

FLORIDA CONSTRUCTION LIEN LAW

Some Important Definitions

Notice of Commencement: A Notice of Commencement is required under Florida law and is designed: (1.) to give potential lienors the information necessary to protect their lien rights, and (2.) to limit a property owner's potential lien liability. A property owner cannot avoid lien liability by failing to file the Notice of Commencement. The property owner or the owner's agent usually files this Notice. A Notice of Commencement is not the same as a Building Permit Application.

Notice to Owner: A Notice to Owner informs the proper parties that a potential lienor will furnish, or already has furnished, materials, labor or other lienable items for the property to be improved. A Notice to Owner does not mean that a lien has been filed against the property. However, in order to preserve lien rights, the Notice to Owner must be served to the owner in a legally sufficient manner no later than 45 days after a lienor commences to furnish labor or materials to the construction project jobsite. Contractors, subcontractors, sub-subcontractors and material suppliers are usually the parties that file these Notices. It is not uncommon for a property owner to receive several Notices to Owner for a single project.

Notice of Nonpayment: A Notice of Nonpayment indicates that a potential lienor has an unpaid balance and helps to preserve the right to enforce a lien against the property if the potential lienor is not paid. If you receive a Notice of Nonpayment, you should not ignore it because to do so may result in your paying twice for the same work. If you receive a Notice of Nonpayment, you should consider consulting an attorney.

Release of Lien: A Release of Lien can work to protect a property owner from having a lien filed against the property. When partial payments are made, the property owner should require a Partial Release of Lien from every party that has furnished lienable items to the property. Before final payment is made, the owner should require Final Releases of Lien from every party that has furnished lienable items.

Claim of Lien: A Claim of Lien is a validly recorded claim against the property for payment of the unpaid balance due. A Claim of Lien is valid for one year and is enforced by filing a lawsuit to foreclose the lien. If your property becomes the subject of a Claim of Lien, you should consult an attorney as soon as possible.

Bid: A construction bid is an offer to perform work. A property owner is not required to accept a contractor's bid, and is free to request bids from several contractors before deciding which bid, if any, to accept. In evaluating bids, price is not always the most important factor. Special care should be taken to examine exactly what work the bidder proposes to perform. It is not uncommon for different contractors to bid differently. Sometimes this may make contractors' bids more difficult to compare. A property owner should never allow an unlicensed contractor to perform work on the property. Special care should be taken to check references, qualifications and insurance.

Contract: The contract represents the agreement for improving the property. In most cases, the property owner should require that the construction contract be in writing. This can help avoid disputes and misunderstandings before they happen. Before you sign most construction contracts, you should seriously consider seeking the advice of an attorney. An experienced construction attorney can evaluate whether the contract is fair and reasonable, and can help you avoid costly legal problems before they happen.

Subcontracts: Subcontracts represent the agreements for improving the property between the Contractor and the Subcontractors. It is not uncommon for Contractors to subcontract certain portions of the work to other parties. Because these subcontracts may affect the property, it may be advisable for an owner to review them.

Change Order: "Change Order" is an industry term describing changes in the work. Oftentimes, a Change Order will result in an increase to the contract price. The construction contract should require that the owner approve all Change Orders in writing before the work is performed. Otherwise, verbal Change Orders may be enforceable and result in a lien against the property.

Payment Bond: A payment bond can be used to exempt property from construction liens. If the property is subject to a payment bond, a copy must be attached to the Notice of Commencement.