



Florida Construction Lien Law requires any contractor or vendor furnishing labor, services, or materials to file a claim of lien for work within 90 days after the termination of a contract or after the final furnishing of labor, services or materials, which ever occurs first. Most contractors or vendors handle the filing of such liens internally. At present, a contractor could record its lien outside of the 90 day period wagering that an owner will prefer to pay the lien off (if the amount due is actually owed) rather than delay a possible sale or refinance transaction or incurring the costs of initiating a contest of the lien or other proceeding to remove the lien of record. The lien would not be considered fraudulent unless the contractor willfully exaggerated the amount of the lien or included a claim for work not performed or materials not provided or the lien is compiled with such willful and gross negligence as to amount to a willful exaggeration.

The Florida Senate is considering a bill which would not only deter ethically challenged contractors from taking such gambles but also make law-abiding contractors more likely to file their claims of liens before the end of the 90 day period. The pending bill would make the filing of a claim of lien after the 90 day period an act of fraud; making the lien not only unenforceable, but also exposing a contractor to felony charges, fines, liability for damages suffered by the owner, prevailing party attorneys' fees and punitive damages. Because the State Attorney is required to report the matter to the Florida Department of Business and Professional Regulation for investigation, the contractor's license also may be at risk.

Additionally, the proposed bill imposes administrative hurdles to the filing of the lien. First, the bill proposes a \$50.00 fee in addition to the recording fees normally associated with the filing of the lien. Further, prior to recording, the contractor must also present the clerk of court with a copy of either (a) the Notice of Commencement, (b) the applicable building permit, or (c) an affidavit under the penalty of perjury affirming the work or materials were provided for the subject property. Because the clerk would now be required to attach a copy of the foregoing materials with the lien, the contractor's recording expenses also would increase.

While this proposed bill seems to be mostly bad news for contractors and vendors, owners also will feel the repercussions. In some ways, the bill incentivizes contractors to file the claim of lien as soon as possible without regard to the facts and circumstances at hand. For instance, in a normal construction loan process, the draw and payment process can be a fluid process due to the time required to collect waivers or releases from the various contractors and vendors, submit the draw, run a title update, process the draw through the lender, and finally issue payment. This proposed legislation may encourage contractors not to wait for this process to play out. From the contractor's perspective, it may seem prudent to file the lien and not risk loss of lien rights due to processing delays. For an owner, however, these prematurely filed liens could mean additional time and expense to remove the liens of record.



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