

The 2009 Florida Statutes

CHAPTER 713.001-713.37 – CONSTRUCTION LIENS

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713.001 Short title of part.--This part may be cited as the "Construction Lien Law."

History.--s. 1, ch. 90-109.

713.01 Definitions.--As used in this part, the term:

- (1) "Abandoned property" means all tangible personal property that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition.
- (2) "Architect" means a person or firm that is authorized to practice architecture pursuant to chapter 481 or a general contractor who provides architectural services under a design-build contract authorized by s. 481.229(3).
- (3) "Claim of lien" means the claim recorded as provided in s. 713.08.
- (4) "Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located.
- (5) "Commencement of the improvement" means the time of filing for record of the notice of commencement provided in s. 713.13.
- (6) "Contract" means an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders.
- (7) "Contract price" means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and must be increased or diminished by the price of extras or change orders, or by any amounts attributable to changes in the scope of the work or defects in workmanship or materials or any other breaches of the contract; but no penalty or liquidated damages between the owner and a contractor diminishes the contract price as to any other lienor. If no price is agreed upon by the contracting parties, this term means the value of all labor, services, or materials covered by their contract, with any increases and diminutions, as provided in this subsection. Allowance items are a part of the contract when accepted by the owner.
- (8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16).
- (9) "Direct contract" means a contract between the owner and any other person.
- (10) "Engineer" means a person or firm that is authorized to practice engineering pursuant to chapter 471 or a general contractor who provides engineering services under a design-build contract authorized by s. 471.003(2)(i).
- (11) "Extras or change orders" means labor, services, or materials for improving real property authorized by the owner and added to or deleted from labor, services, or materials covered by a previous contract between the same parties.
- (12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or

the issuance of a certificate of final completion, and does not include correction of deficiencies in the lienor's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the job site and available for use.

(13) "Furnish materials" means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement, not including any design work, submittals, or the like preliminary to actual fabrication of the materials; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying rental equipment, but does not include supplying handtools. The delivery of materials to the site of the improvement is prima facie evidence of incorporation of such materials in the improvement. The delivery of rental equipment to the site of the improvement is prima facie evidence of the period of the actual use of the rental equipment from the delivery through the time the equipment is last available for use at the site, or 2 business days after the lessor of the rental equipment receives a written notice from the owner or the lessee of the rental equipment to pick up the equipment, whichever occurs first.

(14) "Improve" means build, erect, place, make, alter, remove, repair, or demolish any improvement over, upon, connected with, or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes, or perform any labor or services upon the improvements, including the furnishing of carpet or rugs or appliances that are permanently affixed to the real property and final construction cleanup to prepare a structure for occupancy; or perform any labor or services or furnish any materials in grading, seeding, sodding, or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes, or plants that are planted on the real property, or in equipping any improvement with fixtures or permanent apparatus or provide any solid-waste collection or disposal on the site of the improvement.

(15) "Improvement" means any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

(16) "Laborer" means any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

(17) "Lender" means any person who loans money to an owner for construction of an improvement to real property, who secures that loan by recording a mortgage on the real property, and who periodically disburses portions of the proceeds of that loan for the payment of the improvement.

(18) "Lienor" means a person who is:

- (a) A contractor;
- (b) A subcontractor;
- (c) A sub-subcontractor;
- (d) A laborer;

(e) A materialman who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor; or

(f) A professional lienor under s. 713.03;

and who has a lien or prospective lien upon real property under this part, and includes his or her successor in interest. No other person may have a lien under this part.

(19) "Lienor giving notice" means any lienor, except a contractor, who has duly and timely served a notice to the owner and, if required, to the contractor and subcontractor, as provided in s. 713.06(2).

(20) "Materialman" means 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 or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

(21) "Notice by lienor" means the notice to owner served as provided in s. 713.06(2).

(22) "Notice of commencement" means the notice recorded as provided in s. 713.13.

(23) "Owner" means a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property. The term includes a condominium association pursuant to chapter 718 as to improvements made to association property or common elements. The term does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity.

(24) "Perform" or "furnish" when used in connection with the words "labor" or "services" or "materials" means performance or furnishing by the lienor or by another for him or her.

(25) "Post" or "posting" means placing the document referred to 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.

(26) "Real property" means 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 governmental agency, commission, or political subdivision.

(27) "Site of the improvement" means the real property which is being improved and on which labor or services are performed or materials furnished in furtherance of the operations of improving such real property. In cases of removal, without demolition and under contract, of an improvement from one lot, parcel, or tract of land to another, this term means the real property to which the improvement is removed.

(28) "Subcontractor" means a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor's contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in s. 443.101.

(29) "Sub-subcontractor" means a person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in s. 443.101.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 1, ch. 77-353; s. 1, ch. 80-97; s. 2, ch. 90-109; s. 1, ch. 91-102; s. 3, ch. 92-286; ss. 120, 317, ch. 94-119; s. 800, ch. 97-102; s. 2, ch. 98-135; s. 71, ch. 99-3; s. 2, ch. 2001-164; s. 4, ch. 2001-211; s. 2, ch. 2007-221.

Note.--Former s. 84.011.

713.012 Written notices, demands, or requests.--Notices, demands, or requests permitted or required under this part, except any required by s. 713.14, must be in writing.

History.--s. 3, ch. 2007-221.

713.015 Mandatory provisions for direct contracts.--

(1) 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, OR 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.

(2)(a) If the contract is written, the notice must be in the contract document. If the contract is oral or implied, the notice must be provided in a document referencing the contract.

(b) The failure to provide such written notice does not bar the enforcement of a lien against a person who has not been adversely affected.

(c) This section may not be construed to adversely affect the lien and bond rights of lienors who are not in privity with the owner. This section 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.

History.--s. 1, ch. 2003-177; s. 5, ch. 2005-227; s. 4, ch. 2007-221.

713.02 Types of lienors and exemptions.--

- (1) Persons performing the services described in s. 713.03 shall have rights to a lien on real property as provided in that section.
- (2) Persons performing services or furnishing materials for subdivision improvements as described in s. 713.04 shall have rights to a lien on real property as provided in that section.
- (3) Persons who are in privity with an owner and who perform labor or services or furnish materials constituting an improvement or part thereof shall have rights to a lien on real property as provided in s. 713.05.
- (4) Persons who are not in privity with an owner and who perform labor or services or furnish materials constituting a part of an improvement under the direct contract of another person shall have rights to a lien on real property as provided in s. 713.06.
- (5) Any improvement for which the direct contract price is \$2,500 or less shall be exempt from all other provisions of this part except the provisions of s. 713.05.
- (6) The owner and contractor may agree that the contractor shall furnish a payment bond as provided in s. 713.23, and upon receipt of the bond the owner is exempt from the other provisions of this part as to that direct contract, but this does not exempt the owner from the lien of the contractor who furnishes the bond. If the bond is provided, it shall secure all liens subsequently accruing under this part as provided in s. 713.23.
- (7) Notwithstanding any other provision of this part, no lien shall exist in favor of any contractor, subcontractor, or sub-subcontractor who is unlicensed as provided in s. 489.128 or s. 489.532. Notwithstanding any other provision of this part, if a contract is rendered unenforceable by an unlicensed contractor, subcontractor, or sub-subcontractor pursuant to s. 489.128 or s. 489.532, such unenforceability shall not affect the rights of any other persons to enforce contract, lien, or bond remedies and shall not affect the obligations of a surety that has provided a bond on behalf of the unlicensed contractor, subcontractor, or sub-subcontractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed as provided in s. 489.128 or s. 489.532.

History.--s. 1, ch. 63-135; s. 1, ch. 67-210; s. 35, ch. 67-254; s. 7, ch. 69-97; ss. 2, 17, ch. 77-353; s. 1, ch. 78-397; s. 2, ch. 87-74; s. 15, ch. 87-310; s. 3, ch. 88-397; s. 801, ch. 97-102; s. 5, ch. 2001-211; s. 3, ch. 2003-257; s. 6, ch. 2005-227; s. 5, ch. 2007-221.

Note.--Former s. 84.022.

713.03 Liens for professional services.--

(1) Any person who performs services as architect, landscape architect, interior designer, engineer, or surveyor and mapper, subject to compliance with and the limitations imposed by this part, has a lien on the real property improved for any money that is owing to him or her for his or her services used in connection with improving the real property or for his or her services in supervising any portion of the work of improving the real property, rendered in accordance with his or her contract and with the direct contract.

(2) Any architect, landscape architect, interior designer, engineer, or surveyor and mapper who has a direct contract and who in the practice of his or her profession shall perform services, by himself or herself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him or her for his or her professional services, regardless of whether such real property is actually improved.

(3) No liens under this section shall be acquired until a claim of lien is recorded. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2) or an affidavit concerning unpaid lienors as provided in s. 713.06(3).

History.--s. 1, ch. 63-135; s. 1, ch. 65-456; s. 35, ch. 67-254; s. 3, ch. 77-353; s. 2, ch. 85-103; s. 3, ch. 90-109; s. 121, ch. 94-119; s. 802, ch. 97-102.

Note.--Former s. 84.031.

713.04 Subdivision improvements.--

(1) Any lienor who, regardless of privity, performs services or furnishes material to real property for the purpose of making it suitable as the site for the construction of an improvement or improvements shall be entitled to a lien on the real property for any money that is owed to her or him for her or his services or materials furnished in accordance with her or his contract and the direct contract. The total amount of liens allowed under this section shall not exceed the amount of the direct contract under which the lienor furnishes labor, materials, or services. The work of making real property suitable as the site of an improvement shall include but shall not be limited to the grading, leveling, excavating, and filling of land, including the furnishing of fill soil; the grading and paving of streets, curbs, and sidewalks; the construction of ditches and other area drainage facilities; the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes; and the construction of canals and shall also include the altering, repairing, and redoing of all these things. When the services or materials are placed on land dedicated to public use and are furnished under contract with the owner of the abutting land, the cost of the services and materials, if unpaid, may be the basis for a lien upon the abutting land. When the services or materials are placed upon land under contract with the owner of the land who subsequently dedicates parts of the land to public use, the person furnishing the services or materials placed upon the dedicated land shall be entitled to a lien upon the land abutting the dedicated land for the unpaid cost of the services and materials placed upon the dedicated land, or in the case of improvements that serve or benefit real property that is divided by the improvements, to a lien upon each abutting part for the equitable part of the full amount due and owing. If the part of the cost to be borne by each parcel of the land subject to the same lien is not specified in the contract, it shall be prorated equitably among the parcels served or benefited. No lien under this section shall be acquired until a claim of lien is recorded. No notice of commencement shall be filed for liens under this section. No lienor shall be required to serve a notice to owner for liens under this section.

(2) If a lienor under this section who is not in privity with the owner serves a notice on the owner in accordance with the provisions of s. 713.06(2), payment of lienors by the owner under this section shall be governed by s. 713.06(3)(c), (d), (e), (f), (g), (h), and (4).

(3) The owner shall not pay any money on account of a direct contract before actual furnishing of labor and services or materials for subdivision improvements. Any payment not complying with such requirement shall not qualify as a proper payment under this chapter.

(4) The owner shall make final payment on account of a direct contract only after the contractor complies with s. 713.06(3)(d). Any payment not complying with such requirement shall not qualify as a proper payment under this chapter.

History.--s. 1, ch. 63-135; s. 2, ch. 65-456; s. 35, ch. 67-254; s. 2, ch. 80-97; s. 2, ch. 86-247; s. 803, ch. 97-102; s. 7, ch. 2005-227.

Note.--Former s. 84.041.

713.05 Liens of persons in privity.--A materialman or laborer, either of whom is in privity with the owner, or a contractor who complies with the provisions of this part shall, subject to the limitations thereof, have a lien on the real property improved for any money that is owed to him or her for labor, services, materials, or other items required by, or furnished in accordance with, the direct contract and for unpaid finance charges due under the lienor's contract. A materialman or laborer, in privity with the owner, or a contractor shall also have a lien on the owner's real property for any money that is owed to him or her for labor, services, or materials furnished to improve public property if the improvements to the public property are a condition of the permit to improve the owner's real property. No lien under this section shall be acquired until a claim of lien is recorded. A lienor who, as a subcontractor, sub-subcontractor, laborer, or materialman not in privity with the owner, commences to furnish labor, services, or material to an improvement and who thereafter becomes in privity with the owner shall have a lien for any money that is owed to him or her for the labor, services, or materials furnished after he or she becomes in privity with the owner. A lienor may record one claim of lien to cover both his or her work done in privity with the owner and not in privity with the owner. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2). A lienor, except a laborer or materialman, who is in privity with the owner and claims a lien under this section shall furnish the contractor's affidavit required in s. 713.06(3)(d). A contractor may claim a lien for any labor, services, or materials furnished by another lienor for which he or she is obligated to pay the lienor, regardless of the right of the lienor to claim a lien; but, if the lienor claims a valid lien, the contractor shall not recover the amount of the lien recovered by the lienor, and the amount of the contractor's claim of lien may be reduced accordingly by court order. No person shall have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

History.--s. 1, ch. 63-135; s. 3, ch. 65-456; s. 2, ch. 67-210; s. 35, ch. 67-254; s. 4, ch. 77-353; s. 3, ch. 80-97; s. 1, ch. 96-383; s. 1763, ch. 97-102.

Note.--Former s. 84.051.

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

(1) A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, has a lien on the real property improved for any money that is owed to him or her for labor, services, or materials furnished in accordance with his or her contract and with the direct contract and for any unpaid finance charges due under the lienor's contract. A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, also has a lien on the owner's real property for labor, services, or materials furnished to improve public property if the improvement of the public property is furnished in accordance with his or her contract and with the direct contract. The total amount of all liens allowed under this part for furnishing labor, services, or material covered by any certain direct contract must not exceed the amount of the contract price fixed by the direct contract except as provided in subsection (3). No person may have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

(2)(a) All lienors under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, must serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. A sub-subcontractor or a materialman to a subcontractor must serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor must serve a copy of the notice to owner on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor shall serve the notice to owner on the subcontractor if the materialman knows the name and address of the subcontractor. The notice must be served before commencing, or not later than 45 days after commencing, to furnish his or her labor, services, or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit under subparagraph (3)(d)1. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and does not give to the lienor serving the notice any priority over other lienors in the same category; and the failure to serve the notice, or to timely serve it, is a complete defense to enforcement of a lien by any person. The serving of the notice does not dispense with recording the claim of lien. The notice is not a lien, cloud, or encumbrance on the real property nor actual or constructive notice of any of them.

(b) If the owner, in his or her notice of commencement, has designated a person in addition to himself or herself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(b), the lienor shall serve a copy of his or her notice on the person so designated. The failure by the lienor to serve such copy, however, does not invalidate an otherwise valid lien.

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

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 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 RELEASE 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 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 contacting 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)

The form may be combined with a notice to contractor given under s. 255.05 or s. 713.23 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

(d) A notice to an owner served on a lender must be in writing, must be served in accordance with s. 713.18, and shall be addressed to the persons designated, if any, and to the place and address designated in the notice of commencement. Any lender who, after receiving a notice provided under this subsection, pays a contractor on behalf of the owner for an improvement shall make proper payments as provided in paragraph (3)(c) as to each such notice received by the lender. The failure of a lender to comply with this paragraph renders the lender liable to the owner for all damages sustained by the owner as a result of that failure. This paragraph does not give any person other than an owner a claim or right of action against a lender for the failure of the lender to comply with this paragraph. Further, this paragraph does not prohibit a lender from disbursing construction funds at any time directly to the owner, in which event the lender has no obligation to make proper payments under this paragraph.

(e) A lienor, in the absence of a recorded notice of commencement, may rely on the information contained in the building permit application to serve the notice prescribed in paragraphs (a), (b), and (c).

(f) If a lienor has substantially complied with the provisions of paragraphs (a), (b), and (c), errors or omissions do not prevent the enforcement of a claim against a person who has not been adversely affected by such omission or error. However, a lienor must strictly comply with the time requirements of paragraph (a).

(3) The owner may make proper payments on the direct contract as to lienors under this section, in the following manner:

(a) If the description of the property in the notice prescribed by s. 713.13 is incorrect and the error adversely affects any lienor, payments made on the direct contract shall be held improperly paid to that lienor; but this does not apply to clerical errors when the description listed covers the property where the improvements are.

(b) The owner may pay to any laborers the whole or any part of the amounts that shall then be due and payable to them respectively for labor or services performed by them and covered by the direct contract, and shall deduct the same from the balance due the contractor under a direct contract.

(c) When any payment becomes due to the contractor on the direct contract, except the final payment:

1. The owner shall pay or cause to be paid, within the limitations imposed by subparagraph 2., the sum then due to each lienor giving notice prior to the time of the payment. The owner may require, and, in such event, the contractor shall furnish as a prerequisite to requiring payment to himself or herself, an affidavit as prescribed in subparagraph (d)1., on any payment made, or to be made, on a direct contract, but the furnishing of the affidavit shall not relieve the owner of his or her responsibility to pay or cause to be paid all lienors giving notice. The owner shall be under no obligation to any lienor, except laborers, from whom he or she has not received a notice to owner at the time of making a payment.

2. When the payment due is insufficient to pay all bills of lienors giving notice, the owner shall prorate the amount then due under the direct contract among the lienors giving notice pro rata in the manner prescribed in subsection (4). Lienors receiving money shall execute partial releases, as provided in s. 713.20(2), to the extent of the payment received.

3. If any affidavit permitted hereunder recites any outstanding bills for labor, services, or materials, the owner may pay the bills in full direct to the person or firm to which they are due if the balance due on the direct contract at the time the affidavit is given is sufficient to pay the bills and shall deduct the amounts so paid from the balance of payment due the contractor. This subparagraph shall not create any obligation of the owner to pay any person who is not a lienor giving notice.

4. No person furnishing labor or material, or both, who is required to serve a notice under paragraph (2)(a) and who did not serve the notice and whose time for service has expired shall be entitled to be paid by the owner because he or she is listed in an affidavit furnished by the contractor under subparagraph (c)1.

5. If the contract is terminated before completion, the contractor shall comply with subparagraph (d)1.

(d) When the final payment under a direct contract becomes due the contractor:

1. The contractor shall give to the owner a final payment affidavit stating, if that be the fact, that all lienors under his or her direct contract who have timely served a notice to owner on the owner and the contractor have been paid in full or, if the fact be otherwise, showing the name of each such lienor who has not been paid in full and the amount due or to become due each for labor, services, or materials furnished. The affidavit must be in substantially the following form:

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

Signed, sealed, and delivered this _____ day of _____, _____,

By (name of affiant)

(title of affiant)

(name of contractor's business)

Sworn to and subscribed before me this _____ day of _____ 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)

The contractor shall have no lien or right of action against the owner for labor, services, or materials furnished under the direct contract while in default for not giving the owner the affidavit; however, the negligent inclusion or omission of any information in the affidavit which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien. The contractor shall execute the affidavit and deliver it to the owner at least 5 days before instituting an action as a prerequisite to the institution of any action to enforce his or her lien under this chapter, even if the final payment has not become due because the contract is terminated for a reason other than completion and regardless of whether the contractor has any lienors working under him or her or not.

2. If the contractor's affidavit required in this subsection recites any outstanding bills for labor, services, or materials, the owner may, after giving the contractor at least 10 days' written notice, pay such bills in full direct to the person or firm to which they are due, if the balance due on a direct contract at the time the affidavit is given is sufficient to pay them and lienors giving notice, and shall deduct the amounts so paid from the balance due the contractor. Lienors listed in said affidavit not giving notice, whose 45-day notice time has not expired, shall be paid in full or pro rata, as appropriate, from any balance then remaining due the contractor; but no lienor whose notice time has expired shall be paid by the owner or by any other person except the person with whom that lienor has a contract.

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

4. The owner shall have the right to rely on the contractor's affidavit given under this paragraph in making the final payment, unless there are lienors giving notice who are not listed in the affidavit. If there are lienors giving notice who are not so listed, the owner may pay such lienors and any persons listed in the affidavit that are entitled to be paid by the owner under subparagraph 2. and shall thereupon be discharged of any further responsibility under the direct contract, except for any balance that may be due to the contractor.

5. The owner shall retain the final payment due under the direct contract that shall not be disbursed until the contractor's affidavit under subparagraph 1. has been furnished to the owner.

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

(e) If the improvement is abandoned before completion, the owner shall determine the amount due each lienor giving notice and shall pay the same in full or prorate in the same manner as provided in subsection (4).

(f) No contractor shall have any right to require the owner to pay any money to him or her under a direct contract if such money cannot be properly paid by the owner to the contractor in accordance with this section.

(g) Except with written consent of the contractor, before paying any money directly to any lienor except the contractor or any laborer, the owner shall give the contractor at least 10 days' written notice of his or her intention to do so, and the amount he or she proposes to pay each lienor.

(h) When the owner has properly retained all sums required in this section to be retained but has otherwise made improper payments, the owner's real property shall be liable to all laborers, subcontractors, sub-subcontractors, and materialmen complying with this chapter only to the extent of the retentions and the improper payments, notwithstanding the other provisions of this subsection. Any money paid by the owner on a direct contract, the payment of which is proved to

have caused no detriment to any certain lienor, shall be held properly paid as to the lienor, and if any of the money shall be held not properly paid as to any other lienors, the entire benefit of its being held not properly paid as to them shall go to the lienors.

(4)(a) In determining the amounts for which liens between lienors claiming under a direct contract shall be paid by the owner or allowed by the court within the total amount fixed by the direct contract and under the provisions of this section, the owner or court shall pay or allow such liens in the following order:

1. Liens of all laborers.
2. Liens of all persons other than the contractor.
3. Lien of the contractor.

(b) Should the total amount for which liens under such direct contract may be allowed be less than the total amount of liens under such contract in all classes above mentioned, all liens in a class shall be allowed for their full amounts before any liens shall be allowed to any subsequent class. Should the amount applicable to the liens of any single class be insufficient to permit all liens within that class to be allowed for their full amounts, each lien shall be allowed for its pro rata share of the total amount applicable to liens of that class; but if the same labor, services, or materials shall be covered by liens of more than one class, such labor, services, or materials shall be allowed only in the earliest class by which they shall be covered; and also if the same labor, services, or materials shall be covered by liens of two or more lienors of the same class, such labor, services, or materials shall be allowed only in the lien of the lienor farthest removed from the contractor. This section shall not be construed to affect the priority of liens derived under separate direct contracts.

History.--s. 1, ch. 63-135; ss. 4, 5, ch. 65-456; s. 35, ch. 67-254; s. 1, ch. 75-227; s. 5, ch. 77-353; s. 4, ch. 80-97; s. 3, ch. 87-74; s. 4, ch. 90-109; s. 1, ch. 93-99; s. 318, ch. 94-119; s. 229, ch. 94-218; s. 2, ch. 96-383; s. 1764, ch. 97-102; s. 2, ch. 97-219; s. 3, ch. 98-135; s. 3, ch. 99-386; ss. 2, 3, ch. 2003-177.

Note.--Former s. 84.061.

713.07 Priority of liens.--

- (1) Liens under ss. 713.03 and 713.04 shall attach at the time of recordation of the claim of lien and shall take priority as of that time.
- (2) Liens under ss. 713.05 and 713.06 shall attach and take priority as of the time of recordation of the notice of commencement, but in the event a notice of commencement is not filed, then such liens shall attach and take priority as of the time the claim of lien is recorded.
- (3) All such liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.
- (4) If construction ceases or the direct contract is terminated before completion and the owner desires to recommence construction, he or she may pay all lienors in full or pro rata in accordance

with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his or her intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien, or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

History.--s. 1, ch. 63-135; s. 6, ch. 65-456; s. 35, ch. 67-254; s. 804, ch. 97-102; s. 6, ch. 2007-221.

Note.--Former s. 84.071.

713.08 Claim of lien.--

(1) For the purpose of perfecting her or his lien under this part, every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this part may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom she or he was employed.

(c) The labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorporated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for identification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials and for unpaid finance charges due under the lienor's contract.

(h) 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. 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.

(2) The claim of lien may be prepared by the lienor or the lienor's employee or attorney and shall be signed and sworn to or affirmed by the lienor or the lienor's agent acquainted with the facts stated therein.

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

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 _____

County of _____

Before me, the undersigned notary public, personally appeared _____, who was duly sworn and says that she or he is (the lienor herein) (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 real 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 _____, (year) , and the last of the items on _____, (year) ; 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 _____, (year) , by _____; and (if required) that the lienor served copies of the notice on the contractor on _____, (year) , by _____ and on the subcontractor, _____, on _____, (year) , by _____.

(Signature)

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

(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 _____

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

(4)(a) The omission of any of the foregoing details or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

(b) Any claim of lien recorded as provided in this part may be amended at any time during the period allowed for recording such claim of lien, provided that such amendment shall not cause any person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally recorded. Any amendment of the claim of lien shall be recorded in the same manner as provided for recording the original claim of lien.

(c) The claim of lien shall be served on the owner. Failure to serve any claim of lien in the manner provided in s. 713.18 before recording or within 15 days after recording shall render the claim of lien voidable to the extent that the failure or delay is shown to have been prejudicial to any person entitled to rely on the service.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor. However, if the original contract is terminated under s. 713.07(4), a claim for a lien attaching prior to such termination may not be recorded after 90 days following the date of such termination or 90 days after the final furnishing of labor, services, or materials by the lienor, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

History.--s. 1, ch. 63-135; s. 7, ch. 65-456; s. 35, ch. 67-254; s. 6, ch. 77-353; s. 5, ch. 80-97; s. 4, ch. 92-286; s. 3, ch. 96-383; s. 1765, ch. 97-102; s. 13, ch. 98-246; s. 4, ch. 99-386; s. 4, ch. 2003-177; s. 8, ch. 2005-227; s. 7, ch. 2007-221.

Note.--Former s. 84.081.

713.09 Single claim of lien.--A lienor is required to record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract. The single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land under one direct contract are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. In each claim of lien under this section, the owner under

the direct contract must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

History.--s. 1, ch. 63-135; s. 8, ch. 65-456; s. 35, ch. 67-254; s. 6, ch. 80-97; s. 5, ch. 90-109; s. 805, ch. 97-102.

Note.--Former s. 84.091.

713.10 Extent of liens.--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. 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:

- (1) 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
- (2) All of the 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 recorded by the lessor in the public records of the county in which the parcel of land is located:
 - (a) The name of the lessor.
 - (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.
 - (d) A statement that all leases entered into for premises on the parcel of land contain the language identified in paragraph (c).
- (3) The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 1, ch. 85-103; s. 1, ch. 92-148; s. 806, ch. 97-102.

Note.--Former s. 84.101.

713.11 Liens for improving land in which the contracting party has no interest.--When the person contracting for improving real property has no interest as owner in the land, no lien shall attach to the land, except as provided in s. 713.12, but if removal of such improvement from the land is practicable, the lien of a lienor shall attach to the improvement on which he or she has performed labor or services or for which he or she has furnished materials. The court, in the enforcement of such lien, may order such improvement to be separately sold and the purchaser may remove it within such

reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored substantially to its condition before the improvement was commenced, in which case the court shall order its restoration and the reasonable charge therefor shall be first paid out of such purchase price and the remainder shall be paid to lienors and other encumbrancers in accordance with their respective rights.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 807, ch. 97-102.

Note.--Former s. 84.111.

713.12 Liens for improving real property under contract with husband or wife on property of the other or of both.--When the contract for improving real property is made with a husband or wife who is not separated and living apart from his or her spouse and the property is owned by the other or by both, the spouse who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title, or interest of the other in said property to liens under this part unless such other shall, within 10 days after learning of such contract, give the contractor and record in the clerk's office, notice of his or her objection thereto.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254.

Note.--Former s. 84.121.

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.
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.

(b) The owner, at his or her option, may designate a person in addition to himself or herself to receive a copy of the lienor's notice as provided in s. 713.06(2)(b), and if he or she does so, the name and address of such person must be included in the notice of commencement.

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

(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 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)

(Signatory's Title/Office)

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

Verification pursuant to Section 92.525, Florida Statutes.

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

(Signature of Natural Person Signing Above)

(e) A copy of any payment bond must be attached at the time of recordation of the notice of commencement. The failure to attach a copy of the bond to the notice of commencement when the notice is recorded negates the exemption provided in s. 713.02(6). However, if a payment bond under s. 713.23 exists but was not attached at the time of recordation of the notice of commencement, the bond may be used to transfer any recorded lien of a lienor except that of the contractor by the recordation and service of a notice of bond pursuant to s. 713.23(2). The notice requirements of s. 713.23 apply to any claim against the bond; however, the time limits for serving any required notices shall begin running from the later of the time specified in s. 713.23 or the date the notice of bond is served on the lienor.

(f) The giving of a notice of commencement is effective upon the filing of the notice in the clerk's office.

(g) The owner must sign the notice of commencement and no one else may be permitted to sign in his or her stead.

(2) If the improvement described in the notice of commencement is not actually commenced within 90 days after the recording thereof, such notice is void and of no further effect.

(3) The recording of a notice of commencement does not constitute a lien, cloud, or encumbrance on real property, but gives constructive notice that claims of lien under this part may be recorded and may take priority as provided in s. 713.07. The posting of a copy does not constitute a lien, cloud, or encumbrance on real property, nor actual or constructive notice of any of them.

(4) This section does not apply to an owner who is constructing improvements described in s. 713.04.

(5)(a) A notice of commencement that is recorded within the effective period may be amended to extend the effective period, change erroneous information in the original notice, or add information that was omitted from the original notice. However, in order to change contractors, a new notice of commencement or notice of recommencement must be executed and recorded.

(b) The amended notice must identify the official records book and page where the original notice of commencement is recorded, and a copy of the amended notice must be served by the owner upon the contractor and each lienor who serves notice before or within 30 days after the date the amended notice is recorded.

(6) Unless otherwise provided in the notice of commencement or a new or amended notice of commencement, a notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent purchasers for a valuable consideration, after 1 year after the date of recording the notice of commencement.

(7) A lender must, prior to the disbursement of any construction funds to the contractor, record the notice of commencement in the clerk's office as required by this section; however, the lender is not required to post a certified copy of the notice at the construction site. The posting of the notice at the construction site remains the owner's obligation. The failure of a lender to record the notice of commencement as required by this subsection renders the lender liable to the owner for all damages sustained by the owner as a result of the failure. Whenever a lender is required to record a notice of commencement, the lender shall designate the lender, in addition to others, to receive copies of notices to owner. This subsection does not give any person other than the owner a claim or right of action against a lender for failure to record a notice of commencement.

History.--s. 1, ch. 63-135; s. 9, ch. 65-456; s. 35, ch. 67-254; s. 14, ch. 77-353; s. 7, ch. 80-97; s. 4, ch. 88-397; s. 6, ch. 90-109; s. 2, ch. 91-102; s. 4, ch. 96-383; s. 1766, ch. 97-102; s. 14, ch. 98-246; s. 6, ch. 2001-211; s. 9, ch. 2005-227; s. 8, ch. 2007-221.

Note.--Former s. 84.131.

713.132 Notice of termination.--

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(a) The same information as the notice of commencement;

(b) The recording office document book and page reference numbers and date of the notice of commencement;

(c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies;

(e) A statement that all lienors have been paid in full; and

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and on each lienor who has given notice. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(2) An owner has the right to rely on a contractor's affidavit given under s. 713.06(3)(d), except with respect to lienors who have already given notice, in connection with the execution, swearing to, and recording of a notice of termination. However, the notice of termination must be accompanied by the contractor's affidavit.

(3) An owner may not record a notice of termination except after completion of construction, or after construction ceases before completion and all lienors have been paid in full or pro rata in accordance with s. 713.06(4). If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, as the case may be, is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination; and any such lienor has a right of action for damages occasioned thereby.

(4) A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated, provided that the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has given notice.

History.--s. 7, ch. 90-109; s. 5, ch. 92-286; s. 3, ch. 97-219; s. 4, ch. 98-135.

713.135 Notice of commencement and applicability of lien.--

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

(a) Print on the face of each permit card in no less than 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY 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 RECORDING YOUR NOTICE OF COMMENCEMENT."

(b) Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall furnish, for distribution, the statement described in this paragraph, and the statement must be a summary of the Construction Lien Law and must include an explanation of the provisions of the Construction Lien Law relating to the recording, and the posting of copies, of notices of commencement and a statement encouraging the owner to record a notice of commencement and post a copy of the notice of commencement in accordance with s. 713.13. The statement must also contain an explanation of the owner's rights if a lienor fails to furnish the owner with a notice as provided in s. 713.06(2) and an explanation of the owner's rights as provided in s. 713.22. The authority that issues the building permit must obtain from the Department of Business and Professional Regulation the statement required by this paragraph and must mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver that statement to the owner or, in a case in which the owner is required to personally appear to obtain the permit, provide that statement to any owner making improvements to real property consisting of a single or multiple family dwelling up to and including four units. However, the failure by the authorities to provide the summary does not subject the issuing authority to liability.

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

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13. If the direct contract is greater than \$2,500, the applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded notice of commencement or a notarized statement that the notice of commencement has been filed for recording, along with a copy thereof. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority or a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such certified copy with the issuing authority. The certified copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the certified copy of the notice of commencement is consistent with the information in the building permit application. The issuing authority shall provide the recording information on the certified copy of the recorded notice of commencement to any person upon request. This subsection does not require the recording of a notice of commencement prior to the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such permits may be issued and such inspections may be conducted without providing the issuing authority with a certified copy of a recorded notice of commencement or a notarized statement regarding a recorded notice of commencement. This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than \$7,500.

(e) Not require that a notice of commencement be recorded as a condition of the application for, or processing or issuance of, a building permit. However, this paragraph does not modify or waive the inspection requirements set forth in this subsection.

(2) An issuing authority under subsection (1) is not liable in any civil action for the failure of the person whose property is subject to attachment to receive or to be delivered a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law.

(3) An issuing authority under subsection (1) is not liable in any civil action for the failure to verify that a certified copy of the recorded notice of commencement has been filed in accordance with this section.

(4) The several boards of county commissioners, municipal councils, or other similar bodies may by ordinance or resolution establish reasonable fees for furnishing copies of the forms and the printed statement provided in paragraphs (1)(b) and (d) in an amount not to exceed \$5 to be paid by the applicant for each permit in addition to all other costs of the permit; however, no forms or statement need be furnished, mailed, or otherwise provided to, nor may such additional fee be obtained from, applicants for permits in those cases in which the owner of a legal or equitable interest (including that of ownership of stock of a corporate landowner) of the real property to be improved is engaged in the business of construction of buildings for sale to others and intends to make the improvements

authorized by the permit on the property and upon completion will offer the improved real property for sale.

(5) In addition to any other information required by the authority issuing the permit, each building permit application must contain:

(a) The name and address of the owner of the real property;

(b) The name and address of the contractor;

(c) A description sufficient to identify the real property to be improved; and

(d) The number or identifying symbol assigned to the building permit by the issuing authority, which number or symbol must be affixed to the application by the issuing authority.

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

Tax Folio No. _____

BUILDING PERMIT APPLICATION

Owner's Name

Owner's Address

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

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

City

State _____ Zip _____

Contractor's Name

Contractor's Address

City

State _____ Zip _____

Job Name

Job Address

City _____

County _____

Legal Description

Bonding Company

Bonding Company Address

City _____ State _____

Architect/Engineer's Name

Architect/Engineer's Address

Mortgage Lender's Name

Mortgage Lender's Address

Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY 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 Agent)

(including contractor)

STATE OF FLORIDA

COUNTY OF _____

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

(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 _____

(Signature of Contractor)

STATE OF FLORIDA

COUNTY OF _____

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

(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 _____

(Certificate of Competency Holder)

Contractor's State Certification or Registration No. _____

Contractor's Certificate of Competency No. _____

APPLICATION APPROVED BY

_____ Permit Officer

(b) Consistent with the requirements of paragraph (a), an authority responsible for issuing building permits under this section may accept a building permit application in an electronic format, as

prescribed by the authority. Building permit applications submitted to the authority electronically must contain the following additional statement in lieu of the requirement in paragraph (a) that a signed, sworn, and notarized signature of the owner or agent and the contractor be part of the owner's affidavit:

OWNER'S ELECTRONIC SUBMISSION STATEMENT: Under penalty of perjury, I declare that all the information contained in this building permit application is true and correct.

(c) An authority responsible for issuing building permit applications which accepts building permit applications in an electronic format shall provide public Internet access to the electronic building permit applications in a searchable format.

(7) This section applies to every municipality and county in the state which now has or hereafter may have a system of issuing building permits for the construction of improvements or for the alteration or repair of improvements on or to real property located within the geographic limits of the issuing authority.

History.--ss. 1, 2, 3, ch. 67-185; s. 2, ch. 78-397; s. 1, ch. 84-26; s. 1, ch. 86-247; s. 4, ch. 87-74; s. 8, ch. 90-109; s. 3, ch. 91-102; s. 2, ch. 93-99; s. 230, ch. 94-218; s. 5, ch. 96-383; s. 4, ch. 97-219; s. 15, ch. 98-246; s. 71, ch. 99-5; s. 5, ch. 99-386; s. 5, ch. 2003-177; s. 2, ch. 2006-187; s. 9, ch. 2007-221.

713.14 Application of money to materials account.--

(1) Any owner, contractor, subcontractor, or sub-subcontractor, in making any payment under, or properly applicable to, any contract to one with whom she or he has a running account, or with whom she or he has more than one contract, or to whom she or he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied. If she or he shall fail to do so or shall make a false designation, she or he shall be liable to anyone suffering a loss in consequence for the amount of the loss.

(2) When a payment for materials is made to a subcontractor, sub-subcontractor, or materialman, the subcontractor, sub-subcontractor, or materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply. In any case in which a lien is claimed for materials furnished by a subcontractor, sub-subcontractor, or materialman, it is a defense to the claim, to the extent of the payment made, to prove that a payment made by the owner to the contractor for the materials has been paid over to the subcontractor, sub-subcontractor, or materialman, and to prove also that when such payment was received by such subcontractor, sub-subcontractor, or materialman she or he did not demand a designation of the account and of the items of account to which the payment was to be applied or, receiving a designation of its application to the account for the materials, she or he failed to apply the payment in accordance therewith. This subsection is cumulative to any other defenses available to the person paying the materialman, subcontractor, or sub-subcontractor.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 7, ch. 77-353; s. 9, ch. 90-109; s. 808, ch. 97-102.

Note.--Former s. 84.141.

713.15 Repossession of materials not used.--If for any reason the completion of an improvement is abandoned or though the improvement is completed, materials delivered are not used therefor, a person who has delivered materials for the improvement which have not been incorporated therein and for which he or she has not received payment may peaceably repossess and remove such materials or replevy the same and thereupon he or she shall have no lien on the real property or improvements and no right against any persons for the price thereof, but shall have the same rights in regard to the materials as if he or she had never parted with their possession. This right to repossess and remove or replevy the materials shall not be affected by their sale, encumbrance, attachment, or transfer from the site of improvement, except that if the materials have been so transferred, the right to repossess or replevy them shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein is acquired after such transfer from the site of the improvement or as against a creditor attaching after such transfer. The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price which has been paid.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 809, ch. 97-102.

Note.--Former s. 84.151.

713.16 Demand for copy of contract and statements of account; form.--

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon must be furnished by any party thereto, upon written demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or willfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any detriment thereby has a cause of action against the person refusing or neglecting to furnish the same or willfully and falsely stating the amount due or to become due for his or her damages sustained thereby. The information contained in such copy or statement furnished pursuant to such written demand is binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents must pay for the reproduction thereof; and, if such person fails or refuses to do so, he or she is entitled only to inspect such documents at reasonable times and places.

(2) The owner may serve in writing a demand of any lienor for a written statement under oath of his or her 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 by the lienor. Any such demand to a lienor 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 served by such lienor. The failure or refusal to furnish the statement does not deprive the lienor of his or her lien if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to owner. The failure or refusal to furnish the statement under oath within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person so failing or refusing to furnish such statement of his or her lien. If the owner serves more than one demand for statement of account on a lienor and none of the

information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her lien. The negligent inclusion or omission of any information deprives the person of his or her lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim of lien being enforced through a foreclosure case filed prior to the date the demand for statement is received by the lienor.

(3) A request for sworn statement of account must be in substantially the following form:

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 or her 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 and address of owner)

(date of request for sworn statement of account)

(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other lienor for a written statement under oath of his or her 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 by the lienor. Any such demand to a lienor 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 contractor served by such lienor. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the

bond. If the contractor serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her rights under the bond. The negligent inclusion or omission of any information deprives the person of his or her rights under the bond to the extent the contractor can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed prior to the date the demand for statement of account is received by the lienor.

(5)(a) Any lienor who has recorded a claim of lien may make written demand on the owner for a written statement under oath showing:

1. The amount of the direct contract under which the lien was recorded;
2. The dates and amounts paid or to be paid by or on behalf of the owner for all improvements described in the direct contract;
3. The reasonable estimated costs of completing the direct contract under which the lien was claimed pursuant to the scope of the direct contract; and
4. If known, the actual cost of completion.

(b) Any owner who does not provide the statement within 30 days after demand, or who provides a false or fraudulent statement, is not a prevailing party for purposes of an award of attorney's fees under s. 713.29. The written demand must include the following warning in conspicuous type in substantially the following form:

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.

(6) For purposes of this section, the term "information" means the nature and quantity of the labor, services, and materials furnished or to be furnished by a lienor and the amount paid, the amount due, and the amount to become due on the lienor's account.

History.--s. 1, ch. 63-135; s. 10, ch. 65-456; s. 35, ch. 67-254; s. 8, ch. 77-353; s. 10, ch. 90-109; s. 6, ch. 92-286; s. 319, ch. 94-119; s. 6, ch. 96-383; s. 1767, ch. 97-102; s. 6, ch. 99-386; s. 10, ch. 2007-221.

Note.--Former s. 84.161.

713.165 Request for list of subcontractors and suppliers.--

(1) An owner of real property may request from the contractor a list of all subcontractors and suppliers who have any contract with the contractor to furnish any material or to perform any service for the contractor with respect to the owner's real property or improvement to the real property. The request must be in writing and delivered by registered or certified mail to the address of the contractor shown in the contract or the recorded notice of commencement.

(2) The contractor must within 10 days after receipt of the property owner's written request, furnish to the property owner or the property owner's agent a list of the subcontractors and suppliers who have a contract with the contractor as of the date the request is received by the contractor. If the contractor fails to furnish the list, the contractor thereby forfeits the contractor's right to assert a lien against the owner's property to the extent the owner is prejudiced by the contractor's failure to furnish the list or by any omissions from the list.

(3) A list furnished under this section shall not constitute a notice to owner.

History.--s. 7, ch. 95-240.

713.17 Materials not attachable for debts of purchaser.--Whenever materials have been furnished to improve real property and payment therefor has not been made or waived, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price thereof, so long as in good faith the same are about to be applied to improve the real property; but if the owner has made payment for materials furnished and the materialman has not received payment therefor, such materials shall not be subject to attachment, execution, or other legal process to enforce the debt due for the purchase price.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254.

Note.--Former s. 84.171.

713.18 Manner of serving notices and other instruments.--

(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(a) By actual delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a limited liability company, to a member or manager.

(b) By sending the same by registered or certified mail, with postage prepaid, or by overnight or second-day delivery with evidence of delivery, which may be in an electronic format.

(c) If the method specified in paragraph (a) or paragraph (b) cannot be accomplished, by posting on the premises.

(2) Notwithstanding subsection (1), if a notice to owner, a notice to contractor under s. 713.23, or a preliminary notice under s. 255.05 is mailed by registered or certified mail with postage prepaid to the person to be served at any of the addresses set forth in subsection (3) within 40 days after the date the lienor first furnishes labor, services, or materials, service of that notice is effective as of the date of mailing if the person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing or if the person who served the notice maintains electronic tracking records generated through use of the United States Postal Service Confirm service or a similar service

containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3) If an instrument served pursuant to this section to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served, is not received, but is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item, then service is effective on the date the instrument was sent.

(4) If the real property is owned by more than one person or a partnership, a lienor may serve any notices or other papers under this part on any one of such owners or partners, and such notice is deemed notice to all owners and partners.

History.--s. 1, ch. 63-135; s. 11, ch. 65-456; s. 35, ch. 67-254; s. 10, ch. 87-405; s. 11, ch. 90-109; s. 7, ch. 96-383; s. 1768, ch. 97-102; s. 5, ch. 98-135; s. 7, ch. 99-386; ss. 7, 12, ch. 2001-211; s. 20, ch. 2003-2; s. 3, ch. 2006-187; s. 11, ch. 2007-221.

Note.--Former s. 84.181.

713.19 Assignment of lien.--A lien or prospective lien, except that of a laborer, may be assigned by the lienor at any time before its discharge. The assignment may be recorded in the clerk's office.

History.--s. 1, ch. 63-135; s. 12, ch. 65-456; s. 35, ch. 67-254.

Note.--Former s. 84.191.

713.20 Waiver or release of liens.--

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his or her demand shall not constitute a waiver of his or her lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under s. 713.06(2), or the claim of lien under s. 713.08.

(2) A right to claim a lien may not be waived in advance. A lien right may be waived only to the extent of labor, services, or materials furnished. Any waiver of a right to claim a lien that is made in advance is unenforceable.

(3) Any person may at any time waive, release, or satisfy any part of his or her lien under this part, either as to the amount due for labor, services, or materials furnished or for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release, or as to any part or parcel of the real property.

(4) 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) .

(Lienor)

By: _____

(5) 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)

By: _____

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5).

(7) A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check. However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid check until any such condition is satisfied.

(8) A lien waiver or lien release that is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 5, ch. 88-397; s. 8, ch. 96-383; s. 1769, ch. 97-102; s. 5, ch. 97-219; s. 30, ch. 99-6.

Note.--Former s. 84.202.

713.21 Discharge of lien.--A lien properly perfected under ¹this chapter may be discharged by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction shall be signed by the lienor, the lienor's agent or attorney and attested by said clerk. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction of the lienor, duly acknowledged and recorded in the clerk's office. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this part.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days why his or her lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor's failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of competent jurisdiction showing a final determination of the action.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 810, ch. 97-102.

¹**Note.**--The language "this chapter" predates inclusion of this material in chapter 713 and, when initially included in this section's text, referred to former chapter 84, Mechanics Liens. The Florida Uniform Federal Lien Registration Act was enacted without reference to statutory placement by ch. 92-25, Laws of Florida, and was added as part IV of chapter 713 by the Division of Statutory Revision.

Note.--Former s. 84.211.

713.22 Duration of lien.--

(1) No lien provided by this part shall continue for a longer period than 1 year after the claim of lien has been recorded or 1 year after the recording of an amended claim of lien that shows a later date of final furnishing of labor, services, or materials, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded.

(2) An owner or the owner's agent or attorney may elect to shorten the time prescribed in subsection (1) within which to commence an action to enforce any claim of lien or claim against a bond or other security under s. 713.23 or s. 713.24 by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF LIEN

To: (Name and address of lienor)

You are notified that the undersigned contests the claim of lien filed by you on _____, (year) , and recorded in _____ Book _____, Page _____, of the public records of _____ 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. This _____ day of _____, (year) .

Signed: (Owner or Attorney)

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service shall be deemed complete upon mailing.

History.--s. 1, ch. 63-135; s. 13, ch. 65-456; s. 35, ch. 67-254; s. 9, ch. 77-353; s. 811, ch. 97-102; s. 31, ch. 99-6; s. 12, ch. 2007-221.

Note.--Former s. 84.221.

713.23 Payment bond.--

(1)(a) The payment bond required to exempt an owner under this part shall be furnished by the contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract, and a copy of the bond shall be attached to the notice of commencement when the notice of commencement is recorded. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be conditioned that the contractor shall promptly make payments for labor, services, and material to all lienors under the contractor's direct contract. Any form of bond given by a contractor conditioned to pay for labor,

services, and material used to improve real property shall be deemed to include the condition of this subsection.

(b) The owner, contractor, or surety shall furnish a true copy of the bond at the cost of reproduction to any lienor demanding it. Any person who fails or refuses to furnish the copy without justifiable cause shall be liable to the lienor demanding the copy for any damages caused by the refusal or failure.

(c) Either before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor's bond for protection on the work. If a notice of commencement is not recorded, or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond, the lienor not in privity with the contractor shall have 45 days from the date the lienor is notified of the existence of the bond within which to serve the notice. The notice may be in substantially the following form:

NOTICE TO CONTRACTOR

To (name of contractor)

The undersigned notifies you that he or she has furnished or is furnishing (services or materials) for the improvement of the real property identified as (property description) owned by (owner's name and address) under an order given by _____ and that the undersigned will look to the contractor's bond for protection on the work.

(Lienor's signature and address)

(d) In addition, a lienor is required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety not later than 90 days after the final furnishing of labor, services, or materials by the lienor. A written notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a written notice of nonpayment shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. The notice under this paragraph may be in substantially the following form:

NOTICE OF NONPAYMENT

To (name of contractor and address)

(name of surety and address)

The undersigned notifies you that he or she has furnished (describe labor, services, or materials) for the improvement of the real property identified as (property description) . The amount now due and unpaid is \$_____.

(signature and address of lienor)

(e) No action for the labor or materials or supplies may be instituted or prosecuted against the contractor or surety unless both notices have been given. No action shall be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A contractor or the contractor's agent or attorney may elect to shorten the prescribed time within which an action to enforce any claim against a payment bond provided under this section or s. 713.245 may be commenced at any time after a notice of nonpayment, if required, has been served for the claim by recording in the clerk's office a notice in substantially the following form:

**NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND**

To: (Name and address of lienor)

You are notified that the undersigned contests your notice of nonpayment, dated _____, _____, and served on the undersigned on _____, _____, and that the time within which you may file suit to enforce your claim is limited to 60 days from the date of service of this notice.

DATED on _____, _____.

Signed: (Contractor or Attorney)

The claim of any lienor upon whom the notice is served and who fails to institute a suit to enforce his

or her claim against the payment bond within 60 days after service of the notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice. Service is complete upon mailing.

(f) Any lienor has a direct right of action on the bond against the surety. A bond must not contain any provisions restricting the classes of persons protected thereby or the venue of any proceeding. The surety is not entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety may not be increased beyond the penal sum of the bond. A lienor may not waive in advance his or her right to bring an action under the bond against the surety.

(2) The bond shall secure every lien under the direct contract accruing subsequent to its execution and delivery, except that of the contractor. Every claim of lien, except that of the contractor, filed subsequent to execution and delivery of the bond shall be transferred to it with the same effect as liens transferred under s. 713.24. Record notice of the transfer shall be effected by the contractor, or any person having an interest in the property against which the claim of lien has been asserted, by recording in the clerk's office a notice in substantially the following form:

NOTICE OF BOND

To (Name and Address of Lienor)

You are notified that the claim of lien filed by you on _____, _____, and recorded in Official Records Book _____ at page _____ of the public records of _____ County, Florida, is secured by a bond, a copy being attached.

Signed: (Name of person recording notice)

The notice shall be verified. The clerk shall mail a copy of the notice to the lienor at the address shown in the claim of lien, or the most recent amendment to it; shall certify to the service on the face of the notice; and shall record the notice. The clerk shall receive the same fee as prescribed in s. 713.24(1) for certifying to a transfer of lien.

(3) A payment bond in substantially the following form shall be sufficient:

PAYMENT BOND

BY THIS BOND We, _____, as Principal, and _____, a corporation, as Surety, are bound to _____, herein called Owner, in the sum of \$_____ for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payments to all lienors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract dated _____, _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference; and
2. Pays Owner all loss, damage, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under paragraph 1. of this bond;

then this bond is void; otherwise, it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with formalities connected with the contract or with the changes do not affect Surety's obligation under this bond.

DATED on _____, _____.

(Principal) (SEAL)

(Surety's name)

By _____

As Attorney in Fact

(4) The provisions of s. 713.24(3) shall apply to bonds under this section.

(5) A waiver and release of lien pursuant to s. 713.20 given by a lienor shall constitute a waiver and release in a like amount of the lienor's right to make a claim against a payment bond under this section.

History.--s. 1, ch. 63-135; s. 14, ch. 65-456; s. 35, ch. 67-254; s. 10, ch. 77-353; s. 8, ch. 80-97; s. 5, ch. 87-74; s. 6, ch. 88-397; s. 12, ch. 90-109; s. 812, ch. 97-102; s. 6, ch. 98-135; s. 32, ch. 99-6; s. 8, ch. 99-386; s. 8, ch. 2001-211; s. 10, ch. 2005-227.

Note.--Former s. 84.231.

713.235 Waivers of right to claim against payment bond; forms.--

(1) When a person is required to execute a waiver of his or her right to make a claim against a payment bond provided pursuant to s. 713.23 or s. 713.245, in exchange for, or to induce payment of, a progress payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM

AGAINST THE PAYMENT BOND

(PROGRESS PAYMENT)

The undersigned, in consideration of the sum of \$_____ hereby waives its right to claim against the payment bond 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) , for improvements to the following described project:

(description of project)

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

DATED on _____

(Lienor)

By:_____

(2) When a person is required to execute a waiver of his or her right to make a claim against a payment bond provided pursuant to s. 713.23 or s. 713.245, in exchange for, or to induce payment of, the final payment, the waiver may be in substantially the following form:

WAIVER OF RIGHT TO CLAIM

AGAINST THE PAYMENT BOND

(FINAL PAYMENT)

The undersigned, in consideration of the final payment in the amount of \$_____, hereby waives its right to claim against the payment bond for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) , for improvements to the following described project:

(description of project)

DATED on _____

(Lienor)

By: _____

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2).

(4) A person who executes a waiver in exchange for a check may condition the waiver on payment of the check.

(5) A waiver that is not substantially similar to the forms in this section is enforceable in accordance with its terms.

History.--s. 7, ch. 98-135.

713.24 Transfer of liens to security.--

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either:

(a) Depositing in the clerk's office a sum of money, or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state,

either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus \$1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney's fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to \$20. If the transaction involves the transfer

of multiple liens, an additional charge of up to \$10 for each additional lien shall be charged. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the same or her or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's attorney's fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit or lien transfer bond. Nothing in this section shall be construed to vest exclusive jurisdiction in the circuit courts over transfer bond claims for nonpayment of an amount within the monetary jurisdiction of the county courts.

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer. If a proceeding to enforce a lien is commenced in a court of competent jurisdiction within the time specified in s. 713.22 and, during such proceeding, the lien is transferred pursuant to this section or s. 713.13(1)(e), an action commenced within 1 year after the transfer, unless otherwise shortened by operation of law, in the same county or circuit court to recover against the security shall be deemed to have been brought as of the date of filing the action to enforce the lien, and the court shall have jurisdiction over the action.

History.--s. 1, ch. 63-135; s. 15, ch. 65-456; s. 35, ch. 67-254; s. 6, ch. 77-354; s. 6, ch. 87-74; s. 813, ch. 97-102; s. 8, ch. 98-135; s. 111, ch. 2003-402; s. 73, ch. 2004-265; s. 11, ch. 2005-227; s. 38, ch. 2008-111.

Note.--Former s. 84.241.

713.245 Conditional payment bond.--

(1) Notwithstanding any provisions of ss. 713.23 and 713.24 to the contrary, if the contractor's written contractual obligation to pay lienors is expressly conditioned upon and limited to the payments made by the owner to the contractor, the duty of the surety to pay lienors will be coextensive with the duty of the contractor to pay, if the following provisions are complied with:

(a) The bond is listed in the notice of commencement for the project as a conditional payment bond and is recorded together with the notice of commencement for the project prior to commencement of the project.

(b) The words "conditional payment bond" are contained in the title of the bond at the top of the front page.

(c) The bond contains on the front page, in at least 10-point type, the statement: THIS BOND ONLY COVERS CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE LABOR, SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR FILING A CLAIM OF LIEN ON THIS PROJECT.

(2) Except as specified in this section, all bonds issued under this section must conform to the requirements of s. 713.23(1)(a), (b), (f), and (4). No action shall be instituted or prosecuted against the contractor or the surety after 1 year from the date the lien is transferred to the bond.

(3) The owner's property is not exempt from liens filed under this part. All lienors must comply with the provisions of this part to preserve and perfect those lien rights.

(4) Within 90 days after a claim of lien is recorded for labor, services, or materials for which the contractor has been paid, the owner or the contractor may record a notice of bond as specified in s. 713.23(2), together with a copy of the bond and a sworn statement in substantially the following form:

CERTIFICATE OF PAYMENT
TO THE CONTRACTOR

TO: Lienor (name and address from claim of lien)
Contractor (name and address)
Surety (name and address)

Under penalties of perjury, the undersigned certifies that the bond recorded with this certificate conforms with s. 713.245, F.S., that the bond is in full force and effect, and that the contractor has been paid \$_____ for the labor, services, and materials described in the Claim of Lien filed by _____ dated _____, (year) , and recorded _____, (year) , in Official Records Book _____ at Page _____ of the Public Records of _____ County, Florida.

Dated this _____ day of _____, (year) .

(Owner)

(Address)

STATE OF FLORIDA

COUNTY OF _____

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

(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 _____

(Contractor)

(Address)

STATE OF FLORIDA

COUNTY OF _____

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

(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 _____

Any notice of bond recorded more than 90 days after the recording of the claim of lien shall have no force or effect as to that lien unless the owner, the contractor and the surety all sign the notice of bond.

(5) The clerk shall serve a copy of the notice, the bond, and the certificate on the contractor, the surety, and the lienor; certify to the service on the face of the notice, the bond, and the certificate; record the notice, the bond, and the certificate; and collect a fee in accordance with s. 713.23(2).

(6) The contractor may join in a certificate of payment to the contractor at any time by recording a sworn statement substantially in the following form:

JOINDER IN CERTIFICATE OF PAYMENT

TO: Owner (name and address from certificate of payment)

Lienor (name and address from claim of lien)

Surety (name and address)

The undersigned joins in the Certificate of Payment to the Contractor recorded on _____, (year) , in Official Records Book _____ at Page _____ of the Public Records of _____ County, Florida, and certifies that the facts stated in the Certificate of Payment to the Contractor are true and correct.

Dated this _____ day of _____, (year) .

(Name)

(Address)

STATE OF FLORIDA

COUNTY OF _____

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

(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 _____

(7) The clerk shall serve the joinder in certificate of payment on the owner, the surety, and the lienor; certify to the service on the face of the joinder; record the joinder; and collect a fee in accordance with s. 713.23(2).

(8) If the contractor disputes the certificate of payment to the contractor, the contractor must record, not later than 15 days after the date the clerk certifies service of the certificate, a sworn statement in substantially the following form:

NOTICE OF CONTEST OF PAYMENT

TO: Owner (name and address from certificate of payment)

Lienor (name and address from claim of lien)

Surety (name and address)

Under penalties of perjury, the undersigned certifies that the contractor has not been paid or has only been paid \$_____ for the labor, services, and materials described in the Certificate of Payment to the Contractor recorded in Official Records Book _____ at Page _____ of the Public Records of _____ County, Florida.

Dated this _____ day of _____, (year) .

(Name)

(Address)

STATE OF FLORIDA

COUNTY OF _____

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

(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 _____

(9) The clerk shall serve a copy of the notice of contest of payment on the owner, the lienor, and the surety; certify service on the face of the notice; record the notice; and collect a fee in accordance with s. 713.23(2).

(10) If the contractor has signed the certificate of payment to the contractor or the joinder in the certificate or the contractor fails to record a notice of contest of payment within 15 days after the date the clerk certifies service of a certificate of payment to the contractor signed by the owner, the lien shall transfer to the bond to the extent of payment specified in the certificate of payment to the contractor. To the extent the lien exceeds the amount specified in the certificate of payment to the contractor, such amount shall remain as a lien on the owner's property. The surety may assert all claims or defenses of the owner regarding the validity of the claim of lien or of the contractor regarding the amount due the lienor.

(11) If the notice of contest of payment specifies that the contractor has been paid a portion of the amount due the lienor, the lien shall transfer to the bond to the extent of the payment specified in the notice of contest of payment. To the extent the lien exceeds the amount specified in the notice of contest of payment, such amount shall remain as a lien on the owner's property. The surety may assert all claims or defenses of the owner regarding the validity of the claim of lien or of the contractor regarding the amount due the lienor.

(12) If there are any material misstatements of fact made by the owner or the contractor in any certificate of payment to the contractor, or by the contractor in any notice of contest of payment, the person making the material misstatement is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The penalties apply individually and to the business entity if the false certificate is signed in a representative capacity.

(13) The certificate of payment to the contractor and the notice of contest of payment must be signed by the owner or the contractor individually if she or he is a natural person, by the general partner if the owner or the contractor is a limited partnership, by a partner if the owner or the contractor is a general partnership, by the president or a vice president if the owner or the contractor is a corporation, or by any authorized agent if the owner or the contractor is any other type of business entity.

(14) In an action to enforce a lien, the owner shall not be considered the prevailing party solely because the lien is transferred to a conditional payment bond after the action to enforce the lien is brought.

History.--s. 13, ch. 90-109; s. 9, ch. 92-286; s. 3, ch. 93-99; s. 58, ch. 95-211; s. 814, ch. 97-102; s. 16, ch. 98-246; s. 9, ch. 2001-211.

713.25 Applicability of ch. 65-456.--This act shall take effect on July 1, 1965, but shall not apply to any act required to be done within a time period which is running on that date nor shall apply to existing projects where its operation would impair vested rights.

History.--s. 17, ch. 65-456; s. 35, ch. 67-254.

Note.--Former s. 84.242.

713.26 Redemption and sale.--The right of redemption upon all sales under this part shall exist in favor of the person whose interest is sold and may be exercised in the same manner as is or may be provided for redemption of real property from sales under mortgages.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 4, ch. 71-5.

Note.--Former s. 84.251.

713.27 Interplead.--An owner or other person holding funds for disbursement on an improvement shall have the right to interplead such lienor and any other person having or claiming to have an interest in the real property improved or a contract relating to the improvement thereof, whenever there is a dispute between lienors as to the amounts due or to become due them. If the court decrees the interpleader, it may transfer all claims to the funds held by the plaintiff. In such case the

court shall require said fund to be deposited in registry of court and, effective upon such deposit, shall decree the real property to be free of all liens and claims of lien of the parties to the suit.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254.

Note.--Former s. 84.271.

713.28 Judgments in case of failure to establish liens; personal and deficiency judgments or decrees.--

(1) If a lienor shall fail, for any reason, to establish a lien for the full amount found to be due him or her in an action to enforce the same under the provisions of this part, he or she may, in addition to the lien decreed in his or her favor, recover a judgment or decree in such action against any party liable therefor for such sums in excess of the lien as are due him or her or which the lienor might recover in an action on a contract against any party to the action from whom such sums are due him or her.

(2) In any action heretofore or hereafter brought a court may, either before or after the final adjudication, award a summary money judgment or decree in favor of any party. This shall not preclude the rendition of other judgments or decrees in the action.

(3) If, upon the sale of the real property under any judgment or decree there is a deficiency of proceeds to pay the amount of such judgment or decree, the judgment or decree may be enforced for the deficiency against any person liable therefor in the same manner and under the same conditions as deficiency decrees in mortgage foreclosures. Any payment made on account of any judgment or decree in favor of a party shall be credited on any other judgment or decree rendered in favor of that party in the same action.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 815, ch. 97-102.

Note.--Former s. 84.281.

713.29 Attorney's fees.--In any action brought to enforce a lien or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 11, ch. 77-353; s. 14, ch. 90-109; s. 7, ch. 92-286; s. 816, ch. 97-102.

Note.--Former s. 84.291.

713.30 Other actions not barred.--This part shall be cumulative to other existing remedies and nothing contained in this part shall be construed to prevent any lienor or assignee under any contract from maintaining an action thereon at law in like manner as if he or she had no lien for the security of his or her debt, and the bringing of such action shall not prejudice his or her rights under this part, except as herein otherwise expressly provided.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 817, ch. 97-102.

Note.--Former s. 84.301.

713.31 Remedies in case of fraud or collusion.--

(1) When the owner or any lienor shall, by fraud or collusion, deprive or attempt to deprive any lienor of benefits or rights to which such lienor is entitled under this part by establishing or manipulating the contract price or by giving false affidavits, releases, invoices, worthless checks, statements, or written instruments permitted or required under this part relating to the improvement of real property hereunder to the detriment of any such lienor, the circuit court in chancery shall have jurisdiction, upon a complaint filed by such lienor, to issue temporary and permanent injunctions, order accountings, grant discovery, utilize all remedies available under creditors' bills and proceedings supplementary to execution, marshal assets, and exercise any other appropriate legal or equitable remedies or procedures without regard to the adequacy of a remedy at law or whether or not irreparable damage has or will be done.

(2)(a) Any lien asserted under this part in which the lienor has willfully exaggerated the amount for which such lien is claimed or in which the lienor has willfully included a claim for work not performed upon or materials not furnished for the property upon which he or she seeks to impress such lien or in which the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration shall be deemed a fraudulent lien.

(b) It is a complete defense to any action to enforce a lien under this part, or against any lien in any action in which the validity of the lien is an issue, that the lien is a fraudulent lien; and the court so finding is empowered to and shall declare the lien unenforceable, and the lienor thereupon forfeits his or her right to any lien on the property upon which he or she sought to impress such fraudulent lien. However, a minor mistake or error in a claim of lien, or a good faith dispute as to the amount due does not constitute a willful exaggeration that operates to defeat an otherwise valid lien.

(c) An owner against whose interest in real property a fraudulent lien is filed, or any contractor, subcontractor, or sub-subcontractor who suffers damages as a result of the filing of the fraudulent lien, shall have a right of action for damages occasioned thereby. The action may be instituted independently of any other action, or in connection with a summons to show cause under s. 713.21, or as a counterclaim or cross-claim to any action to enforce or to determine the validity of the lien. The prevailing party in an action under this paragraph may recover reasonable attorney's fees and costs. If the lienor who files a fraudulent lien is not the prevailing party, the lienor shall be liable to the owner or the defrauded party who prevails in an action under this subsection in damages, which shall include court costs, clerk's fees, a reasonable attorney's fee and costs for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien, interest on any money deposited for the purpose of discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due.

(3) Any person who willfully files a fraudulent lien, as defined in this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of this subsection, shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter, and if probable cause is found, shall furnish a copy of any investigative

report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 12, ch. 77-353; s. 260, ch. 79-400; s. 9, ch. 80-97; s. 15, ch. 90-109; s. 8, ch. 95-240; s. 818, ch. 97-102; s. 6, ch. 2003-177; s. 13, ch. 2007-221.

Note.--Former s. 84.311.

713.32 Insurance proceeds liable for demands.--The proceeds of any insurance that by the terms of the policy contract are payable to the owner of improved real property or a lienor and actually received or to be received by him or her because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him or her, be liable to liens or demands for payment provided by this part to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement had not been so damaged, destroyed, or removed. The insurer may pay the proceeds of the policy of insurance to the insured named in the policy and thereupon any liability of the insurer under this part shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 13, ch. 77-353; s. 819, ch. 97-102; s. 72, ch. 99-3.

Note.--Former s. 84.321.

713.33 Disbursing agent and others may rely on owner's notices.--When the proceeds of a construction or improvement loan or any portion thereof are being disbursed by a person other than the owner, any affidavit, notice or other instrument which is permitted or required under this part to be furnished to the owner may be relied upon by such other person in making such disbursements to the same extent as the owner is entitled to rely upon the same.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254.

Note.--Former s. 84.331.

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

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

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

1. If the amount of payments misapplied has an aggregate value of \$100,000 or more, the violator is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
2. If the amount of payments misapplied has an aggregate value of \$1,000 or more but less than \$100,000, the violator is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
3. If the amount of payments misapplied has an aggregate value of less than \$1,000, the violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(d) A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of paragraph (b), shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

(2) This section does not apply to mortgage bankers or their agents, servants, or employees for their acts in the usual course of the business of lending or disbursing mortgage funds.

History.--s. 1, ch. 87-74; s. 7, ch. 88-397; s. 17, ch. 90-109; s. 7, ch. 2003-177; s. 12, ch. 2005-227.

713.346 Payment on construction contracts.--

(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements.

(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days after the date the labor, services, or materials were furnished and payment for such labor, services, or materials became due, or within 30 days after the date payment for such labor, services, or materials is received, whichever last occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).

(3) Any person providing labor, services, or materials for improvements to real property may file a verified complaint alleging:

(a) The existence of a contract, as defined in s. 713.01, to improve real property.

- (b) A description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract.
 - (c) The amount of the contract price.
 - (d) The amount, if any, paid pursuant to the contract.
 - (e) The amount that remains unpaid pursuant to the contract, and the amount thereof that is undisputed.
 - (f) That the undisputed amount has remained due and payable pursuant to the contract for more than 30 days after the date the labor or services were accepted or the materials were received.
 - (g) That the person against whom the complaint was filed has received payment on account of the labor, services, or materials described in the complaint more than 30 days prior to the date the complaint was filed.
- (4) After service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice. The person providing labor, services, or materials is entitled to the following remedies to the extent of the undisputed amount due for labor or services performed or materials supplied, and upon proof of each allegation in the complaint:
- (a) An accounting of the use of any such payment from the person who received such payment.
 - (b) A temporary injunction against the person who received the payment, subject to the bond requirements specified in the Florida Rules of Civil Procedure.
 - (c) Prejudgment attachment against the person who received the payment, in accordance with each of the requirements of chapter 76.
 - (d) Such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law.
- (5) The remedies specified in subsection (4) must be granted without regard to any other remedy at law and without regard to whether or not irreparable damage has occurred or will occur.
- (6) The remedies specified in subsection (4) do not apply:
- (a) To the extent of a bona fide dispute regarding any portion of the contract price.
 - (b) In the event the plaintiff has committed a material breach of the contract which would relieve the defendant from the obligations under the contract.
- (7) The prevailing party in any proceeding under this section is entitled to recover costs, including a reasonable attorney's fee, at trial and on appeal.

History.--s. 8, ch. 88-397; s. 18, ch. 90-109.

713.3471 Lender responsibilities with construction loans.--

(1) Prior to a lender making any loan disbursement on any construction loan secured by residential real property directly to the owner, which, for purposes of this subsection, means only a natural person, into the owner's account or accounts, or jointly to the owner and any other party, the lender shall mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver the following written notice to the borrowers in bold type larger than any other type on the page:

WARNING!

YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME LABOR, SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.

This subsection does not apply when the owner is a contractor licensed under chapter 489 or is a person who creates parcels or offers parcels for sale or lease in the ordinary course of business.

(2)(a) Within 5 business days after a lender makes a final determination, prior to the distribution of all funds available under a construction loan, that the lender will cease further advances pursuant to the loan, the lender shall serve written notice of that decision on the contractor and on any other lienor who has given the lender notice. The lender shall not be liable to the contractor based upon the decision of the lender to cease further advances if the lender gives the contractor notice of such decision in accordance with this subsection and the decision is otherwise permitted under the loan documents.

(b) The failure to give notice to the contractor under paragraph (a) renders the lender liable to the contractor to the extent of the actual value of the materials and direct labor costs furnished by the contractor plus 15 percent for overhead, profit, and all other costs from the date on which notice of the lender's decision should have been served on the contractor and the date on which notice of the lender's decision is served on the contractor. The lender and the contractor may agree in writing to any other reasonable method for determining the value of the labor, services, and materials furnished by the contractor.

(c) The liability of the lender shall in no event be greater than the amount of undisbursed funds at the time the notice should have been given unless the failure to give notice was done for the purpose of defrauding the contractor. The lender is not liable to the contractor for consequential or punitive damages for failure to give timely notice under this subsection. The contractor shall have a separate cause of action against the lender for damages sustained as the result of the lender's failure to give timely notice under this subsection. Such separate cause of action may not be used to hinder or delay any foreclosure action filed by the lender, may not be the basis of any claim for an equitable lien or for equitable subordination of the mortgage lien, and may not be asserted as an offset or a defense in the foreclosure case.

(d) For purposes of serving notice on the contractor under this subsection, the lender may rely on the name and address of the contractor listed in the notice of commencement or, if no notice of commencement is recorded, on the name and address of the contractor listed in the uniform building

permit application. For purposes of serving notice on any other lienor under this subsection, the lender may rely upon the name and address of the lienor listed in the notice to owner.

(e) The contractor or any other lienor may not waive the right to receive notice under this paragraph.

(3)(a) If the lender and the borrower have designated a portion of the construction loan proceeds, the borrower may not authorize the lender to disburse the funds so designated for any other purpose until the owner serves the contractor and any other lienor who has given the owner a notice to owner with written notice of that decision, including the amount of such loan proceeds to be disbursed. For the purposes of this subsection, the term "designated construction loan proceeds" means that portion of the loan allocated to actual construction costs of the facility and shall not include allocated loan proceeds for tenant improvements where the contractor has no contractual obligation or work order to proceed with such improvements. The lender shall not be liable to the contractor based upon the reallocation of the loan proceeds or the disbursement of the loan proceeds if the notice is timely given in accordance with this subsection and the decision is otherwise permitted under the loan documents.

(b) If the lender is permitted under the loan documents to make disbursements from the loan contrary to the original loan budget without the borrower's prior consent, the lender is responsible for serving the notice to the contractor or other lienor required under this subsection.

(c) This subsection does not apply to a residential project of four units or less.

(d) This subsection does not apply to construction loans of less than \$1 million unless the lender has committed to make more than one loan, the total of which loans are greater than \$1 million, for the purpose of evading this subsection.

(e) The owner or the lender is not required to give notice to the contractor or any other lienor under this subsection unless the total amount of all disbursements described in paragraph (a) exceed 5 percent of the original amount of the designated construction loan proceeds or \$100,000, whichever is less.

(f) Disbursement of loan proceeds contrary to this subsection renders the lender liable to the contractor to the extent of any such disbursements or to the extent of the actual value of the materials and direct labor costs plus 15 percent for overhead, profit, and all other costs, whichever is less. The lender is not liable to the contractor for consequential or punitive damages for disbursing loan proceeds in violation of this subsection. The contractor shall have a separate cause of action against the lender for damages sustained as the result of the disbursement of loan proceeds in violation of this subsection. Such separate cause of action may not be used to hinder or delay any foreclosure action filed by the lender, may not be the basis of any claim for equitable subordination of the mortgage lien, and may not be asserted as an offset or a defense in the foreclosure case.

(g) For purposes of serving notice on the contractor under this subsection, the lender may rely upon the name and address of the contractor listed in the notice of commencement or, if no notice of commencement is recorded, the name and address of the contractor listed in the uniform building permit application. For purposes of serving notice on any other lienor under this subsection, the lender may rely upon the name and address of the lienor listed in the notice to owner.

(h) For purposes of this subsection, the lender may rely upon a written statement, signed under oath by the contractor or any other lienor, that confirms that the contractor or the lienor has received the written notice required by this subsection.

(i) A contractor and any other lienor may not waive his or her right to receive notice under this subsection.

History.--s. 8, ch. 92-286; s. 820, ch. 97-102; s. 8, ch. 2003-177; s. 13, ch. 2005-227.

713.35 Making or furnishing false statement.--Any person, firm, or corporation who knowingly and intentionally makes or furnishes to another person, firm, or corporation an affidavit, a waiver or release of lien, or other document, whether or not under oath, containing false information about the payment status of subcontractors, sub-subcontractors, or suppliers in connection with the improvement of real property in this state, knowing that the one to whom it was furnished might rely on it, and the one to whom it was furnished will part with draw payments or final payment relying on the truth of such statement as an inducement to do so commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. A state attorney or the statewide prosecutor, upon the filing of an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with a violation of this section, shall forward a copy of the indictment or information to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation shall promptly open an investigation into the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

History.--s. 1, ch. 63-135; s. 35, ch. 67-254; s. 9, ch. 95-240; s. 9, ch. 2003-177; s. 4, ch. 2006-187.

Note.--Former s. 84.351.

713.37 Rule of construction.--This part shall not be subject to a rule of liberal construction in favor of any person to whom it applies.

History.--s. 15, ch. 77-353.