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A PRIMER ON FLORIDA'S CONSTRUCTION LIEN LAW

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Florida's Construction Lien Laws provide a robust yet confusing framework for property owners to protect their properties from encumbrances, and for contractors, subcontractors, material men, and laborers to protect their rights to payment for goods or services provided on a given construction project. The deadlines and requirements usually require strict compliance, and amendments to the statute in conjunction with court interpretations of the statute have developed an even more complex set of rules and exceptions that project participants must be aware of to protect their unique rights. For those construction industry players who need a refresher on an evolving area of law, or for those new to the Sunshine State, the following article serves as a primer on some of the commonly faced issues by property owners and lienors, as well as best practices to maximize your compliance with the statute.

By way of example, a high-level overview of specific fundamental deadlines looks like this: an owner must file a Notice of Commencement before the project starts; lienors not in privity must serve a Notice to Owner on the owner and general contractor within forty-five (45) days of commencing work on the project; all lienors must record their Claim of Lien within ninety (90) days of last furnishing goods or services on the project; the Claim of Lien must be served on the owner within fifteen (15) days of recording; and lastly, an action to foreclose on a Claim of Lien must be commenced within one (1) year of recording the Claim of Lien.

Notice of Commencement Fla. Stat. § 713.13

As a property owner, it is imperative that you record a notice of commencement with the local clerk's office before the project begins or as soon thereafter as possible. An acceptable form of the notice of commencement is found in the body of the statute (Fla. Stat. § 713.13) and in many local clerk's offices. The notice of commencement will generally include:

- The address of the property.
- The nature of the work being performed.
- The names and addresses of the owner, general contractor, and surety.

Suppose you are thinking to yourself, "why would I want to help people place a valid lien on my property?" It is because the notice of commencement operates to hold every potential lienor to the strict timelines in the statute. This gives all potential lienors the identity and addresses of the individuals they must serve to perfect their liens. Failure to record a notice of commencement or recording an inaccurate notice has become an exception that late lienors may use to redeem their late notices to the owner, which would otherwise wholly bar their lien claims. See Suchman v. Nat'l Hauling, Inc., 549 So. 2d 200 (Fla. 3d DCA 1989).

Notice to Owner Fla. Stat. § 713.06

This notice is only required by lienors who are not in privity with the owner. Lienors in privity with the owner do not need to provide them with notice of their involvement on the project, because they presumably already have notice by virtue of their privity. An acceptable form of the notice to owner is found in the body of the statute (Fla. Stat § 713.06). The notice to owner must include the nature of the work you will be performing, the identity of the company or person you have contracted with, and the name, address, and signature of the

person or company serving the notice to owner. It must be served within forty-five (45) days of commencing to furnish goods or services on the project. This is merely a notice – not to be confused with the Claim of Lien – which serves to notify the owner that you are providing goods or services on a given project and expect to be paid in return. This notice is crucially important to lienors not in privity with the owner because, a lienor's failure to serve a notice to owner operates as a complete defense to enforcement of any lien. Fla. Stat. §713.06(2)(a). The exception of an owner failing to record a notice of commencement is only a defense to a late notice to owner and will not redeem a complete failure to serve a notice to owner. See Stancil v. Gardner, 192 So. 2d 240 (Fla. 2d DCA 1966).

The owner is not the only person who must be served with the notice to owner. The owner may designate additional agents who must be served in their notice of commencement; read it carefully before finalizing your notices to identify all potential recipients. A solid practice and rule of thumb, you must serve all parties up your particular chain of command except parties you are in privity with.

An interesting development in the construction lien law is that the term "privity" is not exclusively limited to contractual privity, i.e., parties with a direct contractual agreement. Privity can also imply a special knowledge showing active consent or concurrence. Marble Unlimited, Inc. v. Weston Real Est. Inv. Corp., 125 So. 3d 286, 288 (Fla. Dist. Ct. App. 2013).

Claim of Lien Fla. Stat. § 713.08

If you have not been paid for materials or services furnished on the project, you must act quickly to record your claim of lien in accordance with the statute, or risk losing your lien rights. An acceptable form of the claim of lien is found in the body of the statute (Fla. Stat. §713.08). The claim of lien must include very specific information, including: name and address of the lienor; name of the person or entity with whom the lienor contracted; the nature and value of the goods or services provided; a description of the property sufficient for identification; the name of the owner; the time of first and last furnishing goods or services on the project; the amounts owed to the lienor; the date and method of service of the notice to owner and other required parties (if applicable). All of which must be sworn to and verified. Some errors or omissions in the required information will not render the claim of lien invalid unless the party against whom it is asserted was adversely affected to a substantial extent by the error.

The claim of lien must be recorded in the local clerk's office at any time during the performance of the project or within ninety (90) days of last day of work on the project. You may also amend the claim of lien at any time during the period allowed for recording such claim of lien. It must then be served on the owner before or within fifteen (15) days of recording, and failure to do so will render the lien voidable to the extent that the failure or delay is shown to have prejudiced any person entitled to rely on the service. A party claiming prejudice often relies upon the need to closeout projects quickly.

Commencing Action, Notice of Contest, and Discharge of Lien

The statute of limitations for commencing an action to foreclose on a valid construction lien is only one (1) year. This is to prevent protracted clouds over title and to force lienors to act on their claims. If an action is timely commenced, the priority of the lienor will extend back to the date of recording of the notice of commencement. Owners can apply pressure on lienors to act on or surrender their claims by recording in the local clerk's office a Notice of Contest of Lien in the form provided in the body of the statute (Fla. Stat. §713.22(2)). The notice of contest shortens the time for the lienor to institute its action to sixty (60) days, or else extinguishes the claim of lien automatically. Another powerful tool for owners is the filing of a Show Cause Complaint under Fla. Stat. §713.21(4). Under this subsection of the statute, an owner may go on the offensive and file a complaint against a lienor alleging that the lien is invalid for any number of reasons, upon which the clerk will issue a summons to the lienor to show cause within twenty (20) days why the lien should not be extinguished. If the lienor fails to respond, the court can order the cancellation of the lien.

Conclusion

Florida’s Construction Lien Law is not renowned for its simplicity. However, it can be a powerful defensive or offensive tool to those who know how to navigate through this confusing labyrinth. Liens are both inherently difficult to preserve and enforce, while also operating as an encumbrance on the property and creating immense pressure on owners, lenders, or sureties to keep the property free and clear of any such clouds on title.

Our firm has extensive experience defending and prosecuting lien claims and performing related necessary due diligence. BSLLP’s construction team routinely advises owners, developers, and contractors on risk mitigation throughout the life of a project, including dispute resolution services.

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