

## CHAPTER 2011-212

### Committee Substitute for Committee Substitute for Senate Bill No. 1196

An act relating to construction liens; amending s. 713.10, F.S.; specifying that a lessor's interest in property is not subject to a construction lien for improvements made by a lessee if certain documents containing specific information and meeting certain criteria are recorded in the official records of the county before the recording of a notice of commencement; authorizing certain contractors and lienors to demand that a lessor serve verified copies of a lease prohibiting liability for improvements made by a lessee; subjecting the interest of a lessor to a specified lien for failing to serve such verified copies or serving a false or fraudulent copy; requiring that the demand include a specified warning; amending s. 713.13, F.S.; revising the form for notice of commencement to include information relating to the obligations of a lessee who contracts for improvements to property; providing an effective date.

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

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

713.10 Extent of liens.—

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

(2)(a) 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.

(b) 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 or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises

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

a.(a) The name of the lessor.

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

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

d.(d) A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability 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.

(3) Any contractor or lienor under contract to furnish labor, services, or materials for improvements being made by a lessee may serve written demand on the lessor for a copy of the provision in the lease prohibiting liability for improvements made by the lessee, which copy shall be verified under s. 92.525. The demand must identify the lessee and the premises being improved and must be in a document that is separate from the notice to the owner as provided in s. 713.06(2). The interest of any lessor who does not serve a verified copy of the lease provision within 30 days after demand, or who serves a false or fraudulent copy, is subject to a lien under this part by the contractor or lienor who made the demand if the contractor or lienor has otherwise complied with this part and did not have actual notice that the interest of the lessor was not subject to a lien for improvements made by the lessee. The written demand must include a warning in conspicuous type in substantially the following form:

WARNING

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

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

Section 2. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

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. A lessee who contracts for the improvements is an owner as defined under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest.

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.

(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 or Lessee information if the Lessee contracted for the improvement: .....

a. Name and address:.....

b. Interest in property:.....

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

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

b. Contractor’s phone number:.....

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

a. Name and address:.....

b. Phone number:.....

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

6.a. Lender: ...(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:

a. Name and address:...(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 may not be before the completion of construction and final payment to the contractor, but will be 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.

Under penalty of perjury, I declare that I have read the foregoing notice of commencement and that the facts stated therein are true to the best of my knowledge and belief.

...(Signature of Owner or Lessee, or Owner's or Lessee'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)...

Section 3. This act shall take effect October 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.