

NOTICE OF COMMENCEMENTS – Construction Law’s “Source Document”

By Christopher M. Cobb

The Notice of Commencement is the most useful document for a contractor or subcontractor to obtain necessary information to perfect lien rights. The Notice of Commencement is referred to as the “*source document*”. A contractor or subcontractor who records a construction lien has the right to rely upon the information contained in the Notice of Commencement when attempting to perfect their construction liens. If the information in the Notice of Commencement is wrong, it will not invalidate the lien. The Notice must contain the following information:

1. Description of the property sufficient for identification,
2. A general description of the improvement,
3. Name and address of the owner,
4. The owner’s interest in the real property,
5. Name and address of the contractor,
6. Name and address of the surety, including bond amount,
7. Name and address of any lender,
8. Name and address of owners designated person for notice,
9. Date of expiration of Notice of Commencement.
10. Warning language.

The owner is required to sign the Notice of Commencement and no one is permitted to sign in place of the owner. §713.13(1)(g), Fla. Stat. The owner’s signature must be notarized and the Notice must also contain the requisite statutory warning language regarding improper payments. The Notice does not act as a cloud on the title to the property. It is simply a document to let the public know that improvements will be occurring on the property. However, if the Notice has not expired or been terminated, a title insurance company may write an exception to any title policy due to the fact that construction liens may relate back to the date of the Notice of Commencement.

Prior to the construction improvements being made, the owner is required to: (i) record with the clerk’s office a Notice of Commencement, and (ii) post on the site of the improvement a certified copy of the Notice or post a notarized statement that the Notice has been recorded along with a copy of the Notice. Before disbursing any construction funds under a construction loan, a lender must record the Notice of Commencement in the clerk’s office, but is not required to post a certified copy on the job site. 713.13(6), Fla. Stat. Usually the lender will record the construction loan first and the Notice of Commencement second so as to avoid any subsequent lien claiming priority over the loan documents. Remember, Florida is a “notice” state so the first in time usually is the first in right; save for any relation back considerations.

The permitting authority may not require the Notice of Commencement be recorded as a condition to obtaining a building permit. §713.135(1)(e), Fla. Stat. When a Notice of Commencement is recorded, a copy may often be obtained by searching the clerk of court’s website. The Notice of Commencement is only valid for one year unless expressly extended in

the language of the Notice. If the improvements described in the Notice of Commencement are not actually started within ninety (90) days, then the Notice is void by operation of law and has no further effect. If the owner wishes to change contractors during the progress of the improvement, a new Notice of Commencement must be recorded. If the project is bonded, a copy of the payment bond must be attached to the Notice Commencement when recorded. If the payment bond is not attached, the bond may still be used to transfer liens by the recording of a separate Notice of Bond.

There are some exceptions to the recording of a Notice of Commencement. First, an owner performing subdivision improvements under §713.04, Fla. Stat., does not need to record a Notice of Commencement. §713.13(4), Fla. Stat. Second, when the cost of the contract between the owner and contractor (i.e. the direct contract) is \$2,500.00 or less, the owner does not need to record a Notice of Commencement. §713.13(1)(a), Fla. Stat. Knowing your rights under Florida's Construction Lien Law can be tricky. Obtaining the information on the Notice of Commencement can help ease anxiety and provide a contractor or subcontractor with the identity of all parties who should be noticed during a construction project.