

Building a Home



Introduction

For many, acquiring a home is a major financial commitment, whether purchasing an existing home or building or remodeling one on land owned by the contractor or the owner. The information in this pamphlet is designed to assist the owner who is having a home constructed or remodeled in Florida on land owned by the owner. However, extreme caution should be exercised to minimize legal problems that can arise. This pamphlet generally covers:

- Selecting your contractor
- Construction contracts
- Construction liens
- Lien documents
- Payments to contractors

Selecting Your Contractor

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”), which can be contacted at: 1940 N. Monroe Street, Tallahassee, Florida 32399-1027; telephone (850) 487-1395; website <https://www.myfloridalicense.com>.

While using a properly licensed contractor is no guarantee of a successful project, it provides the owner with additional remedies in the event problems arise. In order to check on a contractor’s current “active” status BEFORE YOU SIGN a contract, obtain the contractor’s individual license number, which every licensed contractor is required to have, as well as any company’s “qualified business” (“QB”) number, and check it on DBPR’s Web site at: <https://www.myfloridalicense.com>; click on “Search for a License” under the “Public Services” section.

Licensed contractors are only authorized to construct the types of improvements included within the “scope” of their license. For example, if your home will be more than two habitable floors, make sure the contractor has a “general” or “building” contractor license.

Accordingly, you can also contact DBPR to ensure that the contractor you are selecting has the proper type of license for the construction of your home.

License verification can also be obtained by calling the Customer Contact Center at (850) 487-1395.

Construction Contracts

There are many forms of contracts used by contractors. Most of them have been written primarily for the protection of the contractor, and not the owner. Therefore, in addition to carefully reading the contract BEFORE YOU SIGN, you should address any of your questions to the contractor and add any clarifications to the contract in order to avoid a subsequent misunderstanding. If your questions are not answered to your satisfaction, you should consult an attorney, or find another contractor.

Construction contracts are required to contain several specific items, such as the licensee’s number (see Selecting Your Contractor), 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.
- 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 (see Construction Liens).

- Warranties, if any.
- Appropriate property insurance coverage during construction, including commercial general liability, workers' compensation, and builder's risk. 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

Under Florida law, many of those who provide labor or materials to make improvements to your property, such as for the construction or remodeling of a home, are granted "lien" rights for items that are unpaid. The law concerning construction liens is found in Title XL, Chapter 713 of the Florida Statutes.

A "lien" is an encumbrance or charge 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.

These 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 (these are called "non-privity" lienors). As a result, you, as an owner MAY be liable to pay for labor or materials, even though you have already paid your contractor for the same work. In other words, you may end up paying twice for the same thing!

In order to protect yourself from these 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" (See Lien Documents below), 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. **DO NOT MAKE**

ANY FURTHER PAYMENTS TO YOUR CONTRACTOR UNTIL EACH LIENOR SENDING YOU THAT NOTICE PROVIDES YOU WITH A SIGNED RELEASE OR WAIVER OF LIEN RIGHTS UP TO THE DATE OF EACH SUBSEQUENT PAYMENT TO THE CONTRACTOR.

You have the right to request a list of the names and addresses of all subcontractors and suppliers with whom the contractor has contracted, but there may be other subcontractors and suppliers unknown even to the contractor. In addition, you should closely follow the instructions below when making payments to your contractor (see Payments to Contractor).

Lien Documents

There are a number of documents that are vital to the operation of the lien law, the forms for which have been specified by law, including:

Notice of Commencement – this form **MUST** be signed 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. This notice contains information about the project (such as “single-family dwelling”), legal description of the property, owner’s name and address, contractor’s name and address, and lender’s name and address (if any). All lien notices required to be sent to the owner can be addressed as shown on this document. It is **VITAL** that the address where the owner can actually receive mail **DURING CONSTRUCTION** be correct; otherwise, the owner may be unable to take certain steps necessary to protect the property from liens (see Notice to Owner). Likewise, the lender’s name and address should be correctly included because receipt of lien notices may give rise to certain legal responsibilities the lender may have to the owner to help protect the property from liens.

You can obtain this form from your attorney, a local building department, your contractor, an office supply store or the Florida Statutes. However, if you need financing to build or remodel your home, consult your lender regarding this document (because the lender will

also want its name and address included on this form). DO NOT RECORD A NOTICE OF COMMENCEMENT BEFORE THE CLOSING OF A CONSTRUCTION LOAN, because both the construction and the financing may be delayed as a result.

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.

Construction MUST BEGIN within 90 days after the Notice of Commencement is recorded, or it will expire and be void. If this occurs, another Notice of Commencement should be recorded immediately.

Notice to Owner – this 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. It must include a WARNING to the owner to restrict all future payments to the contractor until the person or company sending this notice has been satisfied with a signed waiver or release (at least partially as to all labor, services or materials to the date of a non-final payment, or completely in case of a final payment). Such a notice is normally sent by registered or certified mail, and is usually signed for by anyone actually receiving it. THIS DOCUMENT SHOULD NOT BE IGNORED, and should be discussed with your lender and attorney IMMEDIATELY upon receipt. Also, this notice may be “**deemed served**” on you if properly addressed and mailed to you, but not actually received due to your actions. DO NOT FAIL OR REFUSE TO CLAIM your mail, especially during and immediately following the construction period, because undisclosed liens may arise as a result.

Claim of Lien – this document, when recorded in the public records, actually creates a lien on your property. This lien continues to be effective for one year from the date of recording, unless you take certain steps to shorten that time. Those steps should be undertaken only with the advice of an attorney. A construction lien may be enforced by legal proceedings to FORECLOSE against your property, which can result in a court-ordered sale of your property on the steps of the local courthouse to the

highest bidder, and payment of the lien made from the proceeds of that sale. YOU SHOULD SEEK ADVICE OF AN ATTORNEY IMMEDIATELY UPON receipt or knowledge of a lien, because there may be steps 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 first post-construction payments (which are referred to as “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 can 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. Note that making payments on work not completed properly by the contractor or without waiver of lien does not necessarily give rise to defenses against a lender who provided funds for construction. In other words, if there is a loan to fund construction the liability of that loan will not disappear if the work is not completed 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. In every situation, however, the owner **MUST REQUIRE** from the contractor a waiver or release of lien from **EVERY LIENOR WHO HAS SERVED A NOTICE TO OWNER** each and every time any subsequent payment is made to the contractor after such notice is received. Failure to do so exposes the owner’s property to a lien for the amount that may ultimately be owed to each such lienor.

Both partial and final lien release or waiver forms are set forth in the Florida Statutes, Chapter 713.20. These forms can be downloaded online by visiting <http://www.leg.state.fl.us/statutes> and pulling up the corresponding Web page.

In addition to progress payments; and whether the owner receives any Notice to Owners from lienors, the **OWNER MUST OBTAIN A 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

Thousands of homes are built in Florida each month, and most are completed without liens being filed or other

problems arising. However, the large number of residential projects and contractors and suppliers increases the chances that one or more of them may fail to perform as agreed, and that liens on an owner's property may result. Following the basic suggestions in this publication, together with competent legal advice, can decrease the risks that confront owners building homes and improve their chances of having successful experiences remodeling their homes.

For further information about contractor licensing, consumer complaints and the Consumer Construction Recovery Fund, contact the Florida Department of Business and Professional Regulation at 1940 N. Monroe Street, Tallahassee, Florida 32399-1027, telephone: (850) 487-1395.

If you need a lawyer

If you need a lawyer and don't know how to find one, many areas in Florida have lawyer referral services listed under "attorneys" or "attorney referral service" in the yellow pages of the telephone book. This service will give you an appointment with a lawyer for a nominal fee.

If there is no lawyer referral service in your city, the statewide Florida Bar service can locate a lawyer for you. You can call toll-free at 1-800-342-8011. The statewide service, which operates only in cities where there is no local program, will refer you to an attorney for an initial one-half hour consultation for \$25.

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