



**OLD REPUBLIC**  
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# **BULLETIN**

## **FLORIDA BULLETIN 07-08**

To: All Old Republic National Title Agents and Offices  
From: Underwriting Department  
Re: Amendment to Chapter 713, F.S. – Notice of Commencement  
Date: September 13, 2007

The Construction Lien statute found in *Chapter 713, F.S.*, was recently amended. While there were a number of fairly significant changes, this bulletin will outline the revisions which are most relevant to title insurance agents.

- *Section 713.08* was amended to allow the claim of lien to be prepared by the lienor or the lienor's employee or attorney and now requires the claim of lien to be "sworn to or affirmed," rather than simply "verified." It was also amended to provide that if the original contract was *terminated* pursuant to *713.07(4)*, a claim of lien may not be recorded after 90 days following such termination or 90 days after the final furnishing of labor, services, or materials, whichever occurs first. Notwithstanding this change, Old Republic National Title Insurance Company will **not** insure over a claim of lien recorded using the old form, until Florida courts have determined that such a lien is unenforceable.
- *Section 713.13* regarding the Notice of Commencement form was also amended. It now must include a space for the tax folio number and the following warning must be added to the form:

**"WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT."**

It also changed the notary certification from a *jurat* (i.e. "Sworn to and subscribed before me") to an acknowledgment (i.e. "The foregoing instrument was acknowledged before me"). Additionally, it specifically provides that the owner's authorized officer/director/partner/manager may sign the Notice of Commencement. In place of the *jurat*, the following must be added to the end of the form:

**"VERIFICATION PURSUANT TO SECTION 92.525, FLORIDA STATUTES.**

**UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING AND THAT THE FACTS STATED IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.**

**(Signature of Natural Person Signing Above)**

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Additionally, a new section (5)(a) and (b) were added to *Section 713.13* to provide for an amended notice of commencement to: (i) extend the effective date, (ii) change erroneous information in the original notice, or (iii) add information that was omitted from the original notice. If there is a change of contractors, however, a new notice of commencement must be executed and recorded. Under the new provision, the amended notice must identify the official records book and page where the original notice is recorded, and a copy of the amended notice must be served by the owner upon the contractor and each lienor who serves notice before or within 30 days after the date the amended notice is recorded. Notwithstanding the changes in this section, Old Republic will **not** be willing to ignore a Notice of Commencement on the old form until Florida courts have determined such Notice is not effective.

- *Section 713.22* was revised to allow for the duration of a claim of lien to be extended to 1 year after the recording of an amended claim of lien *if* the amendment shows a later date of final furnishing of labor, services, or materials.
- *Section 713.01* was revised to add a definition for "Final Furnishing," and is described as "the last date that the lienor furnishes labor, services, or materials." With respect to rental equipment, the definition states that it means the date that the rental equipment was last on the job site and available for use. The definition of "Furnish Materials" was amended to include the delivery of rental equipment to come under this definition.
- *Section 713.012* entitled "Written notices, demands or requests" was created to provide that any notices, demands, or requests permitted or required under this chapter, except any required by s. 713.14, must be in writing.
- *Section 713.015* setting forth mandatory provisions for direct contracts between an owner and a contractor was amended to only apply to contracts greater than \$2,500.00. It also provides that the mandatory notice provision under that section must either be printed (in no less than 12 point capitalized, bold faced type) in the contract or on a separate page, signed by the owner and dated. Nevertheless, a provision was added stating that the failure to provide the written notice does not bar the enforcement of a lien against a person who has not been adversely affected.
- *Section 713.02* was amended to no longer allow the owner to require the contractor to provide a performance bond. The owner and contractor must now agree that the contractor will provide the performance bond.
- *Section 713.16* was revised to clarify that the claim of lien must be recorded rather than "filed" before a lienor may make a written demand for a statement of account under oath. Certain provisions relating to the statement of account were revised, and the provision regarding the failure to furnish the statement was deleted.
- *Section 713.18* was revised to provide procedures for service of notices and other instruments to limited liability companies and also to allow service by posting on the premises if none of the other methods specified in the section can be accomplished.

If you have any questions regarding the changes to the statute, please do not hesitate to call the Old Republic National Title Insurance Company Underwriting Department.