

# Basic Considerations for Building or Renovating a Home in Florida

April 30th, 2012 | [bLAWg](#)

By: [Charles B. Jimerson, Esq.](#)

## Introduction

When purchasing a home or renovating an existing inhabitation, property owners should be aware of certain basic issues that can cause legal problems under Florida law. This post is designed to address some issues that may arise in the process and provide basic guidance on what consumers need to be aware of.

## Selecting Your Contractor

For those regular readers of the blawg, you may recognize that we have previously written an article covering [10 things to consider when selecting a General Contractor](#). We encourage you to review those pieces of advice before you execute a contract to improve your property.

Florida law requires that every contractor be properly licensed in this state before contracting to build or remodel a home. A contractor who is “certified” is licensed by the state and may operate in any city or county in this state; a contractor who is “registered” is licensed by a particular city or county and may operate only in the city or county of registration. However, all licensed contractors are regulated by the Florida Department of Business and Professional Regulation (“DBPR”). Local building departments or local building contractors’ associations will be able to tell you if a contractor is properly licensed to work on your project. The Florida Department of Business and Professional Regulation maintains a database of what contractors are licensed for what scope on the state level. You can check a contractor’s license [here](#). The following categories require registration or certification: general; building; residential; sheet metal; roofing; air-conditioning; mechanical; swimming pool/spa; plumbing; underground utility and excavation; solar; and pollutant storage. Cabinets, countertops, flooring, paint, wallpaper and window treatments are examples of work that do not require state licensure. Licensed contractors are only authorized to construct the types of improvements included within the scope of their license.

## Construction Contracts

There are many forms of contracts used in home building. Most of them are contractor or builder slanted and you certainly should gain independent counsel to review any proposed contracts to ensure your rights are protected. All contracts are negotiable and ensure you are executing a document that has agreeable terms.

Florida construction contracts are required to contain several specific items, such as the licensee's number, construction lien language, energy information and insulation ratings for various components. Every contract should also include basic provisions, including, but not limited to:

- Legal description of the land.
- Description of the plans and specifications by date (or revision), name of preparer and number of pages.
- Specific articulation of all documents incorporated into the contract.
- General and specific conditions.
- Total contract price, and the stages and amounts to be paid as construction progresses.
- Time of commencement and time of completion.
- Amounts of allowances or credits for the owner's selection of such things as cabinets, countertops, electrical and plumbing fixtures, appliances, floor covering, roofing material, landscaping or decorating.
- Lien releases requirements.
- Warranties, if any.
- Appropriate property insurance coverages during construction, including commercial general liability, workers' compensation, and builder's risk.
- Payment or performance bond language.
- Indemnifications.

If the land is owned by the contractor until completion of construction, provisions should also be included for transfer of title, the type of deed to be used to convey title, date and time of closing, title insurance and other closing costs.

### **Construction Liens**

Many of those who make improvements to your property during the construction process will be granted construction lien rights for unpaid improvements. A construction lien is an encumbrance against the property, similar to that created by a recorded mortgage, that may prevent a sale of the property without payment or transfer of the lien to a bond with the clerk of court. Unpaid liens may also be foreclosed, which can result in the forced sale of your home by court order.

Lien rights are not limited to your contractor, but also extend to most subcontractors, material suppliers and laborers with whom the owner has not contracted directly. As a result, you may be liable to pay for labor or materials, even though you have already paid your contractor for the same work. In order to protect your property from construction liens, you should require your contractor to obtain a lien waiver or release from every person or company working or providing materials during the construction or remodeling of your home to the extent of each payment that you make to the contractor. If you receive a Notice to Owner, you have an obligation to obtain a signed lien release or waiver from each person sending that notice to you each and every time you make further payments to your contractor. It is imperative that you do not make additional payments to your contractor until each noticing party provides you with a signed lien release/waiver up to the date of each subsequent payment or for the periodic installment amount any lien rights have accrued for. Florida law provides you with the right to request a list of the names and addresses of all subcontractors and suppliers with whom the contractor has contracted. It is important to note, however that there may be other subcontractors and suppliers unknown even to the contractor. For those reasons, obtaining releases from those who serve Notices to Owner is the only foolproof way of ensuring your property will not be liened by those notifiers.

## **Lien Documents**

There are a number of construction lien related documents which are set forth in Florida Statute Chapter 713 that you should be familiar with:

***Notice of Commencement*** – this form must be executed by the owner (not by the contractor or by anyone else on the owner’s behalf). It is required to be recorded in the public records and posted on the job site before the first inspection can be approved by the building department.

The Notice of Commencement identifies the name and address of the owner and requires that all persons that furnish labor and materials to send a Notice to Owner. This notice also contains information about the project (such as “single-family dwelling”), legal description of the property, contractor’s name and address, and lender’s name and address (if any). By recording a Notice of Commencement, the owner can require the general contractor to supply releases of lien from all persons that have served a “Notice to Owner.” Construction must be commenced within ninety (90) days from the date that the Notice of Commencement had been recorded. Do not record a Notice of Commencement before you close on your construction loan as the construction and the financing may be delayed as a result. The Notice of Commencement is effective for one (1) year after it is recorded unless otherwise provided in the Notice. If you are requiring a “payment bond” from your contractor in order to keep liens off of your property, a copy of that bond must be attached to the Notice of Commencement at the time it is recorded.

***Notice to Owner*** – Generally speaking, a “Notice to Owner” is a statutorily required notice which lets 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. We have written about NTO's more [here](#). This statutory form must be sent to the owner by any subcontractor or supplier who did not contract directly with you and later files a lien on your property. With few exceptions, NTO's are sent via certified mail and is usually signed for by anyone actually receiving it. Signing for this document should signify its importance to you. Do not fail to sign for this document either as Florida law holds that you will be deemed served if you are actively avoiding service.

***Claim of Lien*** – A Claim of Lien is a formal and recorded notice that a lien has been placed on property. In Florida, if the lien results from improvement made to property and affords the lienor with a right to take action to enforce the lien, which can include foreclosure on your home and a forced sale on the court house steps. A construction lien “expires” or becomes unenforceable 365 days after it was recorded unless you take certain steps to shorten that time. If you receive a Claim of Lien take it very seriously, do not ignore it, and speak to a Florida attorney with proficiency in construction law. There are many steps that are available to remove the lien or to create a valid defense to its enforcement.

### **Payments to Contractor**

There is no limit on the amount of the initial deposit or progress payments a contractor may require, except as provided in the construction contract with the owner. However, a pre-construction deposit or initial payment to the contractor should only cover the costs the contractor is likely to incur before the progress draw payments. Any deposit in excess of 10 percent of the contract price imposes additional legal obligations on the contractor for obtaining the building permit and commencing the actual construction. In fact, the draws or amounts paid to the contractor should always bear a close relationship to the value or percentage of the work completed to the date of each payment. This should be accomplished by a “payments schedule” set forth in the contract based on stages of completion (such as: floor poured, roof dry-in, etc.) or based on a percentage of completion for each set period (such as bi-weekly or monthly). Many construction problems are associated with the quality of the work performed or the amount of the work performed compared to the amount of monies paid. Accordingly, if payment is made for work not yet completed and the contractor encounters financial problems, the owner may have to

pay twice for the same work. In addition, a substantial final payment, payable only after the certificate of occupancy has been issued and all punch list corrective work has been completed, will encourage the contractor to complete the project to the owner's satisfaction. When each progress payment is made to the contractor, the owner should require a partial waiver or release to the date of payment of all lien rights from the contractor and from all the subcontractors and suppliers who have been hired by the contractor to provide labor, services or materials for the construction or remodeling. This requirement should be included in the construction contract, and even though it may place an additional burden on the parties, it is one of the best protections from liens an owner can obtain. Both partial and final lien release or waiver forms are set forth in the Florida Statutes, Chapter 713.20.

In addition to progress payments, and whether the owner receives any Notice to Owners from lienors, the owner must obtain a Contractor's Final Payment Affidavit from the contractor before final payment is made. Otherwise, the owner's property may be exposed to liens for unpaid amounts that may be due to any lienor who sent a Notice to Owner. This affidavit must set forth the amount due to the contractor, if any, and the amounts due to any subcontractors or suppliers named in this affidavit. If there are amounts due to subcontractors or suppliers, the owner should seek legal advice to determine the best way to make certain such amounts are properly paid, such as by joint checks, or direct payments, to the unpaid subcontractors and suppliers prior to the owner making any further payment to the contractor (even for agreed upon "extras").

## **Conclusion**

One of the most unsettling things that can happen to a property owner is to have a construction lien filed against his/her property when the owner has paid the contractor in full the contractor failed to pay one of its suppliers, subcontractors or laborers. Protecting your property against a mechanic's lien is essential. The first protection is to have a written contract with the general contractor with defined payment terms, including documentation required from the general contractor before any payment is made by the property owner. Remember that a general contractor, who has a contract with the property owner, may also have a cause of action for breach of contract and sue the property owner directly, in addition to recording a lien. Subcontractors as well as suppliers and laborers usually do not have a direct contract with the property owner, and their only remedy is to record a lien against the property. There are several actions a property owner can take that will protect the property from liens so long as you follow the basic suggestions in this publication and timely seek competent legal advice.

Tags: [Construction Law](#), [Liens](#), [Notice to Owner](#)