

**Although the construction lien law has many complexities, the steps owners can take to protect themselves and establish a “proper payment defense” are simple, but very important. This is provided for information only and you should contact an attorney if you have legal questions or need legal advice.**

**STEP 1 — THE NOTICE OF COMMENCEMENT.** — An owner is required by law to complete, sign, and record in the public records an accurate Notice of Commencement which contains certain specified information. The information contained in the recorded Notice of Commencement is relied upon by all parties who provide labor and materials to your project. A copy of the statutory Notice of Commencement form, s. 713.13, F.S., is attached to this document.

If a lender is financing your project, the lender will assist you in completing the Notice of Commencement and is responsible for recording it in the public records. It is critical that your Notice of Commencement be recorded after any construction loan or mortgage documents are filed. If you do not have a lender, preparing and recording the Notice of Commencement is your responsibility. The Notice of Commencement must be recorded before commencing construction and posted on your jobsite. A copy of the recorded Notice of Commencement must be submitted to the building permit authority prior to the first building inspection.

A Notice of Commencement expires 1 year following the date of recording unless otherwise stated. If 1 year is insufficient time for completing your project, specify a realistic date so that the Notice of Commencement does not expire before the completion of your project.

**STEP 2 — MONITOR THE DOCUMENTS AND NOTICES YOU RECEIVE.** — Pick up your certified mail. Most lien notices are served by certified mail and you need to know who is providing labor and materials to your project. Section 713.18, F.S., provides that any properly addressed notices that are returned to the sender through no fault of the sender are considered served on the date sent, so refusing certified mail only hurts you.

If you expect to be absent for periods of time during your project, you should have an attorney or other agent in a position of trust who understands the law handle these details for you. Make sure someone is receiving your mail and taking steps to obtain the necessary lien releases before making payments to your contractor. If you receive anything that you do not understand, seek the assistance of an experienced construction law attorney.

**STEP 3 — OBTAIN SIGNED LIEN WAIVERS EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.** — Each time you pay your contractor you should obtain a Waiver and Release of Lien form from the contractor and from anyone who serves you with a Notice to Owner. Make sure that each release waives lien rights against your project for work or materials furnished through the date of the work or materials that your payment covers. This date is probably not the date you are making the payment, but a date prior to the payment date through which labor and materials have been billed.

There are two statutory Waiver and Release of Lien forms. The Waiver and Release of Lien Upon Progress Payment should be submitted by a contractor, subcontractor, or material supplier each time you make a payment to your contractor. The Waiver and Release of Lien Upon Final Payment should be submitted by your contractor, a subcontractor, or material supplier when they are finished furnishing all work or materials for your project. For example, when the plumber finishes all plumbing on your project

and receives final payment from the contractor, you should obtain a Waiver and Release of Lien Upon Final Payment. Once you receive a final waiver from a contractor, subcontractor, or material supplier, you should not need another waiver unless they are hired to do additional work. A copy of both statutory Waiver and Release of Lien forms, s. 713.20, F.S., are attached to this document.

**STEP 4 — OBTAIN A CONTRACTOR'S FINAL PAYMENT AFFIDAVIT BEFORE YOU MAKE FINAL PAYMENT TO YOUR CONTRACTOR.** — In addition to obtaining Final Waiver of Lien forms from the contractor and anyone who has served you with a Notice to Owner, you should obtain a Contractor's Final Payment Affidavit before you make final payment to your contractor. This sworn affidavit should reflect that everyone who supplied labor and materials on your project has been paid in full, or should list those subcontractors and suppliers who are still owed money. Make sure that anyone listed as not being paid in full is paid before making final payment to your contractor. You have a right to rely on the information contained in the sworn affidavit when you make final payment to your contractor. A copy of the statutory Contractor's Final Payment Affidavit form, s. 713.06, F.S., is attached to this document.

**IF YOU FOLLOW THESE FOUR SIMPLE STEPS, FLORIDA LAW WILL PROTECT YOU AND YOU SHOULD NEVER HAVE TO PAY TWICE FOR THE SAME LABOR OR MATERIALS.**

#### **ADDITIONAL INFORMATION FOR YOUR PROTECTION**

Always hire a Florida-licensed contractor. You can verify the license status of your contractor by accessing the website of the Department of Business and Professional Regulation at [www.myflorida.com/dbpr](http://www.myflorida.com/dbpr) and performing a licensee search. You can check under an individual name or, if your contractor is a company, under the business name and then check to see who the qualifying licensee is for that company. Make sure that your contractor has the proper workers' compensation coverage, or an allowed workers' compensation exemption, and carries sufficient builder's risk insurance. The contractor should be able to provide you with current, valid certificates of insurance from his or her insurance agent.

Never accept an obviously low bid. If it seems too good to be true, it probably is, and your construction project may be in trouble before you even begin.

Some contractors require a reasonable deposit to cover the cost of plans and permitting. This is an acceptable practice. However, never pay substantial sums to a contractor in advance of the work being performed.

If you receive documents or information that you do not understand, consult an experienced construction law attorney. Florida has a Homeowner's Construction Recovery Fund that is funded through a portion of the building permit fees. This fund helps consumers who have been harmed by a licensed contractor. In order to be eligible to recover from this fund, you must have complied with the proper payment procedures as described in this document. For more information, contact the Construction Industry Licensing Board at [www.myflorida.com/dbpr/pro/cilb](http://www.myflorida.com/dbpr/pro/cilb).