



Florida's Construction Lien Law:

A Contractor's Guide to Understanding Chapter 713, Florida Statutes

ANTHONY D. TILTON, ESQ.
atilton@ausley.com

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WHAT IS A "CLAIM OF LIEN?"

History of "Mechanic's Liens" in Florida.

The overall purpose of a Claim of Lien.
Protect and secure rights to payment for those who work to improve real property.

Legal Impact of a Claim of Lien upon private property.
A contractor secures a "slice" of that real property and may encumber the property until made whole.

Permitting a contractor to obtain a SECURITY INTEREST in the improved property.
A contractor who remains unpaid on that security interest may foreclose on the property.



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What Property is Subject to a Claim of Lien?

1. Any (almost) Real Property.
2. Commercial or Residential.
3. Private or Corporately Owned.
4. Some Leased Property.
 - a. Care needed to determine the scope and limitations of the Lease – Locate and review the Lease Agreement.
5. Property Belonging to Homeowners Associations
 - a. Caution needed to ensure the limits of the HOA's ownership of "common elements" and the "Unit Ownership."
6. Spousal Property and the "Separated Spouse" Conundrum.




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**What Property
IS NOT Subject to a Claim of Lien?**


1. State Owned Land.
2. Federally Owned Land.
3. County or Municipal Land.
4. Lease Property Wherein the Property Owner Has RECORDED a Prohibition Against Improvements to the Property.



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**Who Has Lien Rights in Florida?
Who Does NOT Have Lien Rights?**


<p>Have Lien Rights in Florida:</p> <ol style="list-style-type: none"> 1. Contractors 2. Designers 3. Architects, Engineers, or Surveyors who "improve" real property 4. Subcontractors 5. Sub-Subcontractors 6. Suppliers / "Materialmen" 7. Certain "Laborers" 	<p>Do Not Have Lien Rights:</p> <ol style="list-style-type: none"> 1. Subcontractors on projects totaling less than \$2,500.00 2. Contractors performing work on State, Federal, Municipal, or County Land 3. Sub-Sub-Subcontractors 4. Unlicensed Contractors 5. Second-Tier Suppliers 6. Wholesalers selling goods not designated for any specific project 7. Off-Site Laborers 8. Cleaners or Lawn Maintenance (lack of permanent improvement)
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**Statutory Timelines and
Procedures for a Claim of Lien**





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Serving the Notice to Owner, Recording the Claim of Lien, Foreclosing on the Property, and Serving the CFPA

<p>The Notice to Owner</p> <p>Must be served upon the owner of record within 45 Days of the Contractor's first furnishing of labor, services, or materials. (For sub-liters NOT in contractual privity with Owner).</p>	<p>Recording the Claim of Lien</p> <p>Must be recorded in the County where the work was performed within 90 Days from the Contractor's "Final Furnishing." (For every year Contractual Privity or Not, must record within 90 days of last day of work).</p>	<p>Foreclosure</p> <p>Must foreclose upon the property within One Year from the date the Lien was Recorded.</p>	<p>Contractor's Final Payment Affidavit</p> <p>Must be served upon the owner at least 5 Days prior to filing the foreclosure action.</p>
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What May a Contractor Lien For? What **MAY NOT** Be Included in the Claim of Lien?

<p>Damages Subject to a Claim of Lien:</p> <p>The outstanding balance relating to the costs of the labor, services, and materials incorporated into the property.</p> <p>The conservative lien wins the day.</p>	<p>Damages NOT SUBJECT to a Claim of Lien:</p> <ol style="list-style-type: none"> 1. Lost Profits 2. Interest 3. Legal Fees 4. Administrative Costs/Mailing Costs 5. Work not yet performed 6. Be cautious of liening for unsigned change orders
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Property Owner's Procedural Actions to Challenge a Claim of Lien

<p> Order to Show Cause § 713.21(4), F.S.</p>	<p>Action filed in Circuit Court. Lienor has 20 days from service of process to respond and show cause why the Lien should not be vacated.</p>
<p> Lien Transfer Bond § 713.24, F.S.</p>	<p>Filed with the Clerk of Court to deposit the lien amount, plus fees, and statutory interest. Prevents foreclosure against the property and moves the Lienor's security interest to the Bond and away from the property.</p>
<p> Notice of Contest of Lien § 713.22(2), F.S.</p>	<p>No filing of any action. Contest served via Certified Carrier upon the Lienor. Shortens the Lienor's deadline to foreclose from 365 days to 60 days from the date the Notice of Contest is received.</p>

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FORECLOSING UPON A CLAIM OF LIEN

Lienor has 365 days from the date the lien was recorded to foreclose.

Fla. Stat. § 713.22(1), a failure to file an action within one year on a Claim of Lien is an absolute defense.

Claim of Lien is valid for only one year. Following the expiration of the Statute of Limitations, Lienor is precluded from foreclosure.

Action filed in the County or Circuit Court wherein the work was performed and the property is located.

Circuit Courts may have jurisdiction of the action regardless of the amount in controversy.

Certain Statutory Prerequisites to Foreclosure if Served By Owner:

- Contractor's Final Payment Affidavit (**ALWAYS** at least five days prior to foreclosure action).
- Owner's Demand for Sworn Statement of Account (Fla. Stat. § 713.16(2)).
- Request for Copies of Contracts (Fla. Stat. § 713.16) and Sub-Tiers/Suppliers (Fla. Stat. § 713.165).

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FRAUDULENT LIENS

Exaggeration as to Lien Amount

Work Not Performed or Materials Not Supplied

Lien Prepared with Willful or Gross Negligence as to the Amount

A Fraudulent Lien is not a defense, but rather a counterclaim against the Lienor. Liens seeking lost profits, interest charges, costs for the preparation and filing of the lien, attorney's fees, or any other amount which exceeds the value of "the labor, services, or materials incorporated into the property" may be subject to a counterclaim for a Fraudulent Lien.

Florida's Lien Statute, at Fla. Stat. § 713.29, entitles the "prevailing party" in a lien foreclosure action to recover attorney's fees and costs. What is a "prevailing party?" Significant Issues Test in Trytek v. Gale Industries, Inc.

Criminal penalties for misuse of Florida's Construction Lien Laws may involve the giving of false sworn statements, false releases, or the fabrication of any other required documents relating to payments to subcontractors or suppliers. Misapplication of construction funds is the most common misstep (e.g., "Robbing Peter to Pay Paul").

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**CONCLUSION,
CLOSING THOUGHTS, AND DISCUSSION**

THANK YOU!

850-425-5341

ATILTON@AUSLEY.COM

WWW.AUSLEY.COM

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