



Notice To Owner (NTO), Liens, & Contracts

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LIEN: WHAT IS IT?

- A **lien** is a right to foreclose on an owner's property if you do not get paid.
- Most states have some form of construction lien, and Florida requires that its laws be strictly followed.
- All general contractors, suppliers, materialmen, subcontractors, sub-subcontractors have lien rights if you provide labor and/or materials that improve real property.
- You **must, must, must, must** follow the proper procedure here in Florida.
- If you do not, you will lose your lien right, and may be subject to paying owners attorney fees, costs, and other sanctions for slandering title, etc.

LIENS: NOTICE TO OWNER

Purpose is to put owner on notice that subcontractors and suppliers have the right to lien their property.

For suppliers, materialmen, subcontractors and sub-subcontractors because they do not have a direct contract with the owner.

General contractors: if they have a direct contract, notice is not necessary.

Professional service providers without a direct contract have lien upon real property that is improved using their services or supervision; no NTO required

Timelines for serving on owner: FL = after contract but no later than 45 days after first furnishing of labor, service, or materials

Based on Notice of Commencement

Licenses & Contracts

- You must have the proper license for the work performed §713.02 and §489.128
 - Unlicensed contractors cannot enforce
 - But owners can!
 - No lien rights
- Can be oral or written §713.01
- Clarifying the scope of work and costs
 - Identify contract documents/plans
- Being clear avoids disputes
- American Rule
- Clause for attorney fees
 - All efforts to resolve disputes or collect monies, not just litigation
- Monetary penalties for non-payment (interest)
- Make sure you pull permits and obtain all required inspections
 - However, projects can be substantially complete prior to the final inspection

1st Mandatory Disclosure

- § 713.015 12-point, capitalized, and boldfaced
 - **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.**

2nd Mandatory Disclosure

- § 489.1425 – Residential Property Owner notification of recovery fund
- FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND
- PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:
- Exception – not required on contracts < \$2,500

3rd Almost Mandatory Disclosure

- Contractor's Right to Notice and Opportunity to Repair Act – §558.005
 - CHAPTER 558 NOTICE OF CLAIM
- CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.
- Can agree to opt out.

LIENS: RECORDING

- Requires original contract amount, amount owed, description of property, start date and end date.
 - Only include material and labor actually purchased or provided; no interest, fees, postage, etc.
- Timeline to record and to serve a Claim of lien.
 - Within 90 days of last date substantial work performed
 - This is very strictly construed
 - Punch lists do not count; time starts from substantial completion.
 - No exceptions if you miss the deadline
 - Could actually record as soon as you complete work
- Must be served via certified mail as per NOC within 15 days of recording

FORECLOSURE

- Timeline within which to file a lawsuit to foreclose a Claim of Lien.
 - Within 1 year in Florida unless owner serves a contest, then timeline shortens to 60 days.
- Must provide contractor's final payment affidavit
- Foreclose by filing a lawsuit in the appropriate court of jurisdiction (based on dollar amount)
- Award is the amount of your claim, attorney fees, and costs
- Property can be sold at auction, just like mortgage foreclosure if owner does not pay

Who We Are

With two locations, one in the heart of downtown Fort Myers and one in the South Cape, Aloia, Roland, Lubell & Morgan, PLLC upholds the highest standards in the practice of law. Led by an experienced team of trial attorneys, we function as a full-service law office. From business and real estate law to personal injury and family law, and a wide array of civil and commercial litigation, we cater to clients' needs and advocate in their best interest.

Meet our Attorneys:



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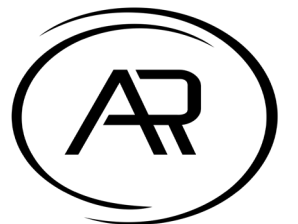
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QUESTIONS or COMMENTS?





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