

Cantwell & Goldman, P.A.

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Central Florida Law Reporter

Construction Law – Simplifying the Lien Process

Whether you are a homeowner, a commercial property owner, a contractor, or sub-contractor, you should become familiar with the specific benefits and protections afforded to you under the Florida Construction Lien Law. The Florida Construction Lien Law, which is found in Florida Statute Chapter 713, serves two primary purposes: protect the landowner by requiring lienors to provide notice to the landowner of possible and pending liens; and protect certain parties who perform work on the property by providing lien rights.



Florida law limits the type of real property on which construction liens can be placed. Real property for the purposes of the Florida Construction Lien Law Statute, “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.”

Florida law also limits the types of parties that can become lienors. In Florida, only contractors, subcontractors, sub-subcontractors, laborers, materialmen who contract with the owner, and certain designated professionals are entitled to place construction liens against real property.

In order for the protections under this statute to take effect, Florida law requires certain notices and filings. The first notice required under Florida Construction Lien Law is the Notice of Commencement. A few of the many requirements for a valid Notice of Commencement include, legal description and street address of the property, name of the owner, contractor contact information, surety, and any lender information. Improvements must start within 90 days of the date of recordation of the Notice of Commencement. A properly completed Notice of Commencement allows all claims to relate back to the date of recordation, making the liens under the notice equal in priority. A building permit is not typically issued unless a Notice of Commencement is first recorded.

A Notice to Owner is a notice from materialmen and subcontractors who have not contracted directly with the owner. This notice must be served on the owner within 45 days of the furnishing of labor or materials but before final payment by the owner. If no Notice of Commencement exists for a particular project, then subcontractors and materialmen can rely on the information contained in the building permit when preparing a Notice to Owner. Owners should be aware that they could be liable for double payment for services or material if the subcontractor is not properly paid and a release is received.

Next month’s edition will address claims of lien, bringing an action under the Florida Construction Lien Law, and releasing construction liens. The attorneys at Cantwell & Goldman, P.A. have years of experience in real estate law, construction law, and construction law litigation, among many other practice areas. More information is available on our website, at www.hmtlaw.com. If you have questions concerning any information contained herein, please schedule a consultation with one of our knowledgeable attorneys.

Legal News: Short Sale Momentum at Risk

Short sales of homes may stall in the near term while Congress contemplates whether to renew the Mortgage Forgiveness Debt Relief Act, which provided tax relief for short selling homeowners. Traditionally if a lender cancels or forgives the debt of a borrower, the IRS views the amount of forgiven debt as income for tax purposes. The Mortgage Forgiveness Debt Relief Act provides an exception to this rule, excluding the cancelled debt generated by the short sale of a principal residence from the homeowner's income.



The concern over its extension was reported by the Florida Association of Realtors, as Congress started reviewing proposals for the 2015 extension. The provision has applied to debt forgiven in calendar years 2007 through 2014. However, the real estate industry would prefer to see legislation that provides more than a one year term for the extension, allowing greater certainty for potential short sellers. More information about the Mortgage Forgiveness Debt Relief Act is available on the IRS website at the following link: <http://www.irs.gov/Individuals/The-Mortgage-Forgiveness-Debt-Relief-Act-and-Debt-Cancellation->

Consumer Watch: The Latest Fraud

In keeping with the main topic of this edition, below are several common construction fraud schemes:

Outside Vendor Arrangements – In this fraud, a project manager or other decision-maker arranges to purchase excess goods or services from a third-party supplier or subcontractor. The profits are later split in the form of cash, trips, or other kickbacks.

Utilization of Credit Cards – An employee who has access and spending authority over a company credit card may expense personal purchases to the company. This is more common when a person has the job cost coding authority over the card.

Theft of Inventory and Assets – Whether it's supplies, inventory, or machinery and equipment, many construction companies suffer internal losses due to employee theft.



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