



Dinsm<sup>o</sup>re

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# Florida's Construction Lien Law Overview

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# Dinsmôre



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## Generally, Strict

## Construction Lien Statutes are Strictly Construed, Except for when they aren't

- As a statutory creation, Florida's construction lien laws must be strictly construed.
- This generally applies to deadlines.
- Does not necessarily need to be strict compliance with content of documents.
- Standard is generally whether there is prejudice.





# Contracts

## Have a Contract

- **Can be oral or written (713.01)**
- **Be properly licensed for the work performed (713.02 and 489.128)**
- **Pull proper permits for the work performed**
- **Make sure you have the mandatory disclosures for Florida Contracts**



## Only Applicable to Certain People

- **Professional Services – architect, landscape architect, interior designer, engineer, surveyor, mapper (713.03)**
- **Subdivision improvements – civil site work (713.04)**
- **Materialman, laborer, contractor, subcontractor, sub-subcontractor (713.05 & 06)**
- **Contracts under \$2,500, exempt, except for from 713.05**



## Professional Services Liens

- Professional service providers have a lien on property where there is (1) a direct contract, (2) relating to specific property, (3) regardless of improvement
- Professional service providers without a direct contract have lien upon real property that is improved using their services or supervision
- Not required to file a notice to owner
- Not required to serve an affidavit of unpaid lienors





## Professional Services Liens

- Design-build contractor is not an architect, so plans developed by them are not lienable under this statute.
- Expert witness services provided are not lienable
- If acting as more than a professional service provider, then might need to comply with other provisions of Chapter 713



## Subdivision Improvement Lien

- Any lienor who, regardless of privity, performs services or furnishes material to real property for the purpose of making it suitable as the site for the construction of an improvement or improvements shall be entitled to a lien on the real property for any money that is owed to her or him for her or his services or materials furnished in accordance with her or his contract and the direct contract





## Liens of Those in Privity

- Those with a direct contract have a lien on real property for money owed, plus unpaid finance charges
- No lien exists until it is recorded
- If privity doesn't exist out the outset, it can be created
- Not required to serve a notice to owner
- Must provide a contractor's final payment affidavit



## Liens of Those in Privity

- Privity requires both knowledge by an owner that a particular subcontractor is supplying services or materials to the job site and an express or implied assumption by the owner of the contractual obligation to pay for those services or materials.
- Privity is established where, for all practical purposes, a common identity exists between the owner and the contractor.



## Liens of Those Not in Privity

- Persons not in privity will have a lien for money owed, plus unpaid finance charges, if they follow the statutory requirements
- Total amount of liens of those not in privity cannot exceed the amount of the direct contract
- Must serve a notice to owner
- Sub-subcontractors and materialmen must also serve that on the contractor



A photograph of a blue wall and concrete steps. A yellow horizontal line is positioned above the title.

## Notices to Owner

- **Subcontractor, sub-subcontractor, materialman, or laborer**
- **Must serve a notice to owner in the statutory form**
- **Can serve anytime between contract and 45 days after first furnishing of labor, services, or materials**
- **BUT before final payment made after the contractor's final affidavit**
- **Failure to serve is a complete defense to a lien**



## Notices to Owner

- **Should be prepared using the information contained in the notice of commencement or building permit application**
- **Errors or omissions do not prohibit enforcement of the lien so long as they are not prejudicial**



## First Furnishing

- **Generally, the first day physically out at the property.**
- **For specially fabricated goods, it can be the day the work is begun.**





## Construction Lien

- **Can only include amounts for work that is completed. This is different from the total amount of money you may be owed under the contract.**
- **Must be recorded within 90 days of final furnishing or termination of the contract under 713.07 (713.08)**
- **Must be mailed to property owner**
- **Must also mail a contractor's final payment affidavit 5 days before filing a lawsuit**



## Final Furnishing

- **Can only include amounts for work that is completed. This is different from the total amount of money you may be owed under the contract.**

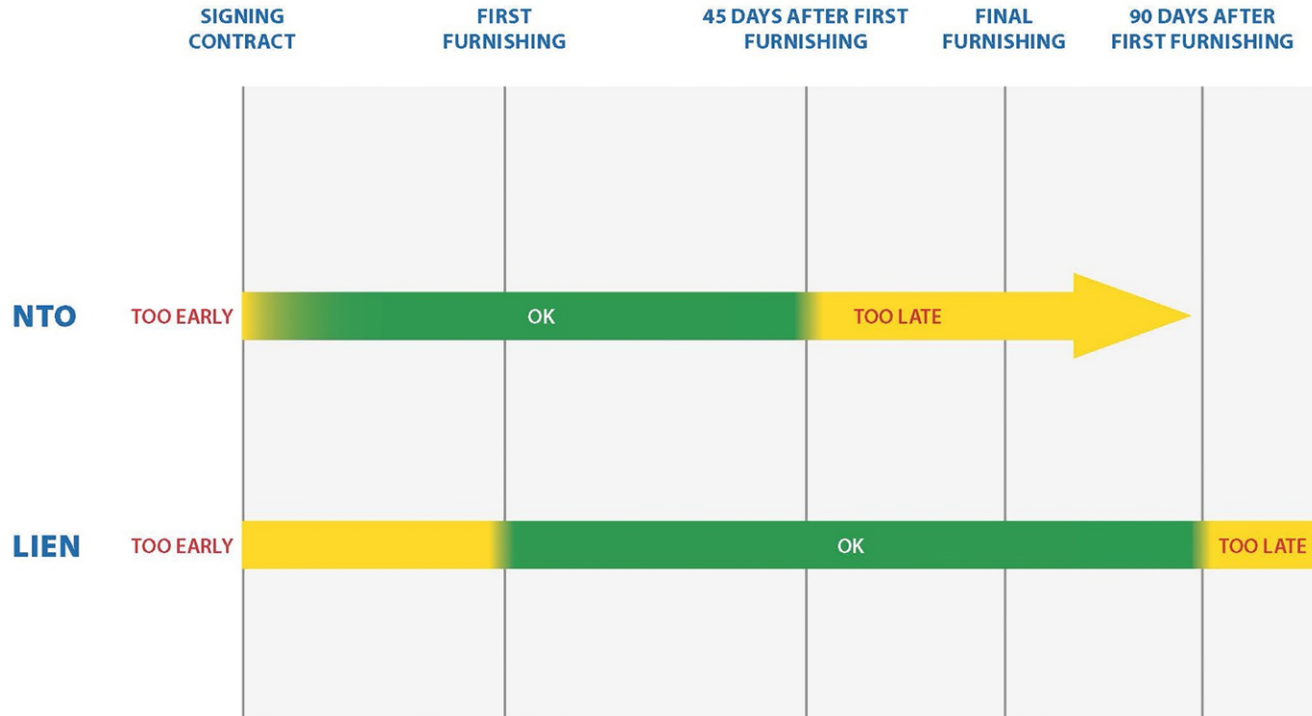
A photograph of a blue wall and concrete steps. A yellow horizontal line is positioned above the title text.

## Tenant Improvement Liens

- Liens can only encumber the estate owned by the contracting party
- Landlord generally not responsible if it has recorded a short form lease or if lease limits liability



# Lien Deadlines





## Releasing Liens

- **Must provide a written lien release**
- **Cannot be required to provide a form other than the statutory form unless the contract calls for it**

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## Payment on Construction Contracts

713.346 / 255.071

- **Penalty for failing to pay undisputed amounts within 30 days of receiving payment for that work**
- **Entitles you to have an expedited evidentiary hearing shortly after filing the lawsuit**
- **Entitles you to an accounting, injunctive relief, prejudgment attachment/garnishment, any other available legal or equitable remedies, and attorneys' fees**
- **Dispute must be in good faith to be valid**



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# Construction Contract Prompt Payment Law

715.12

**Payments must be made within 14 days of request unless a different timeline is stated in the contract**



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## Public Projects

### Timely Payment for Purchases of Construction Services – 218.735

- **Payments must be made within 20 – 25 days for local government projects**

### Timely Payment for Purchases of Construction Services – 255.073

- **Must pay downstream contractors within 7 – 10 days**

### Payment of Construction or Maintenance Contracts – 337.141

- **Payments must be made within 75 days of final approval on public transportation projects**

# Questions?



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A man in a dark suit stands in profile on the left side of the frame, looking towards the right. He is in a dark, industrial-looking space. In the background, a large, metallic dollar sign is visible, partially obscured by a complex metal scaffolding structure. The entire scene is bathed in a deep blue light. The text 'Accomplish more.' is centered in the middle of the image, with a yellow horizontal line underneath it.

Accomplish more.™