</sup> Id.

<sup>13</sup> Fla. Stat. 713.06

<sup>14</sup> Id.

<sup>15</sup> *Zaleznik v. Gulf Coast Roofing Co., Inc.*, 576 So. 2d 776 (Fla. 2d DCA 1991).

<sup>16</sup> Fla. Stat. 713.06(2)(d).

<sup>17</sup> Fla. Stat. 713.06(2)(a).

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

**UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.**

**TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASEE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.**

### NOTICE TO OWNER

To (Owner's name and address)

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

(General description of services or materials) form the improvement of the real property identified as (property description) under an order given by \_\_\_\_\_ Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

#### IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid 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. PROTECT YOURSELF:**

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

--LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contracting an attorney or the Florida Department of Business and Professional Regulation.

(Lienor's Signature)

(Lienor's Name)

(Lienor's Address)

Copies to: (Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)<sup>18</sup>

The lien of a person not in privity with the owner is limited by the amount of the contract which the owner signed with the main contractor.<sup>19</sup>

<sup>18</sup> Fla. Stat. 713.06(2)(c).

<sup>19</sup> Fla. Stat. 713.06(1).

## 7.06 Claim of Lien

In order to enforce its lien, all lienors must record a claim of lien.<sup>20</sup> The claim of lien must be recorded in the clerk's office in the county where the real property improved is located.<sup>21</sup> The recording of the lien must take place either within 90 days of the date the final work is furnished by the lienor or within 90 days of the date the contract is breached by the contractor, whichever occurs first.<sup>22</sup> A copy of the lien must be served upon the owner within 15 days of recording of the lien.<sup>23</sup>

The claim of lien must contain the following information:

1. The name of the lienor and the address where notices or process may be served on the lienor;
2. The name of the person with whom the lienor contracted or by whom he was employed;
3. The labor, services, or materials furnished and the contract price or value thereof;
4. A description of the real property sufficient for identification;
5. The name of the owner;
6. The time when the first and the last item of labor or service or materials was furnished;
7. The amount unpaid the lienor for such labor or services or materials;
8. If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner;
9. If the lien is claimed by a person not in privity with the contractor or subcontractor, the date and method of service of the copy of the notice on the contractor or subcontractor.<sup>24</sup>

The claim of lien must be signed and verified by the lienor or an agent of the lienor who is acquainted with the facts.<sup>25</sup>

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<sup>20</sup> Fla. Stat. 713.08

<sup>21</sup> Fla. Stat. 713.08(5).

<sup>22</sup> Id.

<sup>23</sup> Fla. Stat. 713.08(4)(c).

<sup>24</sup> Fla. Stat. 713.08(1).

<sup>25</sup> Fla. Stat. 713.08(2).



**WARNING!**

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

**Claim of Lien**

**State of Florida**

space above reserved for recording information

**County of Palm Beach**

Before me, the undersigned notary public, personally appeared, \_\_\_\_\_, who was duly sworn and says that she or he is (check one)  the lienor herein; or  the agent of the lienor herein \_\_\_\_\_, whose address is \_\_\_\_\_, and that in accordance with a contract with \_\_\_\_\_, lienor furnished labor, services, or materials consisting of \_\_\_\_\_, on the following described property in \_\_\_\_\_ County, Florida:

*(Legal Description of Real Property)*

owned by \_\_\_\_\_ of a total value of \$ \_\_\_\_\_, of which there remains unpaid \$ \_\_\_\_\_, and furnished the first of the items on \_\_\_\_\_; and the last of the items on \_\_\_\_\_; and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on \_\_\_\_\_ by \_\_\_\_\_; and (if required) that the lienor served copies of the notice on the contractor on \_\_\_\_\_, by \_\_\_\_\_ and on the subcontractor, \_\_\_\_\_, on \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by: \_\_\_\_\_ personally known to me, or who produced \_\_\_\_\_ as identification.

Notary Seal

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Notary Printed Name

Commission Number: \_\_\_\_\_

Commission Expiration: \_\_\_\_\_

## 7.07 Notice of Commencement

The owner or his authorized agent must record a notice of commencement prior to actually commencing any work. A notice of commencement is a document which gives notice to third parties that work is about to be commenced which may give rise to construction liens. The notice of commencement marks the start of the improvement and is the date which construction liens can revert back to take priority over after recorded liens. The notice states what type of work is to be performed and gives a description of the property and the property owner. The notice of commencement must be recorded in the public records in the county where the real property is located.<sup>27</sup>

In addition to recording, a certified copy of the recorded notice of commencement must also be posted on the property to be improved.<sup>28</sup> Posting for notice of commencement purposes is defined as:

Placing the document on the site of the improvement in a conspicuous place at the front of the site and in a manner that protects the document from the weather.<sup>29</sup>

The responsibility for posting the notice of commencement is on the owner.<sup>30</sup>

The notice of commencement must contain the following information:

1. A description sufficient for identification of the real property to be improved.
2. A general description of the improvement.
3. The name and address of the owner, his interest in the site of the improvement, and the name and address of the fee simple titleholder.

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<sup>27</sup> Fla. Stat. 713.13.

<sup>28</sup> 713.13(7). Note: This is the *owner's* obligation, not the lender's.

<sup>29</sup> Fla. Stat. 713.01(25).

<sup>30</sup> Fla. Stat. 713.13(7).

4. The name and address of the contractor.
  5. The name and address of the surety on the payment bond and the amount of the bond, if any.
  6. The name and address of any person making a loan for the construction of the improvements.
- A Notice of Commencement form from Palm Beach County Clerk of Court is on the following page.

PERMIT NUMBER: \_\_\_\_\_

**NOTICE OF COMMENCEMENT**

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 & street address, if available) TAX FOLIO NO.: \_\_\_\_\_

SUBDIVISION \_\_\_\_\_ BLOCK \_\_\_\_\_ TRACT \_\_\_\_\_ LOT \_\_\_\_\_ BLDG \_\_\_\_\_ UNIT \_\_\_\_\_

2. GENERAL DESCRIPTION OF IMPROVEMENT: \_\_\_\_\_

3. OWNER INFORMATION OR LESSEE INFORMATION IF THE LESSEE CONTRACTED FOR THE IMPROVEMENT:

a. Name and address: \_\_\_\_\_

b. Interest in property: \_\_\_\_\_

c. Name and address of fee simple titleholder (if different from Owner listed above): \_\_\_\_\_

4. a. CONTRACTOR'S NAME: \_\_\_\_\_

Contractor's address: \_\_\_\_\_ b. Phone number: \_\_\_\_\_

5. SURETY (if applicable, a copy of the payment bond is attached):

a. Name and address: \_\_\_\_\_

b. Phone number: \_\_\_\_\_ c. Amount of bond: \$ \_\_\_\_\_

6. a. LENDER'S NAME: \_\_\_\_\_

Lender's 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 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 will be 1 year from the date of recording unless a different date is specified): \_\_\_\_\_, 20\_\_\_\_

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 Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)

(Print Name and Provide Signatory's Title/Office)

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization,

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

by \_\_\_\_\_, as \_\_\_\_\_  
(name of person) (type of authority, ...e.g. officer, trustee, attorney in fact)

for \_\_\_\_\_  
(name of party on behalf of whom instrument was executed)

Personally Known  or Produced Identification  Type of Identification Produced \_\_\_\_\_

(Signature of Notary Public)

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

The notice of commencement is effective as notice to third parties upon the filing of the notice in the clerk's office.<sup>33</sup> The owner is the only party who may sign the notice.<sup>34</sup> The improvement described in the notice of commencement must be commenced within 90 days of the recording of the notice or a new notice will be required.<sup>35</sup> A notice of commencement expires one year after its recording.<sup>36</sup>

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<sup>33</sup> Fla. Stat. 713.13(1)(f).

<sup>34</sup> Fla. Stat. 713.13(1)(g).

<sup>35</sup> Fla. Stat. 713.13(2).

<sup>36</sup> Fla. Stat. 713.13(6).

This instrument prepared by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

### Notice of Termination (of Notice of Commencement)

space above reserved for recording information

The undersigned hereby gives notice that the effective period of that certain Notice of Commencement dated \_\_\_\_\_, \_\_\_\_\_ and recorded in Official Record Book / Page \_\_\_\_\_ / \_\_\_\_\_ of the Public Records of Palm Beach County, Florida will terminate; and, in accordance with Section 713.132, Florida Statutes, the following information is provided:

1. The date and recording information for the Notice of Commencement being terminated are as described above, and all information contained therein is hereby expressly incorporated into this NOTICE OF TERMINATION.
2. The Notice of Commencement shall be terminated as of \_\_\_\_\_, \_\_\_\_\_, or 30 days from the recording date of this Notice of Termination, whichever date is later.
3. This Notice of Termination applies to:
  - all the real property subject to the above described Notice of Commencement.
  - only to the portion of such real property described as:

\_\_\_\_\_  
\_\_\_\_\_

4. All lienors have been paid in full or prorata in accordance with Section 713.06(4), Florida Statutes.
5. A copy of this notice has been served on the contractor and on each lienor who has given notice, if any.

Owner Signature: \_\_\_\_\_ Owner Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by: \_\_\_\_\_ personally known to me, or who produced \_\_\_\_\_ as identification.

Exhibits attached:

- Contractor's Final Payment Affidavit
- Property Legal Description
- Copy of Notice of Commencement
- Other: \_\_\_\_\_

Notary Seal

Notary Signature \_\_\_\_\_

Notary Printed Name \_\_\_\_\_

Commission Number: \_\_\_\_\_

Commission Expiration: \_\_\_\_\_

## Chapter 7

### 7.08 Service of Notices

All notices required to be served by the Construction lien law must be served by actual delivery, by mailing or by posting.<sup>37</sup> Physical delivery of the notice to the person to be served is the preferred service but is not usually feasible or economical. If physical service is used on a partnership, service on any partner is valid service on the partnership. If a corporation is physically served the service may be made on an officer, director, managing agent, or business agent of the corporation.<sup>38</sup>

Service of a notice may also be made by mailing the notice, postage prepaid, by registered or certified mail to the person to be served at his last known address.<sup>39</sup> If service by mail is returned and is marked "refused", "moved, not forwardable", "unclaimed", or other similar post office jargon then service is effective as of the date of mailing.<sup>40</sup> If service by mail or by physical delivery have been unsuccessfully attempted then service can be made by posting the notice on the premises.<sup>41</sup> If the real property to be improved is owned by more than one person, service on any of the owners is good service as to all of the owners.<sup>42</sup>

### 7.09 Duration of Lien

A construction lien is valid for one year.<sup>43</sup> If an action to enforce the lien is not commenced within the one year period the lien expires and can not be enforced against the improved property.<sup>44</sup> The lien can be continued during the pursuit of an action to enforce the claim but only if a lis pendens is filed in the public records where the real property is located.<sup>45</sup>

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<sup>37</sup> Fla. Stat. 713.18.

<sup>38</sup> Fla. Stat 713.18(1)(a).

<sup>39</sup> Fla. Stat. 713.18(3).

<sup>40</sup> 713.18(3)(a)2.

<sup>41</sup> Fla. Stat. 713.18(1)(c).

<sup>42</sup> Fla. Stat. 713.18(4).

<sup>43</sup> Fla. Stat. 713.22(1).

<sup>44</sup> Id.

<sup>45</sup> Id.

The duration of a construction lien can be shortened to 60 days by filing a notice of contest of the lien.<sup>46</sup> The notice of contest must be recorded in the public records where the real property is located and served upon the lienor.<sup>47</sup> Once the notice of contest of lien is recorded the clerk of the court will serve the notice upon the lien claimant by mailing a copy of the recorded notice to the lien claimant at the address shown on the lien.<sup>48</sup> Service by the clerk is deemed complete when mailed.<sup>49</sup>

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<sup>46</sup> Fla. Stat. 713.22(2).

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.



This instrument prepared by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

## Notice of Contest of Lien

(Construction Liens - Pursuant to Ch. 713.22(2) f.s.)

space above reserved for recording information

TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

You are notified that the undersigned contests the claim of lien filed by you on \_\_\_\_\_, \_\_\_\_\_, and recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the public records of Palm Beach County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Owner or Attorney

\_\_\_\_\_  
Print Name of Owner or Attorney

### 7.10 Payments Made by Owner to Contractor

An owner must be careful in making final payment to a contractor to make sure that all subcontractors and materialmen have been paid or will be paid out of the final payment. If the owner makes payment to the contractor without getting proof that all subcontractors and materialmen have been paid the owner may be stuck paying the subcontractors and materialmen eventhough he made full payment to the contractor. To avoid this problem the owner should pay all subcontractor and materialmen who have served him with a notice to owner. Payment directly to a subcontractor should only be made after receiving a statement of the amount due from the subcontractor and after giving the contractor an opportunity to dispute the lienor's claim. Prior to payment the owner should also receive a release of the lienor's interest in the property. Any payments made to a subcontractor and materialman can be deducted from the amount due the contractor.<sup>51</sup> The owner does not have to pay any lienor who has not filed a notice to owner.

When final payment is due the contractor under the contract the contractor must supply the owner with a contractor's affidavit before the owner is required to make final payment. The owner can not make final payment under the contract without first receiving the affidavit or any amounts paid may have to be paid again to any subcontractors not yet paid. The contractor's affidavit must state the following:

1. That all lienors under the direct contract have been paid in full, or
2. If all lienors have not been paid, the names and addresses of all lienors not yet paid and the amounts due each for labor, services or materials.<sup>52</sup>

### 7.11 Obtaining a Copy of the Contract

Any party to a contract, or a lienor contracting with or employed by a party to the contract may obtain a copy of the contract upon written notice.<sup>53</sup> Any person who refuses to provide a copy of the contract or who willfully and falsely states the amount due under the contract is responsible for damages to that party.<sup>54</sup> The information provided subsequent to such a request is binding upon the party who provided the information unless notice of any changes are given prior to the receiving parties

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<sup>51</sup> Fla. Stat. 713.06(3).

<sup>52</sup> Fla. Stat. 713.06(3)(d).

<sup>53</sup> Fla. Stat. 713.16.

<sup>54</sup> Fla. Stat. 713.16(1) and (5)(b).

reliance upon the information.<sup>55</sup> The person requesting the contract is responsible for any reproduction costs.

### 7.12 Sworn Statement of Account

At anytime the owner is to make payment to a contractor or lienor the owner may request a written statement of account.<sup>56</sup> The owner must serve demand in writing. The statement of account must be under oath. The statement must state the nature of the labor or services, the amount paid on account to date, the amount due, and the amount to become due. The notice must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to owner. The failure to provide the sworn statement of account within 30 days from demand deprives the person so failing of his or her lien rights.<sup>57</sup>

### 7.13 Priority of Liens

Liens of parties in privity with the owner have priority in the order in which they are recorded.<sup>58</sup> Liens of parties not in privity with the owner are treated differently however. Liens of parties not in privity with the owner revert back to the date the notice of commencement is recorded.<sup>59</sup> The liens of parties not in privity when a notice of commencement is filed share an equal pro-rated priority as of the date of the recording of the notice of commencement.<sup>60</sup> Such liens can take priority over interests recorded after the notice of commencement but prior to the recording of the notice of lien. The ability of the liens to take priority over prior recorded interests makes the presence of a recorded notice of commencement something that can not be ignored in reviewing title. If a notice of commencement is not recorded then liens of parties not in privity with the owner take priority as of the time of recording and do not revert back to a prior date.<sup>61</sup>

<sup>55</sup> Fla. Stat 713.16(1).

<sup>56</sup> Fla. Stat. 713.16(2).

<sup>57</sup> Id.

<sup>58</sup> Fla. Stat. 713.07(1).

<sup>59</sup> Fla. Stat. 713.07(2).

<sup>60</sup> Id.

<sup>61</sup> Id.

#### 7.14 Enforcement of Lien

A construction lien can be enforced by foreclosing the lien and/or by suing the contracting party. A construction lien can be foreclosed regardless of the dollar amount. The foreclosure of a construction lien is very similar to the foreclosure of a mortgage. The foreclosure of a construction lien is so similar in fact that the provisions of law relating to an action to foreclose a mortgage, including the sale and distribution of proceeds, apply to a construction lien foreclosure.

As in a mortgage foreclosure, a lis pendens must be filed when foreclosing a construction lien. The purpose of the lis pendens is to put third parties on notice of the enforcement of the lien. Any party who obtains an interest in the real property after the filing of the lis pendens takes their interest subject to the outcome of the suit and are not entitled to notice of the proceedings.<sup>62</sup>

After a final judgment is obtained, the improved property is offered for public sale by the clerk's office. The property is sold to the highest bidder. The proceeds of the sale are distributed to the various lien holders in the order determined by the court.

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<sup>62</sup> Fla. Stat. 713.22(1).

**WARNING!**

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

**Claim of Lien**

**State of Florida**

space above reserved for recording information

**County of Palm Beach**

Before me, the undersigned notary public, personally appeared, \_\_\_\_\_, who was duly sworn and says that she or he is (check one)  the lienor herein; or  the agent of the lienor herein \_\_\_\_\_, whose address is \_\_\_\_\_, and that in accordance with a contract with \_\_\_\_\_, lienor furnished labor, services, or materials consisting of \_\_\_\_\_, on the following described property in \_\_\_\_\_ County, Florida:

*(Legal Description of Real Property)*

owned by \_\_\_\_\_ of a total value of \$ \_\_\_\_\_, of which there remains unpaid \$ \_\_\_\_\_, and furnished the first of the items on \_\_\_\_\_; and the last of the items on \_\_\_\_\_; and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on \_\_\_\_\_ by \_\_\_\_\_; and (if required) that the lienor served copies of the notice on the contractor on \_\_\_\_\_, by \_\_\_\_\_ and on the subcontractor, \_\_\_\_\_, on \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Signature

Sworn to (or affirmed) and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by: \_\_\_\_\_ personally known to me, or who produced \_\_\_\_\_ as identification.

Notary Seal

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Notary Printed Name

Commission Number: \_\_\_\_\_

Commission Expiration: \_\_\_\_\_

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

**UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.**

**TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASEE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.**

**NOTICE TO OWNER**

To (Owner's name and address)

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows: (general description of services or materials) for the improvement of the real property identified (property description) under an order given by \_\_\_\_\_.

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

**IMPORTANT INFORMATION FOR YOUR PROTECTION**

Under Florida's laws, those who work on your property or provide materials and are not paid 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.**

**PROTECT YOURSELF:**

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

--LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

This \_\_\_\_\_ day of \_\_\_\_\_.

(Lienor's Signature)  
(Lienor's Name)  
(Lienor's Address)

Copies to: (Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)

*See 713.06(2)(c), adding "Warning" effective October 1, 2003. S s.2, ch.2003-177. This form can be completed by nonlawyers; The Florida Bar re Advisory Opinion - Nonlawyer Preparation, etc., 544 So.2d 1013 (Fla. 1989).*

This instrument prepared by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Notice of Contest of Lien**  
(Construction Liens - Pursuant to Ch. 713.22(2) f.s.)

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

space above reserved for recording information

You are notified that the undersigned contests the claim of lien filed by you on \_\_\_\_\_,  
\_\_\_\_\_, and recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the public  
records of Palm Beach County, Florida, and that the time within which you may file suit to enforce your  
lien is limited to 60 days from the date of service of this notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Owner or Attorney

\_\_\_\_\_  
Print Name of Owner or Attorney

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
OF FLORIDA, IN AND FOR \_\_\_\_\_ COUNTY

CASE NO. \_\_\_\_\_

GENERAL JURISDICTION DIVISION

\_\_\_\_\_  
\_\_\_\_\_  
Plaintiff,  
-vs-  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant(s).

NOTICE OF LIS PENDENS

TO: DEFENDANT \_\_\_\_\_ AND ALL OTHERS WHOM IT  
MAY CONCERN:

YOU ARE NOTIFIED of the institution of this action by the Plaintiff against  
you seeking to foreclose a notice of construction lien on the following described  
property, in \_\_\_\_\_ County, Florida:

Dated on \_\_\_\_\_, 20 \_\_\_\_.

Attorneys for Plaintiff

\_\_\_\_\_

Address

\_\_\_\_\_

Florida Bar No. \_\_\_\_\_



IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
OF FLORIDA, IN AND FOR \_\_\_\_\_ COUNTY

CASE NO. \_\_\_\_\_

GENERAL JURISDICTION DIVISION

\_\_\_\_\_

Plaintiff,

-vs-

\_\_\_\_\_

Defendant(s).

COMPLAINT

Plaintiff, \_\_\_\_\_ sues  
Defendant(s), \_\_\_\_\_, and alleges:

1. This is an action to foreclose a lien in excess of \_\_\_\_\_  
Dollars, on real property located in \_\_\_\_\_ County, Florida.

2. Plaintiff is a (Florida Corporation)(Florida General Partnership) or (a sole  
proprietorship) having its place of business in \_\_\_\_\_ County, Florida.

3. Defendant is the owner of the following described real property which is  
the subject of this action:

(Legal)

4. On or about \_\_\_\_\_, 20\_\_\_\_, the Plaintiff and Defendant  
entered into a written contract for the improvement of the real property described in  
paragraph 3. A copy of the contract is attached hereto as Exhibit A.

5. Plaintiff provided labor, materials and services pursuant to the contract  
which have been incorporated into the real property.

6. Plaintiff has fully performed under the written contract and has demanded  
payment from the Defendant.

7. Defendant has refused payment pursuant to the contract after demand by the Plaintiff.

8. Plaintiff filed a claim of lien in the amount of \$ \_\_\_\_\_ which was recorded on \_\_\_\_\_, \_\_\_\_\_ in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of \_\_\_\_\_ County, Florida. A copy of the lien is attached hereto as Exhibit B.

9. Plaintiff has complied with all conditions precedent to the commencement of this action.

10. Plaintiff is now due and owing from the Defendant \$ \_\_\_\_\_ together with interest thereon, costs of collection and reasonable attorney's fees.

WHEREFORE, Plaintiff demands judgment against the Defendant and prays this Honorable Court will:

1. Enter a judgment in favor of the Plaintiff for the full amount alleged herein with interest, attorney's fees and costs of collection;

2. Find that the Plaintiff has a valid lien against the real property described herein for the full amount of the judgment entered;

3. Order a judicial sale of the real property described herein should the Defendant not pay the amount of the final judgment to pay the final judgment; and

4. Order such other relief as is necessary to fully satisfy the Plaintiff's claim including the entering of a deficiency judgment.

Attorneys for Plaintiff

By: \_\_\_\_\_

REQUEST FOR SWORN STATEMENT OF ACCOUNT

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

To: (Lienor's name and address)

The undersigned hereby demands a written statement under oath of his account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement for the improvement of real property identified as \_\_\_\_\_

\_\_\_\_\_  
(property description)

\_\_\_\_\_  
(signature of owner)

\_\_\_\_\_  
(address of owner)

\_\_\_\_\_  
(date of request)

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT

RELEASE OF  
CLAIM OF LIEN

State of Florida  
County of \_\_\_\_\_

*KNOW ALL MEN BY THESE PRESENTS* that \_\_\_\_\_, party of the first part, in consideration in the sum of Ten Dollars and other good and valuable consideration received from \_\_\_\_\_, party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, does hereby satisfy, release and forever cancel that certain claim of lien made by \_\_\_\_\_, recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, Public Records of \_\_\_\_\_ County, Florida, upon the following described parcel of land:

(legal)

*IN WITNESS WHEREOF*, the party of the first part have set their seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged under oath before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by \_\_\_\_\_ who is the \_\_\_\_\_ President of \_\_\_\_\_, and who is personally known to me and who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Prepared by and return to:

**\*CONTRACTOR'S FINAL PAYMENT AFFIDAVIT**

State of Florida  
County of \_\_\_\_\_

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

1. He or she is the           (Title of affiant)          , of           (Name of contractor's business)          , which does business in the State of Florida, hereinafter referred to as the "Contractor."

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

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

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

NAME OF LIENOR: \_\_\_\_\_ AMOUNT DUE: \_\_\_\_\_

NAME OF LIENOR: \_\_\_\_\_ AMOUNT DUE: \_\_\_\_\_

Signed, sealed, and delivered this \_\_\_ day of \_\_\_\_\_, 20

By           (Name of Affiant)            
          (Title of Affiant)            
          (Name of contractor's business)          

Sworn to and subscribed before me this \_\_\_ day of \_\_\_\_\_, 20 , by           (Name of Affiant)          , who is personally known to me or produced \_\_\_\_\_ as identification, and did take an oath.

          (Name of notary public)            
Notary Public

My Commission Expires:  
(date of expiration of commission)

*\*Adopted January 1, 2004 in s.3, ch.2003-177, amending FS 713.06(3)(d)1.*

## Mandatory Provisions for Direct Contracts\*

### 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 notice provision printed in no less than 12-point, capitalized, boldfaced type on the front page of the contract or on a separate page, signed by the owner and dated:

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, Q 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.

Nothing in 713.015 shall be construed to adversely affect the lien and bond rights of lienors who are not in privity with the owner, and it does not apply when the owner is a contractor licensed under chapter 489 or is a person who created parcels or offers parcels for sale or lease in the ordinary course of business.

When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment, the waiver or release may be in substantially the following form:

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on \_\_\_\_\_, (year).

By: \_\_\_\_\_

When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, the final payment, the waiver and release may be in substantially the following form:

WAIVER AND RELEASE OF LIEN

UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on \_\_\_\_\_, (year).

(Lienor)

**CONDITIONAL WAIVER AND RELEASE OF LIEN**  
**UPON PROGRESS PAYMENT**

(Pursuant to Florida Statutes Annotated § 713.20)

Upon receipt by the undersigned of a check in the sum of \$ \_\_\_\_\_, payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this waiver and release document shall become effective and enforceable.

Subject to the above language, the undersigned lienor, in consideration of the sum of \$ \_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through \_\_\_\_\_ (insert date) to \_\_\_\_\_ (insert the name of your customer) on the job of \_\_\_\_\_ (insert the name of the owner) to the following property:

\_\_\_\_\_  
(description of property)  
\_\_\_\_\_  
\_\_\_\_\_

This waiver and release does not cover any retention of labor, services, or materials furnished after the date specified.

DATED on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Claimant name)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_



**UNCONDITIONAL WAIVER AND RELEASE OF LIEN**  
**UPON FINAL PAYMENT**

(Pursuant to Florida Statutes Annotated § 713.20)

The undersigned lienor, in consideration of the final payment of \$ \_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to \_\_\_\_\_ (insert the name of your customer) on the job of \_\_\_\_\_ (insert the name of the owner) to the following property:

\_\_\_\_\_  
(description of property)  
\_\_\_\_\_  
\_\_\_\_\_

DATED on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Claimant name)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_