

## **NOTICE TO OWNERS: WHO, WHAT, WHEN AND WHY AM I SERVING THIS?**

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Generally speaking, a "Notice to Owner" is a statutorily required notice which let Owners of construction projects know who is working on the project. It is effectively, just that....a Notice to the Owner. The Notice is required by Florida's Construction Lien Law and must contain certain warning language, the Owner's name and address, a description of the materials or services provided and a description of the real property improved. The form for the Notice can be found verbatim in *Fla. Stat. § 713.06(2)(c)*. The Notice does not act as a cloud or encumbrance on the title of the Owner's real property and must be served by certified mail or hand delivery with proof of the delivery either: (i) before commencing work or (ii) within 45 days of your first furnishing labor, services or materials to a construction project.

The Notice is effective as of the date it was placed in the mail provided that it was placed in the mail 40 days from the first day of work. However, if you are specially fabricating materials for a project (i.e. custom cabinets or marble countertops) the time period to serve the Notice runs from the date of first fabrication. When the Notice is properly served, but is returned as "refused", "moved", "not forwardable" or "unclaimed", the service is deemed effective as of the date the Notice was sent.

If the Notice is required and you fail to serve the Notice, the Owner has a complete defense to a lien foreclosure action. The result can be a complete loss of the construction lien, payment of the other party's attorneys' fees and even claims for damages for slandering or improperly encumbering the title to the real property of the Owner. In fact, courts have invalidated Notice to Owners if they omit portions of the required text, like the warning language or if the statutory form is reformatted. See Allstar Bldg. Materials v. Kronauer, 724 So.2d 616 (Fla. 5<sup>th</sup> DCA 1999). So make sure you use the *statutory* form.

Florida's Construction Lien Law does create exceptions for some lienors. No Notice to Owner is required if you fall within one of the below categories:

1. The contract is directly with the Owner of the construction project (in privity).
2. The contract is directly with the Owner's agent.
3. The Owner and general contractor share common corporate identity and are thus the same person.
4. Labor, services and materials to make the construction site suitable for building (i.e. site work, excavating, grading, underground utilities).
5. Professional lienors (architect, engineer, land surveyor, mapper, and landscape architect).
6. Laborers who perform actual physical work at the construction site.
7. If the contract for construction between the owner and general contractor is under \$2,500.00, then Florida's Construction Lien Law does not apply and the Notice to Owner is of no use.
8. Federal, State or Municipal construction projects.

If you are in doubt as to whether you should serve a Notice to Owner or are exempt from doing so, you should consult your construction attorney for guidance. A good rule of thumb is “when in doubt, serve it anyway”. Remember, failing to serve the Notice to Owner when required is fatal to your construction lien.