

## CONTRACTOR LIEN RIGHTS AND ASSOCIATIONS

### By Associated Property Management

Many associations find themselves in a dispute with contractors because they do not comply with the Florida Construction Lien Law (Chapter 713, Florida Statutes – The Mechanic’s Lien Law). There are stories of community associations who have paid roofers, painters all of the required funds, received release of liens and final release of lien, when the project was finished, only to receive a notice of lien from a supplier of materials or labor that they had never been paid from the contractor. This can be very expensive for the association as they may be paying for the same work twice!

The State of Florida Construction Lien Law is a mandatory statewide legislation, which shall be enforced in every jurisdiction throughout the State. Applicants for a permit are required to provide information concerning the Owner, Mortgage lender and the Architect/Engineer. In addition the application has to have the Owners notarized signature affixed.

A certified copy of the recorded Notice of Commencement must be posted and maintained, along with the permit, from the start of the job through the final inspection. The State mandates that no inspections shall be approved without this notice being posted. This requirement applies to all permitted work regardless of building valuation or funding (cash or credit) source.

What to do to protect your association – For your protection, if you are planning to spend over \$2,500 on building or improvements, before your start building, repairing or replacing, it is suggested:

You consult an attorney regarding the Mechanics Lien Law before starting a major construction project. Make sure that all requirements for recording and posting the “Notice of Commencement” have been accomplished.

Before making any payments to your contractor, you should get a sworn statement in writing that the contractor has paid all the bills for your job.

If you have received a “Notice to Owner” from anyone, you should require your contractor to get a sworn statement from each such person stating that they have been paid for all work done on your job. This should be done before making any payments to your contractor.

If a Mechanics Lien is filed against your property, consult an attorney immediately.

The Mechanics Lien Law (Chapter 713, Part I, Florida Statutes) provides a method by which a contractor, subcontractor, laborer, building material supplier, architect, landscape architect, interior designer, engineer, or land surveyor may claim lien on real property on which they have done work, or to which they have furnished materials. If the lien is not satisfied, your property may be sold to pay the lien.

What is it? A “lien” is a charge or encumbrance on real property (land that is improved and the improvements thereon, including fixtures), which must be satisfied by the property owner to ensure clear title. “Attachment” means that if a court finds a claim a lien valid, the owners’ property may be seized and sold to satisfy the lien if it is not voluntarily paid.

A “Notice of Commencement” is a notice, which is filed with the Clerk of the Circuit Court in the county where the work will be performed. The notice should not be recorded before the construction or development mortgage is recorded, but must be recorded before actual construction begins. It contains detailed information on the property owner, financing arrangements, and other specifics regarding the construction project. If a performance bond is to be posted, a copy of the bond must be attached to the “Notice of Commencement”.

The owners’ responsibility – Before any construction begins, and after the construction mortgage has been recorded, the owner should take the following steps:

At the time application is made for a building permit, a “Notice of Commencement” form may be created by the Association’s attorney or obtained from an office supply store.

Complete the “Notice of Commencement” form with the required information and retain a certified copy.

After the building permit is issued, record the Notice of commencement with the Clerk of the Circuit Court in the county where the work will be performed. If a performance bond is to be posted, a copy of the bond must be attached at the time of, or prior to, recordation of the “Notice of Commencement”.

Post the certified copy of the “Notice of Commencement” at the job site. There is no requirement to post a copy of the bond at the construction site.

An owner’s failure to comply with these requirements could affect title to your property.

When can a lien be filed against your property? – There are two instances, which can result in a lien being filed against your property:

If you fail to pay your contractor for work performed, your property can be subject to a Mechanics’ Lien filed by the contractor.

If a laborer, subcontractor, or a person supplying materials to your property is not paid and has given you a “Notice to Owner” and your contractor fails to pay laborers, subcontractor, or material man, they can file a Mechanics Lien against your property. A “Notice to Owner” is a written statement that gives you the name, address, and description of the work to be done by the subcontractor or material man.

The steps to protect the association may seem to be very involved but by following the Florida Mechanics’ Lien Law, the association will be protected from loss and potential delays in having any sales/transfers take place.