



Florida ICPC Summary of 2023 HB 331 Changes to Florida’s Construction Lien Law Signed by Governor DeSantis June 12, 2023 Effective date: October 1, 2023

Notice of Commencement – Sections 713.13 & 713.135, Florida Statute

The bill modifies the statutorily-provided notice of commencement form to reflect that the person signing the notice may use an online notary. Additionally, the bill:

- Authorizes a building permit applicant to submit the clerk’s office official records identifying information for the recorded notice of commencement, including the instrument number or the number and page of book, to the issuing authority in lieu of a certified copy of the notice or notarized statement of filing.
- Requires the building permit authority to accept a recorded notice of commencement from an owner if the notice is in the statutorily-specified form.
- Provides that the building permit issuing authority is not liable in any civil action for failing to verify that the building permit applicant submitted one of the acceptable forms of proof that the applicant filed a notice of commencement.
- Increases the contract amount which excuses a building permit applicant from filing a copy of the notice of commencement with the issuing authority, from \$2,500 to \$5,000. Note: Section 713.13 Florida Statutes continues to require the recordation of Notices of Commencement on all non-governmental improvements (excluding subdivision improvements) in excess of \$2,500 .

Payment Bonds and Related Notices on Pubic Improvements under Chapter 255.05 Florida Statutes and non-governmental improvements under Chapter 713 Part 1, Florida Statutes

The bill amends the service requirements for a notice of contest of claim against a payment bond to require that, after the contractor serves the notice on the person claiming against the payment bond (“the claimant”) and records the notice with the clerk’s office along with a certificate of service, the clerk must serve a copy of such recorded notice on the claimant and the contractor or his or her attorney and charge for such services as provided by law.

The bill also:

- Modifies the notice of nonpayment form to reflect that the person signing the notice may use an online notary.
- Specifies that, while a lienor must still serve a notice of nonpayment on the general contractor to receive protection under a payment bond, he or she may serve a copy of the notice on the surety, instead of a separate original notice of non-payment.
- For a construction project on a public building, if the payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment if applicable, authorizes the claimant to serve the notice to contractor up to 45 days after the date he or she is served with a copy of the bond.
- Modifies the available alternative forms of security that may be filed in lieu of a payment bond for public projects to remove an irrevocable letter of credit and a security of a type limited in Part II of Ch. 625, F.S., and to add a domestic corporate bond or debenture as authorized in s. 625.317, F.S.

Transfer of Liens to Security -Section 713.24, Florida Statutes

The bill increases the amount of the bond required to be deposited or filed with the clerk's office to transfer a lien to a security. Specifically, the bill changes the amount required to the amount demanded in the lien, plus interest at the legal rate for three years, plus \$5,000 or 25 percent of the amount demanded in the lien, whichever is greater. Further, the bill requires that the clerk include a copy of the deposit or bond used for the transfer with the certificate made and recorded to show the lien's transfer.

Licensed General and Building Contractors (acting as Construction Managers)-Section 713.01(8), Florida Statutes

The bill amends the definition of "contractor" to include any licensed general or building contractor who provides construction or program management services. This guarantees to such licensed general and building contractors the ability to claim construction liens if they are not paid for their work.

Notice of Termination of Notice of Commencement-Section 713.132 Florida Statutes

The bill requires that a notice of termination be served before recording on each lienor in privity with the owner and on each person who timely served a notice to owner before the recording of the notice of termination. Under the bill, if it is thus served, a notice of termination terminates the notice of commencement 30 days after it is recorded. However, the bill also requires an owner to serve a copy of the notice of termination on any lienor who began work under a notice of commencement before its termination, lacks a direct contract with the owner, and timely serves a notice to owner after the notice of termination is recorded. Under the bill, the notice of termination is effective as to such lienors 30 days after service.

The bill also:

- Specifies that a notice of termination must include a statement that the owner will serve a copy of the notice on all lienors who timely serve a notice to owner after the notice of termination's recording.
- Deletes a provision specifying that an owner may only record a notice of termination after construction completion or when construction ceases before completion and all lienors have been paid, specifying instead that such notice may be recorded after all lienors have been paid.
- Clarifies that the notice of termination must include the official records reference numbers and recording date affixed to the recorded notice of commencement by the recording office.

Manner of Serving Documents-Section 713.18, Florida Statutes

The bill:

- Specifies that all documents allowed or required under the construction lien law must be served as provided in s. 713.18, F.S., relating to manner of serving documents.
- Clarifies that "actual delivery" of a notice means "hand delivery."
- Provides that service by mail must be made to the person to be served.
- Clarifies that service of a notice sent through the mail is effective upon mailing or shipping.
- Specifies that service to a partnership, corporation, or limited liability company may be made on an employee or agent authorized by the business to receive service.

Further, the bill modifies the requirement that, for service to be effective on the date of mailing, the person serving a notice to contractor where a payment bond applies must maintain electronic tracking records generated by the USPS, deleting the requirement that the records be electronic and specifying that they may be either generated or approved by the USPS. The bill also deletes the requirements that such tracking records contain the name and address of the person served.

Duration of Lien-Section 713.22, Florida Statutes

The bill specifies that after the property owner files a notice of contest of lien with the clerk's office and the clerk's office serves a copy of the notice on the lienor and records the notice with a certificate of service, the clerk's office must serve a copy of the recorded notice on the lienor and the owner or the owner's attorney and charge fees for such services as provided by law.

Discharge of Liens (Release of Liens)-Section 713.21, Florida Statutes

The bill provides that the methods specified for discharging a lien may also be used to release a lien, in whole or in part. The bill also specifies that, if a satisfaction or release of lien is filed with the clerk's office, the satisfaction or release must include the lienor's notarized signature and the official reference number and recording date affixed by the recording office on the subject lien. Finally, the bill clarifies that, upon the filing of a complaint for satisfaction or release of lien, and the issuance of a summons to the lienor to show cause within 20 days, the 20-day deadline is tied to the lienor's receipt of the summons.

Attorney Fees and Costs-Sections 255.05 and 713.29 Florida Statutes

The bill provides that a prevailing party in an action to enforce a lien transferred to a security may recover his or her reasonable attorney fees in an amount to be determined by the court. The bill also clarifies that, where a prevailing party is entitled to recover his or her reasonable attorney fees in an arbitration action to enforce a claim against a Section 255.05 Florida Statutes payment bond, the amount or the attorney fees to be awarded may be determined by the arbitrator.

Computation of Time-Section 713.011 Florida Statutes

The bill provides that, in computing any time period relating to the construction lien law documents, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk's office or designated as such by the chief judge of the circuit, the time period is extended to the end of the next business day.

However, the bill also provides that, if the clerk's office is closed in response to an emergency for one or more days, so that a person may not present a document for recording or an action for filing in person with the clerk's staff, the time period for recording a document or filing an action with the clerk's office relating to the construction lien law is tolled. Under the bill, when the clerk's office reopens, the time period is extended by the number of days the clerk's office was closed.

Finance Charges-Section 713.01(13) Florida Statutes

The bill defines "finance charge" as the contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract.

Effective Date

The effective date of the changes is October 1, 2023.

Florida ICPC

Florida's Improved Construction Practices Committee (ICPC) is a group of volunteer credit managers from the memberships of NACM Tampa and NACM South Atlantic. We primarily represent Florida's construction industry's material suppliers, subcontractors, and laborers before the Florida Legislature. Our main objective is to maintain a fair process for payment in the construction process.

The ICPC has a contracted lobbyist who advocates for us at the state level. Our lobbyist interacts and negotiates with other groups vested in the construction industry such as ABC, AGC, FHBA, lending institutions, title companies, surety companies, building officials, the League of Cities, the Association of Counties, and the Florida Bar Association.

If you would like to have further information about ICPC, or if you would like to donate to the lobbying effort, please contact Eliza Holm by email at eholm@zoomlien.com, or by telephone at 813-864-9852.