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THE ABC'S OF FLORIDA'S CONSTRUCTION LIEN LAW

By: Will W. Sunter

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Within the past four years, Florida has experienced a construction boom. Whether it is reconstructing your home after hurricane Charley, renovating homes for investment purposes, or building your dream home for your retirement, many people in our community have become intimately involved with the construction industry. During this time, people have developed a fear of a contractor's Claim of Lien without ever really understanding it. Most property owners believe a Claim of Lien to be a contractor's ultimate "trump card;" believing that they must pay the contractor or the contractor will take their house.

WHAT IS A CLAIM OF LIEN?

A properly perfected Claim of Lien is a security interest in real property, much like a mortgage. It places the world on notice that the lienor claims an interest in the property. This can make selling or financing the property more difficult while a Claim of Lien is on the property, but otherwise, the Claim of Lien has no other effect until it is foreclosed through a lawsuit.

WHO CAN FILE A CLAIM OF LIEN?

There are two categories of individuals that can file a Claim of Lien: persons in privity of contract with the property owner and persons not in privity of contract with the property owner. Persons in privity of contract are any person, whether a general contractor, subcontractor, materialmen or laborer, with whom the property owner has a direct contract. Persons not in privity of contract are subcontractors, materialmen, and laborers that have been hired by the contractor to perform work on the property.

Persons not in privity of contract with the property owner must provide Notice to the Owner to preserve their lien rights. This means they must inform the property owner that they are a subcontractor performing work on the property and the property owner has the obligation to make sure the general contractor pays the subcontractors. A person not in privity must send a Notice to Owner before commencing work or no later than 45 days after first furnishing labor, services,



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or materials. If a person not in privity of contract has not sent the Notice to Owner within the 45 days, he has waived his lien rights to the property. If a person not in privity has complied with the statutory requirements, then he has lien rights just like a person in privity of contract. A property owner can protect his interests by asking the general contractor for lien waivers from the subcontractors (this means the subcontractor has waived the right to file a Claim of Lien for the work performed to date).

Persons in privity of contract, and those not in privity that have sent the Notice to Owner, have 90 days from the last date labor, services, or materials were furnished on the property to file a Claim of Lien. If either delays past the 90 days, they have waived their right to a Claim of Lien on the property.

HOW TO GET RID OF A CLAIM OF LIEN

One year after the Claim of Lien has been recorded, it is automatically discharged if a lawsuit has not been filed to enforce the Claim of Lien. The one year time frame can be shortened by recording a Notice of Contest of Lien in the public records of the county in which the Claim of Lien was recorded. Additionally, a property owner may bond off a Claim of Lien or transfer the lien to a security. This transfers the builder's security interest from the property to another method of collection, thereby freeing up the property owner's property (this is very useful if you are looking to sell or refinance the property). Another way to discharge a Claim of Lien, and the most unsavory to most property owners, is by paying the lienor and getting a Satisfaction of Lien. Finally, a Claim of Lien can be discharged by judicial order, but this requires a lawsuit.

Whether you are a builder or a property owner, a Claim of Lien has important consequences. As a builder, the Claim of Lien gives you the ability to collect directly from the improved property and possibly recover your attorney fees as well. As a property owner, understanding a Claim of Lien can protect your homestead from an unethical contractor. If you are trying to enforce your rights under a Claim of Lien or protect your property from a Claim of Lien, it is advisable to consult an attorney to assist you.

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