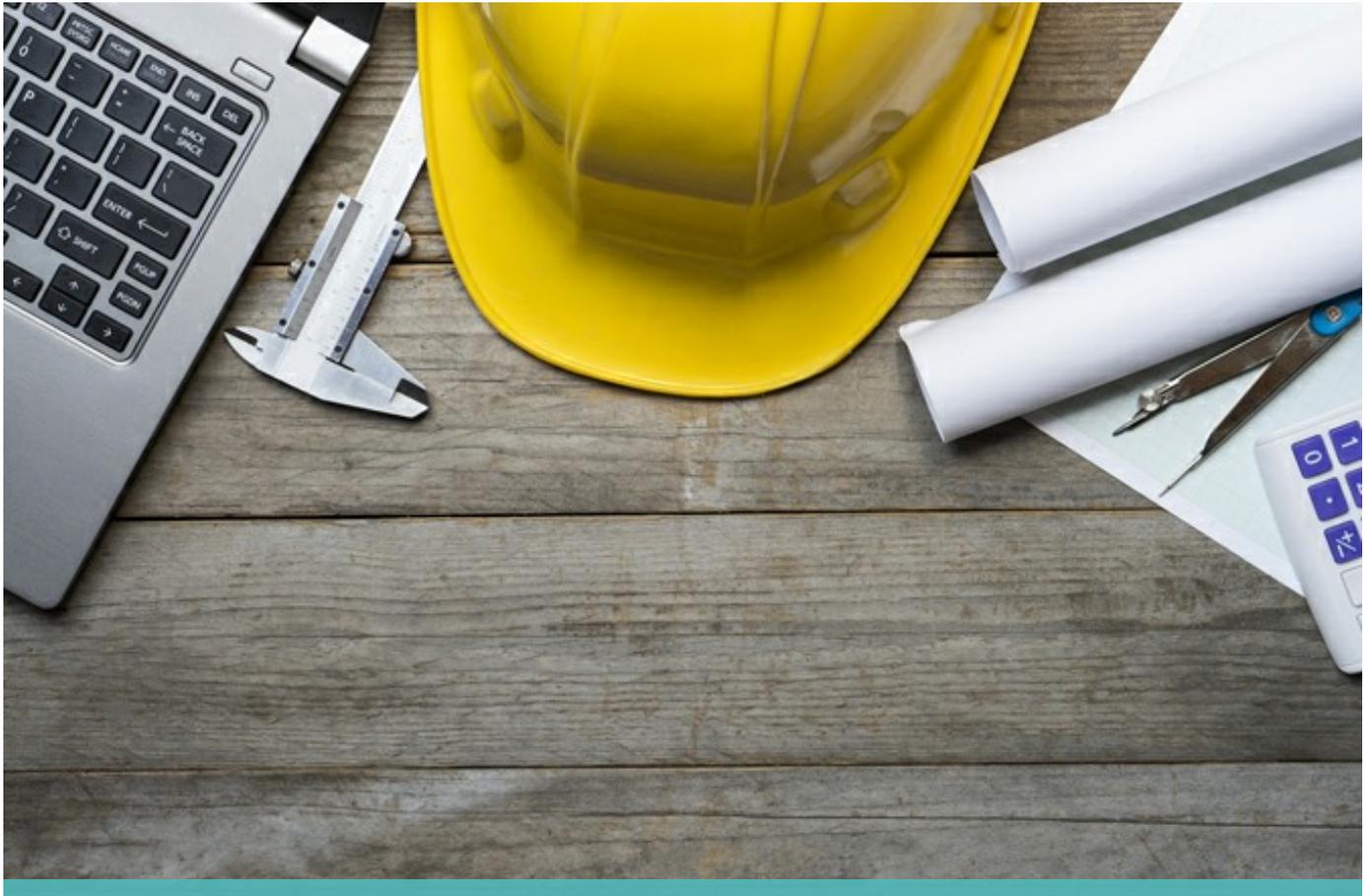


## Understanding waivers and releases for Florida construction contractors



Craig Distel | Thursday, December 20, 2018

Florida statutes provide detailed instructions regarding partial and final waivers and releases of lien. Contractors and subcontractors should be careful what they are signing and must understand the rights they are waiving. This blog provides practical advice for contractors handling waivers and releases, discusses the standard forms and language required by Florida law, and identifies the key issues contractors need to understand.

### 4 Quick Facts About Florida Waivers and Releases

1. Florida contractors cannot waive their lien rights before work is performed. See. Fla. Stat. § 713.20(2). Contractors should not execute any document that requires them to waive their lien rights before work is completed. This provision was added after an epidemic of pre-construction waivers caused problems for contractors and owners. Prior to the adoption of § 713.20(2), contractors and owners were engaged in a bidding war, waiving lien rights and imposing these obligations on downstream subcontractors and suppliers.
2. Contractors cannot be forced to execute a form that is not substantially similar to the form provided in Florida Statutes Section 713.20. Owners may still provide their own forms that include additional language, so it is imperative that contractors read the waivers and releases they are signing so that the contractor fully understands what rights are being waived. Careless contractors can find themselves in trouble after signing broad waivers and releases.
3. The waiver and release is effective as of the date listed on the executed document. Contractors must be careful not to waive rights to payment for work that was completed prior to the date on the executed waiver and release.
4. A best practice for contractors is to include language making the waiver and release conditional on clearance of funds. Contractors should familiarize themselves with the types of waivers and releases provided by Chapter 713 before implementing these tips.

### Partial Waivers and Releases

A partial waiver and release of lien is exactly what it sounds like, through execution, a contractor or subcontractor waives its right to a lien for work completed up to the date listed on the waiver. These are often used at different benchmarks throughout a project. Fla. Stat. § 713.20(4) provides the form for a

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partial waiver and release of lien:

### WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$ , hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

### Final Waivers and Releases

A final waiver and release is given at the end of the project in exchange for final payment. Like a partial waiver and release this provides an owner with confirmation that contractors, subcontractors, and suppliers have been paid. Fla. Stat. § 713.20(5) provides the form for a final waiver and release of lien:

### WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$ , hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

Once a contractor executes a final waiver and release of lien, they are releasing all lien rights against a potential owner. For this reason, contractors should condition the final waiver and release on clearance of funds as provided in Fla Stat. § 713.20(7). This protects contractors in the event a check does not clear. It is important to note that if there is no payment bond, the owner may withhold payment to a contractor the amount of any such unpaid check until the condition is satisfied.

Our experienced construction attorneys regularly deal with issues related to lien law and waivers in Florida, as well as many other jurisdictions. If you have questions about this topic or any other construction law issues, feel free to contact one of the attorneys below.



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